

**VERBATIM NOTES OF THE SIXTH MEETING OF THE JOINT SELECT COMMITTEE ON ENERGY AFFAIRS, HELD IN THE A.N.R. ROBINSON MEETING ROOM (EAST) (IN PUBLIC), OFFICE OF THE PARLIAMENT, TOWER D, THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON WEDNESDAY, JUNE 01, 2016 AT 11.08 A.M.**

**PRESENT**

Mr. Colm Imbert	Chairman
Mr. Franklin Khan	Vice-Chairman
Maj. Gen. Edmund Dillon	Member
Mr. David Lee	Member
Mr. David Small	Member
Mr. Daniel Solomon	Member
Miss Candice Skerrette	Secretary

**ABSENT**

Mrs. Paula Gopee-Scoon	Member [ <i>Excused</i> ]
Mrs. Ayanna Webster-Roy	Member [ <i>Excused</i> ]

**OFFICIALS OF THE MINISTRY OF ENERGY AND ENERGY INDUSTRIES**

Mr. Selwyn Lashley	Permanent Secretary
Ms. Heidi Wong	Deputy Permanent Secretary
Mr. Richard Jeremy	Chief Technical Officer (Ag.)
Ms. Louise Poy Wing	Senior State Counsel
Mr. Ivor Superville	Senior Energy Analyst (Ag.)
Mr. Dave Mungal	Senior Energy Analyst (Ag.)
Ms. Susan Singh	Senior Human Resources Officer (Ag.)

Mr. Frank Look Kin

Advisor

**Mr. Chairman:** Good morning, good to see you all again. Mr. Lashley, we waited for you and Ms. Wong, we could not do this without you.

**Mr. Lashley:** My apologies.

**Mr. Chairman:** No problem at all. All right, in this meeting we will just continue where we left off and particularly focus on the answers that you provided to the questions we asked on the last occasion, and maybe one or two other items. Does any member of the Committee want to go first? I seem to have lost Minister Khan. Okay, all right gentlemen, well I have some questions on the responses you gave us with respect to Atlantic LNG. If you go to the document, I think it is page 5 of the document—all right, now you are familiar with what I am talking about, this is your responses to us, Mr. Lashley—the second to last paragraph, the last sentence where you say:

“Most contracts provide 50% sharing of the diversion upside with the gas supplier, however in one contract, there is no sharing of the upside.”

Could you explain what that means? What do you mean by that?

**Mr. Lashley:** Good morning, Chair, and members of the Committee. First let me just put in context the response that we sent in, and I think we alluded to it on the last day, a lot of the contractual arrangements are just that, subject to contract and confidentiality, so the response, or responses may seem to be broad. So we have kept some names out certainly, and, certainly, in terms of details, contractual details.

**Mr. Chairman:** On that, perhaps you can answer a question that I had asked in another forum, these confidentiality agreements are between who and who?

**Mr. Lashley:** It would vary in terms of the parties to the contracts. Some contracts we are party to the contracts and we actually are bound by the confidentiality

provisions of the contracts. Other contracts we may have sight of the contracts but under side letters of confidentiality as well. I can let our legal representative to probably speak in more detail to that.

**Mr. Chairman:** Sure, okay.

**Ms. Poy Wing:** Good morning, Chair and members, just as PS is indicating there are certain agreements that were entered into in respect of LNG between the Government and some of the companies and those are mainly contained in project agreements between us and the Train 1 partners, the Train 2/3 partners, the Train 4 partners, and those do have confidentiality clauses. In terms of the LNG sales agreements, those are entered to between the companies that are producing under the PSCs and their ultimate buyers, and those contracts, as PS would have indicated, we would have sight of but we are not parties to, and so they do contain confidentiality provisions but those are as between the seller and the buyer of the LNG.

**Mr. Chairman:** Let me tell you what I am driving at, in this document here, again, I believe it is on page 9—I think it is 9—if you look at the first paragraph on page 9, the top there, go to the sentence that start with:

“In addition, 86% of this company’s Train 4 cargoes over the same period have been sent to Spain and received extremely low prices that are not a reflection of European benchmark prices...”

And then, yes, page 8—Mr. Lee, you are quite right—on the second paragraph, last sentence on page 8:

“...in recent years some companies have opted to manipulate the spirit of the contracts, and so the original intent of these contracts are not being honoured.”

How do we as a Committee find out what are these agreements that are not being

honoured in the spirit? How do we find out what is going on since everything seems to be locked up by confidentiality?

**Mr. Lashley:** In another edition of these discussions I heard some sort of indication as to probably another mechanism for having some sort of interaction, maybe in camera, where speaking a little, you know, more freely, we can do it, but I mean that is notwithstanding the fact that there are certain details which we are still bound to not disclose based on disclosures that have been made to us. So I am just suggesting maybe that might be a mechanism that the Committee can explore.

**Mr. Small:** I am not an attorney so I am just asking, when you say it has been disclosed to the Ministry but the Ministry cannot disclose it to anyone else, not even to the Government—

**Mr. Chairman:** I do not think he is saying that.

**Mr. Small:** That is what I am trying to get clear. So who cannot—I am not an attorney so you have to guide me. If information is disclosed to the Ministry, and, for instance, this Committee has an in camera, completely private session, are there still information that even in a private session you would not be able to disclose? Is that what you are saying?

**Mr. Lashley:** I will allow the attorney to guide you, but, generally, the sort of standard that the recipient of confidential information is held to most times is that they have to ensure that any disclosure that they make, first of all is done with the permission of the disclosing party; and, two, that in fact we receive undertakings from any other party similar to what we are bound by. So those are the types of things normally that would apply to disclosures under covered by confidentiality.

**Mr. Solomon:** Chair, if I may, I am an attorney and I just want to find out exactly why it is that the Parliament, or the Government of Trinidad and Tobago, whom we represent, and I imagine would be the signatory to these contracts, are not

allowed to know what the contents of it—I agree we could do it in camera, but it seems very strange to me that these are contracts that deal with the natural resources of our country and we are the representatives of that, that we should be held in the dark and not know what is going on. How are we going to make a report or suggestions about improving it if we do not know what the deal is? That to me just seems alien and unacceptable.

**Ms. Poy Wing:** Perhaps it may be helpful if I could respond in broad terms, because as PS indicated, we cannot indicate specific companies or specific contracts. To try and assist with the area you identified earlier, Mr. Imbert, when we spoke about—you said there was one contract that did not have the destination premium. In some of those contracts what we did is under the base contract there is a particular destination that those cargoes were agreed upon between buyer and seller. The contract allows some flexibility in terms of excess cargoes and even in the contracted cargoes, and it is what we refer to as a destination premium, and I would let my friend on the other side, Mr. Jeremie, assist when I am through. So if that cargo of LNG was destined, let us say to the US, but the buyer has been able to find a better market, a better price for that LNG, our cargoes have gone as far as Korea and Japan and so on, the price that they would get for the cargo going to the premium destination, obviously it is a better price so you deduct the base price from that price and that destination premium, which we referred to in the contracts, is divided between the seller and the Government, 50/50. The contract that did not contain that clause, it would have been a factor of, it was just not negotiated by the Government at the time, so that it was omitted from that particular contract, and we did seek to improve on that in the later contracts.

**Mr. Chairman:** But is that a contract or a destination, or for one of the trains? That is what I am getting at, what do you mean by, a contract did not have an

upside premium? What do you mean by that?

**Ms. Poy Wing:** For those of the Committee that are not familiar I am going to give you a little background. All of the contracts, the gas we are talking about, natural gas, comes from the upstream under production-sharing contracts, all right, and the parties under those contracts. Those, the LNG, so when the contractor companies discover the gas they then find a market for that gas. If it is LNG it goes to Atlantic to be liquefied, and then it is sold to whoever the buyers, they negotiate. It is not the Government that finds the buyers, it is the sellers. So that it is these upstream companies that would be selling the gas that would have negotiated the sale of the gas under those PSCs to whoever the eventual buyer is in the market.

**Mr. Chairman:** No, but what I am driving at is your words here on page 9 where you say that there was a particular contract—is it page 9? Is it page 4? You are sure?

**Mr. Khan:** Page 5.

**Mr. Chairman:** Page 5, yeah, where you say, in one contract there is no sharing of the upside, that is a contract for what?

**Ms. Poy Wing:** This would be, one, it would be the project agreement between the Government and these companies, and it would also be in the LNG sale and purchase agreement between the companies again, the same companies in the upstream that are selling the gas to the buyer.

**Mr. Chairman:** Yes, but, again, I do not think you are understanding my question so I will try to be a better communicator. Is this a contract for all of the LNG coming out of a particular train? Or is it a contract for some of the gas? What is it? Okay, that is what I am driving at.

**Mr. Lashley:** Chair, perhaps I can allow Mr. Jeremie just to walk you through, because the question you posed, I think it brought it out. The commercial

arrangements are between a number of entities on the upstream. There are several trains and there are different arrangements for the trains, and then there are several parties or entities that are responsible for marketing on the downstream end. So I would ask my Jeremie to just walk you through.

**Mr. Jeremie:** As the PS had mentioned, in terms of the contracts they have particular arrangements. So just one correction in terms of the PSC, there are both ENP and PSC in terms of where the gas is sourced. Now let us say, for instance, in Train 1 there are two buyers of the LNG to particular markets; in Trains 2 and 3 there are about 5 different buyers of the LNG, one, in terms of Trains 2 and 3, there is one particular buyer in its contract does not have where you can share 50/50, the arrangements.

**Mr. Chairman:** What percentage of the output would that be?

**Mr. Jeremie:** It is between 30 and 40 per cent.

**Mr. Khan:** You cannot call the name—

**Mr. Chairman:** How much?

**Mr. Jeremie:** 30 and 40 per cent.

**Mr. Chairman:** 30 to 40 per cent of Trains 2 and 3?

**Mr. Jeremie:** Yeah.

**Mr. Khan:**—but the name listed here.

**Mr. Chairman:** All right, now that is interesting. So, you know, I just want to ask a general question now, so we as a country have caused this project to happen, Atlantic LNG, but we cannot find out what is going on as a country? That is my question. We as a country have facilitated the creation of the Atlantic LNG project and the production of gas, the selling of gas, the processing of gas, the sale of LNG, we facilitated all of that. But we as a Committee now trying to find out, are we getting the best deal, are we getting the best value, are we getting the best price,

are we getting the most amount of tax we could get, we cannot find out? That is my question.

**Mr. Lashley:** The thing about it, you are—I do not know whether it is a question or assertion—

**Mr. Chairman:** It is a question.

**Mr. Lashley:** It is a question, because I was suggesting that one of the ways to get some more specific information is perhaps have a closed session—

**Mr. Chairman:** I understand that, I am trying to get there, that there is a way that this Committee can get more information, but you are implying that if we speak to you out of the public eye we cannot talk about it, that is what you are saying?

**Mr. Lashley:** Yes. There are constraints that the Ministry of Energy would be held to.

**Mr. Chairman:** All right, I would hand you over to the other members of the Committee now. Go ahead, Minister.

**Mr. Khan:** I mean, I just want to make a general point here, please. We are a Committee of the Parliament, and the Parliament is the highest court in the land, and, fundamentally, unless it is very extraneous circumstances, should the Parliament not have access to certain information. I am just saying that as a general principle. On page 8, second paragraph, I want to repeat what the Chairman said:

“However, in recent years some companies have opted to manipulate the spirit to the contracts, and so the original intent of these contracts are not being honoured.”

I want to move on to page 9 to repeat again what the Chairman has said, last sentence on the first paragraph:

“In addition, 86% of this company’s Train 4 cargoes over the same period have been sent to Spain and received extremely low prices that are not a



reflection of European benchmark prices such as NBP.”

And it concludes by saying:

“The net result of this effective swapping of cargoes is that a significant amount of value is captured by the marketer outside of our tax net and GORTT loses out on this revenue.”

Now that is a very, very fundamental statement, and we have a responsibility to the population, because here we have an industry that is the prime revenue earner for the State and it is clouded in secrecy, so while we do not want to breach any confidentiality agreement, as a Committee we must find an opening where certain amount of information has to be shared with this parliamentary committee to bring greater clarity to this issue.

**Mr. Small:** Thank you, Mr. Chairman, I want join in supporting the comments that have been made to date on this issue. I believe that the Ministry has the ability to write to these agencies and say, the Parliament, or the Committee of the Parliament wishes to have full access to the information and allow the companies to say, no, because that would send a particular type of message, because in a closed hearing the Committee would like to have full access to all of the commercial arrangements, and, of course, the Parliament is known for its confidentiality. Issues of confidentiality should not arise regarding the Parliament. Because we cannot function in a space where we have an industry, Mr. Chairman, that is using over 70 per cent of our gas on a daily basis—by my calculations, Mr. Chairman, based on the submission of the Ministry in the previous submission, I have done a calculation where I have netted off—I have done a netback backed off shipping based on the submission of the Ministry of the volume sold and the various markets they went to, and then the average prices. The LNG business is generating in the order of \$60 to \$65 billion in gross revenues a year, and that is net of

shipping, that is netback. So that we have to figure out some way to understand, are we really getting from—you would be well aware, Minister, of what your take is, that does not need to be public information, but when an industry is generating more than the national budget then we have to have very clear sight of what is going on with that industry. And we have to create new means, create creative avenues to try to see how we could understand what is going on and try to make sure that in a state where we have a wasting resource that we try to make sure that we capture as much rent as we can, and make sure we have the structures in place to do so.

I just have a question after my statement, Mr. Chairman. I know the same issue is on page 9 of your document about the swapping of cargoes, what does the Ministry use to track? Because for you to be able to say this I assume that you are tracking the cargoes. I have an access to a nice online portal where when a cargo leaves here I know the ship, the ship number, I know where it goes; so they go to Boston and then they transfer—I can tell you what happens to the cargo, there are services available. So that when the Ministry is making this statement, I suppose that the Ministry should be able to provide some guide as to how much value has been lost as to when the cargo is actually sold in a market, because there are services that are available from Lloyd's and from other parties where you can actually track every day where the ship goes. And it is a subscription service, it is not free, so I suspect the Ministry is using that, but I want to understand how is—because for the Ministry to make this statement:

“The net result... is that a significant amount of value...”

I want to understand, what do you mean by significant amount of value? How are you estimating that? And what is it that you are using?

**Mr. Lashley:** I would allow Mr. Jeremie to respond specifically to what you are

saying, but let me just point out that the monitoring or the tracking of physical delivery of cargoes is what you are speaking to and that is what we monitor as well, but there is another element in terms of paper transactions that can take place that are outside of our jurisdiction as well.

**Mr. Chairman:** Let me just come in here. You have made some statements here that:

“...companies have opted to manipulate the spirit of the contracts, and so the original intent of these contracts are being honoured.”

What are you doing about that?

**Mr. Lashley:** You want me to answer that first before Mr. Jeremie?

**Mr. Chairman:** It does not matter.

**Mr. Lashley:** Well, in terms of this particular instance we have had some extensive negotiations with the company. They have not borne fruit to date because certainly we have indicated and we have pointed out the issues we have with them. Of course, their response has been, well, they are not dishonouring the contractual provisions. There is a contractual freedom available to them to do certain things, but our position has always been, as originally conceived and drafted, that the contracts were designed to facilitate a particular set of marketing arrangements.

In fact, as Ms. Poy Wing has indicated, in some other instances when we provided for additional flexibility, the contract was adjusted to ensure that there was upside sharing, because we realize that in the changing environment for LNG it behoves all stakeholders to seek the best price and the best opportunity for cargoes, but, certainly, in all fairness, if in fact a cargo coming from Trinidad and Tobago receives a particular price with a premium, that premium, to our mind, should be shared with the Government.

**Mr. Chairman:** All right. Well let me tell you what I mean by the question when I

ask what are you doing about it? Have you received legal advice on this?

**Ms. Poy Wing:** Internally, yes; external advice outside of the Ministry of Energy, no.

**Mr. Chairman:** Not yet.

**Ms. Poy Wing:** Not yet.

**Mr. Chairman:** Okay. And then with respect to the comment about 86 per cent of Train 4 cargoes being sent to Spain and receiving extremely low prices, are they allowed to do that contractually? Go ahead, Mr. Jeremie.

**Mr. Jeremie:** Yes, they are allowed to divert to destinations of their choice, it is in the contract, in terms of to get better pricing, but what we referred in the statement is that the companies in terms of pricing in the market, that is what we were referring to, in terms of diverting to markets and fetching prices which in our view are not the best price that should be had in the market.

**Mr. Chairman:** Why would a company sell its product at a lower price than it could get elsewhere? Why would they do that?

**Mr. Jeremie:** To also answer Mr.Small's question, the contract are between the LNG, buyer in Trinidad, buys from Atlantic, and the marketer, all right, and the contract is not—

**Mr. Chairman:** Are they selling it to themselves?

**Mr. Jeremie:** Correct, in terms of—

**Mr. Chairman:** So that is transfer pricing then?

**Mr. Jeremie:** No, but it is based on contracts which were approved by the Government.

**Mr. Chairman:** No, it is okay, I understand. So they are selling it to affiliated or associated companies—

**Mr. Jeremie:** Correct.

**Mr. Chairman:**—which they have an interest in. So even though they sell it at a low price they then benefit from receiving that cargo which they could then sell again, so it could be sold two and three times, the same cargo? It is a hypothetical question I am putting to you.

**Mr. Lashley:** To put another way, Chair, the control and management of the portfolio of cargoes is outside of the jurisdiction.

**Mr. Chairman:** I understand that, that is not my question. I asked first, why would a company sell its product at a lower price that they could get in the market, and then we got to the point where it is agreed that they could be selling it to an associated company, therefore selling it to themselves, is it that when they sell it to themselves they then sell it again to somebody else, hypothetically?

**Mr. Jeremie:** Well, what we get is really what is reported, and it has to be based on our reporting.

**Mr. Chairman:** I know that.

**Mr. Jeremie:** But, you know, it is hard for us to say because we do not track it, we do not track the cargoes after.

**Mr. Chairman:** Well, I think we need to start tracking.

**Mr. Small:** We need to start tracking the cargoes.

**11.35a.m.**

**Mr. Lee:** Good morning to the panel. I am just leading off with the discussion we just had, and I want to carry that into question 9, which is the rationale for the markets for LNG exports from 2005 to 2015. On page 12, I want to direct and maybe get some clarification on the second to last and the last paragraph of the export to North America. Does that also play out in this scenario that we have been discussing a while ago?—because you talked about the LNG to North America had been down between 2013/2014, and it increased in 2015. Then you mentioned in

the last paragraph: “It must be noted that the region”—and the region I assume is the north-east region. Is that correct?—“is now set to become an LNG exporter”.

**Mr. Lashley:** Yes.

**Mr. Lee:** Are you saying that they are now going to be exporting our gas that we sent to that market?

**Mr. Jeremie:** No. It is because of the shale gas in the US. They now have gas that they can now export. So the regasification terminals, which previously received LNG from Trinidad, are now being converted into liquefaction plants, so the US can now export.

**Mr. Solomon:** I am having an issue with this contract. I am sorry to go on about it. You say that, however, in recent years some companies have opted to manipulate the spirit of the contracts, and so the original intent of these contracts are not being honoured. If they are not being honoured and the companies are allowed to manipulate them, and the original intent is not being met, it means that those contracts are either faulty or they are being allowed to get away with it, and they need to be redrafted or reconsidered. I mean, that is something that is a major concern. We need to know what is going on here. How is it that these companies are allowed to manipulate the spirit of the contracts and the original intent? That means the contracts have failed.

**Ms. Poy Wing:** I will attempt to begin, and I will defer to my partner, Mr. Jeremie, to complete. In brief, Mr. Solomon, you are correct. At the time some of these contracts were negotiated, Trinidad and Tobago was obviously not experienced in LNG as we are today, so there are deficiencies in some of these contracts. As PS indicated, we have attempted to negotiate with the companies to improve the benefits and revenues to the country, and what we have been met with on the other side is that they are honouring the letter of the contract, as we say, though not the

spirit of it. So that is a challenge that we have at the moment.

**Mr. Chairman:** Let me come in here. Is there a dispute resolution clause in these contracts?

**Ms. Poy Wing:** Yes.

**Mr. Chairman:** Is it arbitration, is it litigation?

**Ms. Poy Wing:** It is arbitration in the energy sector under the Petroleum Act.

**Mr. Chairman:** So if Trinidad and Tobago felt that these companies were in breach, what would we do? We would file a claim with some arbitral panel? What would we do?

**Mr. Solomon:** It seems they are not in breach.

**Mr. Chairman:** No, well, we are getting there. So if we felt that they were in breach, what would we do?

**Ms. Poy Wing:** Initially we would need to seek external advice.

**Mr. Chairman:** If you got advice that it is not just the spirit of the contracts they are breaching, they are breaching the actual obligation?

**Ms. Poy Wing:** Then we would have to institute arbitral proceedings.

**Mr. Lashley:** Just to add though before Richard may also jump in. As I indicated we have had discussions with the companies. The preferred route, of course, is first have a discussion to see if we can solve it across the table. But certainly we have put them on notice that, in fact, if we do not get the sort of relief, that any sort of pathway that is open to us we will proceed, inclusive of litigation or policies that we may wish to bring to bear.

**Mr. Chairman:** Let me ask you a question. It might be an unfair question because I asked this of the Securities and Exchange Commission and the answer was no. Have you ever taken any of these companies to arbitration?

**Mr. Lashley:** The Ministry of Energy and Energy Industries? I am not aware.

**Ms. Poy Wing:** The answer is no.

**Mr. Chairman:** So, the answer is no. Well, there is a first time for everything.

**Mr. Jeremie:** Could I bring some further clarity? The PS is correct in terms of what we are doing. When we see things that are not correct we bring it to the fore to the local company, but the contracts are not with the Government. We cannot bring the marketer to litigation or to arbitration. We have to get the “himself to himself”, the local companies to take action against the affiliate, and that is what we find ourselves in.

**Mr. Chairman:** I understand. What I am driving at is, have you ever got to the point—I mean, I know the answer already because you have told me—where the Government is of the view that, “Look, we are being cheated,” and you go through the process and you ask the local companies to deal with it and they do not, and then you go to the point of, “All right, you do not want to deal with it, then we will enforce our rights under the contract”. You take it to dispute resolution and you get a ruling. So, you have not done that yet? You just try to sort it out in amicable discussions and mediation and that sort of thing?

**Mr. Jeremie:** There was one instance where the Government was able to get a particular company to take the marketer to arbitration, and they lost.

**Mr. Chairman:** I think I know which company—I think so. But that does not mean anything. Arbitration, like litigation, is a lottery, you win/you lose, but that does not mean you should not try. Otherwise we would have no need for people like Mr. Solomon. *[Laughter]*

**Mr. Lee:** Chair, a question to the panel. Let me just change the topic a little bit. Question one, commencement date for stakeholders’ consultation on the energy industry. Again, the response does not give us any comfort.

**Mr. Chairman:** Yes, Mr. Lashley, let me come in here. You gave us a non-



response here, you know. You say you will do it when you will do it.

**Mr. Lashley:** What I was trying to indicate, Chair, was that it is not totally in the hands of us here; there is a process. The process is in train, but we are awaiting confirmation.

**Mr. Chairman:** What you are telling us is that you have sent it to the Minister for her consideration. So you throw the Minister under the bus?

**Mr. Lashley:** No, no. I think it is in a broader context than that. At the end of the day I think what we are seeking is the most effective way to conduct the consultations and, in fact, we are drawing on the advice that we are receiving in terms of how we structure it.

**Mr. Chairman:** All right. But, I mean, we cannot command you to do anything, we are just a parliamentary committee. We can only ask. I wish I could command you to have this consultation tomorrow. But you would have to be more specific.

**Mr. Lashley:** Sure, and to the extent that we can be, we will.

**Mr. Chairman:** What I mean is, what are your time frames?

**Mr. Lashley:** This month. The structure has changed, as I indicated the last time we sat. There was an initial construct of having about two or three large assemblies of stakeholders. The thinking now is moving towards having smaller groupings clustered around their sort of common interests. So, for instance, upstreamers and downstreamers, et cetera, and having groupings that would feel free in the particular forum to have a productive and fruitful exchange with respect to policy going forward.

**Mr. Chairman:** Mr. Lashley, I understand all of that, you know, but you still have to tell us when.

**Mr. Lashley:** That is the only specific that I cannot give you.

**Mr. Chairman:** Because the Minister is considering it.

**Mr. Lashley:** It is even broader than the Minister. In the national agenda, there are consultations on energy that we would want to have as we move forward to framing the policy.

**Mr. Chairman:** I will tell you why I think it is important. A proposal was made to me as the Minister of Finance that we should, as a Government, seriously consider looking at the supplemental petroleum tax. The view of the industry—the small players in the industry, not so much the big players—was that this is outdated, that it was designed at a time when the price of oil was about \$25 a barrel, so therefore if the price shot up to \$50, it would really be a windfall. In other words the price would double, so there would be an unexpected increase in price, and therefore you would want the country to benefit from that windfall that the oil companies would earn. But with the average price, Mr. Small did a calculation the other day. I do not know how accurate his calculations are, but he said the average price is \$43. Am I correct, Mr. Small? You calculated the average price of WTI over the last 20 years or something.

**Mr. Small:** The weighted average of West Texas from the inception of indexing. The weighted average price, inflation adjusted also, was already \$43.

**Mr. Chairman:** So he did a calculation; we will assume that his calculation is correct. So if the average price is \$43, \$50 is not really a benchmark for a windfall. How does one deal with this? Right now because oil is not \$50, I am getting no supplemental tax at all. We used to get about \$4 billion in SPT when things were going good. In 2013 and so we got about \$4 billion in SPT for that year. Now we are getting zero. What the small companies are saying is: look, this is a penalty because at \$49.50, my profitability is reasonable, but from the time it hits \$50.50, you are imposing this additional penalty on me, this SPT, even though it is for the extra dollar. As we go up to \$52, \$53, it is making my business unprofitable, so

that I would prefer not to produce oil at \$52 or \$53 because I have the extra burden of the SPT on me. So they have asked for it to be increased. They have asked for it to go up to \$80, which I thought was ridiculous.

But the point is that it is a problem, we need to deal with it. Some of the advisors that advised me recently on oil and gas taxes, told me we should look at SPT in the context of profitability rather than price. So look at how profits increase with an increase in price, rather than benchmark the price and put a tax on that. The reason why I am giving you this long story is you need to settle this matter. It cannot be that, you know—because eight months of this Government's life has passed, you know, Mr. Lashley. I count it, I do not know if you count it. We really need to get these consultations going. So, could you impress upon your Minister, since you are saying it is being considered by her. Even though she is my colleague, could you impress upon her that we need to get this show on the road.

**Mr. Lashley:** And we will. We are just as anxious, Minister, to have the consultations, get the feedback. The input from the stakeholders is critically important in terms of framing a policy going forward that works, as you indicated with the SPT issue, not just for the Government, but stakeholders and investors going forward. It goes back, as we mentioned on the previous day, to the whole perception of the competitiveness and fairness, if you will, of our fiscal system, which we are in full agreement needs to be reviewed. The only point I would think is that we cannot finally settle because this is an ongoing thing. So we have to continually review and ensure that the measures you put in place are relevant for the current environment.

**Mr. Chairman:** Let me tell you what I am driving at with the SPT. It is either we increase the benchmark or we link it to profitability, or we leave it at \$50. We have to do something, because it is an issue. Then there is also an issue with respect to

marginal fields, and fields that are costly to produce. Again, that is inhibiting investment, it is inhibiting production.

Petrotrin told us the other day that their cost of lifting is \$47. So they are not making any money at all with oil at \$47. So there will be marginal fields that have that kind of high cost. We need to settle these things, because leaving the oil in the ground does not help anybody. I do not know if anybody wants to comment?

**Mr. Khan:** Going back to LNG, if you do not mind—

**Mr. Chairman:** Let us stay on this one. Are we done, so that we are waiting until you tell us when?

**Mr. Lashley:** The thing about it is what was requested was a schedule going forward.

**Mr. Chairman:** We just want to get an idea whether it would be in the next month, the next two months, the next three months, the next six months.

**Mr. Lashley:** I would say the next month.

**Mr. Chairman:** Within the next month or so?

**Mr. Lashley:** Within the next month, because what we intend to have is a series of stakeholder forums. They are being designed, as I said, around some clusters of stakeholders, inviting them in, having a full discussion and getting that feedback and incorporating it into the policy.

**Mr. Khan:** Sorry to belabour the LNG point, but I think it is extremely important. We are in a revenue strapped situation as we speak, as a Government, and I get the impression from this discourse that, whether either breach of contracts or not well structured contracts, the State seems to be foregoing significant revenue from the LNG business and marketing. Is that a fair statement?

**Mr. Lashley:** I would say yes, in broad terms.

**Mr. Khan:** Do not answer any more. And that is largely due because of, as I said,

“flawed contracts”, the lack of monitoring capacity at the Ministry of Energy and Energy Industries in particular as to where cargoes’ final destination occurs, and other certain shortcomings in the system. So it is something we have to put right, because to me this is the largest stream of revenue that can now be captured by the State legitimately, even without the investment of a single cent. So it is not something to blink your eye at.

With regard to the marketing of LNG, I take Ms. Poy Wing’s comments that when these contracts were put together we were very inexperienced in the LNG business. As a matter of fact, the LNG business itself did not know what its business was. Crude is marketed by index: crudes, WTI, Brent, what have you, and the only difference in crude sales, because it is ubiquitous all over the world, is whether you are on a long-term contract or you are on the spot market. But crude sells basically at the same price based on the benchmark crude that you have.

The gas business was not like that. Gas is not a transportable commodity except through pipelines, and that has its Henry Hub issues, and then when the LNG business came on stream you were able to transport gas with regasification. So if you did not have regasification, you could not buy LNG. Then the whole issue of destination came in. So when these contracts were put in place, I understand there was a lot of ignorance on the market.

The point I am coming to is that there is a concept in law—and I am guided by my attorneys—called “changed circumstance”. I think the circumstance in the industry has changed so fundamentally that it could form the basis of a renegotiation. Am I right, Mr. Solomon?

**Mr. Solomon:** Yes.

**Mr. Khan:** And that is the principle I would like the State to adopt, because this thing has changed fundamentally. You cannot tell me five years ago, all our LNG

was going to Boston, 75 per cent of Trinidad and Tobago's LNG. We were the largest supplier, 75 per cent to the US market, and that crashed because of certain circumstances. Now all our LNG is going to Chile, and five years ago it was going to Spain. So a contract could not have possibly covered all these scenarios.

Again, just to summarize my thesis, I think if it is possible with a legal team, if we can invoke the concept in law called "changed circumstance", and if we can use that as a template to renegotiate some of these contractual issues. It is a comment, I do not expect a response from it now.

**Mr. Chairman:** Mr. Lashley, I think we would have one more session with you. It will be in camera, where we can have more open discussions on LNG pricing and so on. We will tell you when. What I would like now is for members of the Committee, do you have any further questions for the Ministry of Energy and Energy Industries?

**Maj. Gen. Dillon:** Just one question, Mr. Chairman. It is different to what is on the question paper. It has to do with more of the human resource component. We have seen an increase in terms of the international players in the gas industry. Is there a monitoring role by the Ministry with respect to the transfer of local content, the transfer of knowledge and the encouragement of basically local content throughout? Is there a monitoring role by the Ministry and how effective has that been?

**Mr. Lashley:** Certainly I think the establishment of certain provisions for local content, some may argue, had the genesis in when the LNG projects were developed. There is a large element. As the representative for Point Fortin I know you would have seen a lot of—entrenched within some of the agreements, without getting into specifics, were provisions for contributions and initiatives geared towards increasing and ensuring that local content and local input were addressed

or maximized to a particular level. So there were some limits set in some of the contracts.

In addition to that, contributions to some national efforts, like the National Energy Skills Centres, have to do with specific provisions for contributions over the life of the project, to sustain or to support and finance the conduct of and the operations of some of these facilities. That has been expanded even further under the PSCs and some other project agreements, where that focus on ensuring that as we develop the resource, there is that due attention being paid to the development of the human resource. Certainly that is something that we continue to monitor within the Ministry.

In fact, we recently resuscitated the permanent Local Content Committee with a specific mandate to get into more detail and monitor more closely some of the operations and provisions and commitments of the companies, going forward. So certainly I want to give you the assurance that that is front and centre in terms of the Ministry's agenda going forward. In collaboration with some of the other stakeholders, we are moving forward full steam ahead with that.

**Mr. Chairman:** Before Mr. Small comes in. In your responses you told us that you have 144 vacancies. Could you give us some idea of what areas these are in? You said technical and administrative. What do you mean by that?

**Mr. Lashley:** I would let the DPS speak more specifically to that, but certainly it is a mix from inspectors, engineers, geoscientists as well as administrative.

**Ms. Wong:** Good morning, Chair, members. These positions and so on are a mix of both contract as well as established positions. Over the years we have, in fact, tried to see if we could get some of the established positions filled. We are relooking at the structure. We have a proposal which would be sent to PMCD by next week. So there is a proposal on the table, and this is only looking at phase one

of the structure. There is a broad framework that has been identified. Some of the issues for job descriptions and the core areas have been thrashed out for certain divisions and sections within the Ministries, and that would be forwarded for PMCD's comments by next week.

**Mr. Chairman:** All right, let me ask the question a different way. For how many years have you had this level of vacancy, 144? Has that been going on for a very long time?

**Ms. Wong:** It has been with the Ministry for a substantially long time. It has been because of the restructuring process that has taken so long. Once a structure has been identified and there are changes in the administration and so on, each administration needs time to review, and rather than move forward with what was last proposed there is always a continuous review that is taking place. We are hoping that this time the review and the proposal can go forward straight through to implementation. This has happened because there has been a lack of implementation of the last structure.

**Mr. Chairman:** These are primarily contract positions?

**Ms. Wong:** No, it is a mix of established and contract positions.

**Mr. Chairman:** If it takes the Service Commission so long to fill vacancies, why are you focusing on establishment positions? Because you were told to do that?

**Ms. Wong:** No, I said it is a mix of established—

**Mr. Chairman:** No, listen. I have in my own Ministry, I am looking at contract positions in the Government with a view to rationalizing them. There is a view you should go for establishment positions rather than contract positions. I know the general policy. But in a specialized Ministry like the Ministry of Energy and Energy Industries, if for 20 years you cannot fill the establishment posts—you know, in the army they say if something is working, do not try to fix it, but if



something is broken you should try to fix it. I am just wondering if your focus is on going the familiar route of trying to get the Service Commission to fill these posts or you are going to focus on contract positions. It is just a question.

**Ms. Wong:** No, we have adopted a blend in fact, because some of the contract positions are those positions in fact where there is no classification. Once you have positions that have been established and that have been properly classified, the policy has been to go with those positions. So you have geophysicists, you have geologists, those positions have already been classified.

**Mr. Chairman:** What I am picking up as well is that the salary is uncompetitive, so you are not keeping people. So, the point I am making is if something has not worked for the last 20 years, why continue? According to Einstein that is the definition of insanity, doing the same thing over and over and hoping for a different result.

**Mr. Small:** Mr. Chairman, you went along the same route. That is the big issue for me. You have the Ministry here before us today that is in charge of overseeing the energy sector running at 65 per cent of its manpower. That is simply not on. I always have a view, perhaps I have some little history on this matter, that the Ministry also is able to recover its cost through the petroleum impost. So for me theoretically there should be no hold-back by the Minister of Finance and the sitting administration to make sure the Ministry of Energy and Energy Industries is properly resourced.

I believe that the challenges the country is facing now is because we have a dearth of people who want to work in a system. The system does not allow for flexibility and it is certainly not the most attractive place. The important issue, Mr. Chairman, you hit it, is that these types of energy jobs have become more transient. People are not going to come to work in a place for 20 years. They want to come,

they want to work for five or 10 years and move on to another place, and the system has to accommodate that. So the position you have taken, you have outlined about why we have not been able to fill permanent positions, it is painfully obvious in my respectful view. I would support any initiative of this Committee to give the guidance, to support the Ministry having the resources that it needs to do the job effectively. I say that very clearly.

The Permanent Secretary indicated that in the discussions with the companies on the issues raised here about the contracts, they have taken their position and they are holding. We need to be able to have the manpower and resources and the skills and capability to go in that room and hold our position also. It is a view I have espoused on more than one occasion, and I continue to hold. Thank you, Mr. Chairman.

**Mr. Chairman:** I am speaking on behalf of the Committee. We will give you any support you require. I think you should start trying something new. We will help you to see if you could get better terms and conditions, and different ways of getting skilled professionals into the Ministry because you need it.

**Mr. Lashley:** We appreciate the support of the Committee.

**Mr. Khan:** There was a time you all were paying a professional allowance. Is that still there or has that been ceased?

**Mr. Lashley:** It is still there for some categories of workers. There was an initiative actually to seek to improve it, which was not entertained at the time.

**Mr. Chairman:** I can assure you that it will be entertained. [*Laughter*]

**Mr. Lashley:** Chair, just to clarify one of the issues, and I agree with Sen. Small and the opinion that Minister Khan put out in terms of renegotiations of the contracts. That is a process which I have seen it even when it happens between companies. It takes a while, so that is something which we can take and we will

take, but certainly in the interim we are also pursuing face to face discussions. Those discussions have not borne any sustainable fruit. But certainly with respect to some of the contracts, as Mr. Jeremie alluded to and Ms. Poy Wing, there have been changes. Some of them initiated by insistence by the Ministry that the parties change some of the terms in order to make them more, in our view, fair, in terms of the arrangements. Certainly on a face to face discussion carrying on that dialogue in the interim, I think it is important.

**Mr. Small:** Chairman, if you permit me. I think also the Ministry needs to look at having the appropriate support. There are entities out there, and you can work out the confidentiality issues. If you approach the Oxford Institute of Energy Studies and say, "Listen, we would like you to partner with the Ministry to review some of these contracts and to help us understand what is the best way to go about it", or you approach Jackson School of Geosciences Bureau of Economic Geology, you have people who are doing this who are in the numbers, and they would kill, give their left arm to be able to look at real contracts and understand, and give the Government recommendations, at a fraction of what it would cost for Wood McKenzie or similar entities. We have to try to engage other entities to support the work that we are doing.

The Ministry has these relationships already that I am aware of that you can try to find other parties to support what you are doing. Not necessarily to guide but to support the Ministry and say, "Listen, have a clean eye, look at this for us", and you can have a confidentiality arrangement that can work out. And everybody signs the document and it is all wonderful, to support the Ministry so that when you go in the room, you are powerful in the room.

Right now I think that what is happening in the room is that you go in the room and the rooms are staged properly, and we are not as powerful as the others.

That is no reflection on us, it is just a capacity issue in my respectful view.

**Mr. Chairman:** I would like to wrap up now, unless members have any other questions you want to ask. I would just want to say, Mr. Lashley, and to your staff, it has been a pleasure. Despite the questions we have posed to you and the things we have said to you, speaking on behalf of the Committee, I really appreciate the way the Ministry has made an effort to respond to our questions and give us the information we require. We look forward to that in camera session where we could see if we could get some more details on these LNG contracts. Thank you most sincerely.

**12.06 p.m.:** *Meeting adjourned.*