

Ottawa Light Rail Transit Commission

Closing Argument of the Amalgamated Transit Union, Local 279

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Closing Submissions of ATU Local 279

A. Introduction

1. For more than 100 years, the members of the Amalgamated Transit Union Local 279 (“ATU 279”) have proudly worked to deliver public transportation to the residents of the National Capital Region.
2. While transit technologies may have changed over the years — residents first rode on streetcars and then diesel buses and now light rail — the role of the members of ATU 279 has remained constant. They have been responsible for operating and maintaining whatever technology was in use to provide public transit in this City, and they are good at what they do.¹
3. Today, it is Light Rail Operators (LROs) represented by ATU 279 and employed by the City of Ottawa that are tasked with operating the Alstom Citadis Spirit trains in revenue service. This is a task they do well.²
4. Other members of ATU 279, employed by Alstom Transportation, are responsible for cleaning and maintaining the light rail trains as well as maintaining and repairing the guideway, traction, signalling and train control systems that are vital to the operation of the Confederation Line.
5. ATU 279 knows that many residents of the City of Ottawa rely on the public transit system of which the Union is so much a part. People may use transit to get to or from

¹ Transcript of John Manconi’s Testimony at page 177, line 26 and page 178, line 1

² Transcript of Troy Charter’s Testimony at page 172, line 13

work; they may use it to get to school; or it may simply be a way to get out and explore the City.

6. Whatever the reason someone chooses to take OC Transpo, ATU 279 firmly believes that they have a right to expect that their public transit system is capable of getting them to and from their destination reasonably on time and without incident. As was stated by Troy Charter in his testimony before the Commission, the reason that OC Transpo exists is to “provide a reliable service, whether it be bus or train. That’s why we’re here. Safe and reliable, that’s [sic] the two factors — safe and reliable.”³
7. This description of OC Transpo’s role — as a means of safe and reliable transportation — was also echoed by the City’s former General Manager of Transportation, John Manconi, in his testimony before the Inquiry.⁴
8. Residents of Ottawa were promised that the years of disruptions to their roadways and transit networks during the construction of Phase 1 would be worth it because the light rail system would deliver this “safe and reliable” transit service from its inception.
9. Regrettably, what the evidence has shown over 18 days of testimony and countless exhibits is that not only has the Confederation Line fallen far short of being a reliable form of public transportation, but it has also shown that virtually everyone connected with the project knew this was going to be the reality before the system’s public launch in September of 2019.

³ Transcript of Troy Charter’s Testimony at page 177, line 11

⁴ Transcript of John Manconi’s Testimony at page 180, line 26

10. Given that the construction of the Confederation Line will be the City's largest infrastructure project in a generation (with Phase 1 alone costing more than \$2.1 billion) the public had a right to receive the safe and reliable transit system that they were promised. It is the role of this Inquiry to find the answers to why they did not get it.

11. As will be summarized in the submissions that follow, ATU 279 believes that the following factors have led to the present lack of reliability for the Confederation Line:

- a. The adoption of a public/private partnership (P3) model for the construction and operation of the Confederation Line rather than having OC Transpo operate the system directly (i) unduly fragmented the operations and maintenance of the transit system; (ii) prevented OC Transpo managers from responding to service challenges; and (iii) generally led to a lack of public accountability for the system's failures.
- b. The financial incentives and penalties built into the P3 model led to a premature handover of the system as well as understaffing and under-resourcing of the maintenance operations of the system both before and after Revenue Service Availability (RSA) was declared.
- c. The alteration of testing standards during the trial running period in July and August of 2019 as well as the decision by the City to award Substantial Completion of the project despite the existence of a long list of deficiencies (some of which continue to this day) resulted in the acceptance of a system for public use when it was far from ready.

12. ATU 279 also believes that the decisions made by the City to end the parallel bus service operating alongside the LRT followed by the reduction in the size its bus fleet and the number of bus operators it employed removed a needed cushion for the newly

opened Confederation Line. These decisions also left the transit agency unable to adequately respond when the almost inevitable service disruptions began only months after the public launch of the system.

13. ATU 279 firmly believes that had different decisions been made in relation to this project by both managers and elected officials of the City of Ottawa, the public would have a much more reliable public transit system than it presently does.

B. The Systemic Failures of the P3 Model Used for the Confederation Line

14. Historically, the P3 model has not been the preferred method of developing public transit infrastructure in Ontario. In contrast to the experience with the Confederation Line, when in the past municipalities believed that a new transit facility was required, a project would be designed and then built through a tendering process. Once the new transit project was complete, however, historically it would have been operated and maintained by public employees as a public service and not as a commercial venture that needed to produce a reasonable return on a corporate investment.⁵

15. Major Canadian transit systems, such as those in Toronto operated by the Toronto Transit Commission (the TTC), have long been able to expand the reach of their transit systems while relying on their own employees to repair and maintain their vehicles and infrastructure.⁶ These municipalities have found this, to be an effective and reliable method of operating and maintaining large transit systems.

⁵ Transcript of Mario Guerra's Testimony at page 127, line 11

⁶ Transcript of John Manconi's Testimony at page 182, lines 15 through 25

16. As Mario Guerra of RTG noted in his testimony, the TTC has long directly employed the staff who maintain not only the vehicles used by the TTC in its subway, light rail and streetcar operations but also the infrastructure for those modes of transportation including the tunnels, ballast, tracks and signalling systems.⁷ It was his opinion that the TTC runs well making use of its own internal staff to perform these same functions that are contracted out in Ottawa.⁸

17. In fact, when the TTC opened its extended line 1 subway expansion into north Toronto and onward into Vaughan in December of 2017, the responsibility for the ongoing maintenance of the newly opened 8.6 kilometers of track, signals and related facilities remained with the TTC and its staff.⁹

18. Rob Pattison from Infrastructure Ontario testified that Ottawa's Confederation Line project was only the second transit project coordinated by Infrastructure Ontario, with the first being the construction of the small railway track spur needed to connect Toronto's Pearson International Airport to GO Transit's existing tracks as part of the Union Pearson Express project.¹⁰

19. Despite taking on a key role in the design of the procurement process that would be used for the Confederation Line, Infrastructure Ontario had no history in relation to the construction of light rail systems.

⁷ Transcript of Mario Guerra's Testimony at page 125, line 9

⁸ Transcript of Mario Guerra's Testimony at page 126, line 8

⁹ Transcript of Mario Guerra's Testimony at page 126, line 15

¹⁰ Transcript of Rob Pattison's Testimony at page 55, line 2

20. Since that time, Infrastructure Ontario, has gone on to coordinate a number of other P3 structured transit projects in Ontario, often with the assistance of Brian Guest who, before his involvement with the Confederation Line project, also had no experience or recognized expertise in developing P3 transit projects.¹¹

21. The involvement of large national and multinational private firms — like SNC Lavalin — to maintain municipal transit infrastructure was therefore a relatively new concept in Ontario when the Confederation Line was conceived by the City with no track record to look to for proof of success or failure of the model. The presumed benefit of involving these corporations was that the internal commercial tensions between the various P3 partners would, Patterson testified, ensure that “what the design builder delivers will be a safe, durable, high-quality, reliable product.”¹²

22. Using a P3 model would also, in the words of John Jensen, give the City “one throat to choke” with respect to any future issues with the project.¹³

23. The evidence put before this Inquiry has shown, however, that the commercial tensions within the P3 Consortium were not sufficient to ensure the delivery and operation of a safe and reliable transit system. Equally, the evidence did not show that there was ever one single commercial actor who’s throat the City was able to choke in an effort to resolve future problems.

¹¹ Transcript of Brian Guest’s Testimony at page 123, line 15

¹² Transcript of Rob Pattison’s Testimony at page 12, line 8

¹³ Transcript of John Jensen’s Testimony at page 64, line 22

24. Recognized or not by Messrs, Patterson, Guest and Jensen, the P3 concept used for the Confederation Line carried its own significant risks and challenges.

25. Yet there was no evidence put before the Inquiry that the City of Ottawa ever considered the risks of using a P3 model before it embarked on the Confederation Line project. In fact, as former City Treasurer Marian Simulik testified, it had always been the City's intention since the initial conception of the project to adopt a P3 model for the design, building and maintenance of the new light rail line.¹⁴

26. In her testimony, Ms. Simulik indicated that the only real debate about the P3 model within the City was whether to also include a private sector financing element as a requirement for bidding. This internal debate was resolved when the Province communicated that its financial contribution to the project could be in jeopardy if the City did not include a private financing component because failing to do so would be seen by the Province as meaning that the City had left value for money on the table.¹⁵

27. So, what did the P3 model end up delivering for the City?

i. A Loss of Accountability

28. OC Transpo had a long history of delivering quality public transit before the commissioning of the Confederation Line, largely through the use of the diesel buses operating on the system of bus-only roads known as the Transitway.

¹⁴ Transcript of Marian Simulik's Testimony at page 167, line 5

¹⁵ Transcript of Marian Simulik's Testimony at page 168, line 1

29. Several of the senior managers from OC Transpo that testified before this Inquiry agreed that the agencies' staff were skilled and that they performed their jobs well.¹⁶ John Manconi in particular, testified that ATU 279 members were "very good at doing vehicle maintenance and operations" and that after being given the proper training, tools and resources, OC Transpo maintenance staff were capable of acquiring new skills and learning how to maintain new types of vehicles.¹⁷
30. Manconi agreed that the managers, supervisors, and employees at OC Transpo are public employees and as such, are ultimately accountable to the elected officials of the City — and through those officials to the public — via an established bureaucratic structure.¹⁸
31. There is no similar accountability with respect to any of the staff employed by the P3 Consortium or its subcontractor, Alstom. Other than with respect to a few key managerial positions where the City has a veto over hiring, there is no ability on the part of City officials to direct the P3 Consortium to employ or not employ any specific individual in the event of poor performance or other concerns.¹⁹
32. Nor does the City have the right to give directions to the staff of Alstom, RTG or RTM. As Nicolas Truchon from RTG testified, the City pays for the delivery of a service, and the contractors providing that service "have the flexibility to develop the resources and methods to deliver the service."²⁰

¹⁶ Transcript of Steve Kanellakos' Testimony at page 76, line 27

¹⁷ Transcript of John Manconi's Testimony at page 178, lines 10 and 19

¹⁸ Transcript of John Manconi's Testimony at page 179, line 7

¹⁹ Transcript of Nicolas Truchon's Testimony at page 194, line 13

²⁰ Transcript of Nicolas Truchon's Testimony at page 227, line 14

33. John Manconi echoed this same point when he agreed in his testimony that the City pays “for service outcomes. We dictate how much service we need. How they get there, that’s entirely up to them.”²¹

34. The result of the P3 structure, ATU 279 submits, is that it removes a key element of public accountability both in relation to the ongoing operations of the transit system as well as in relation to construction of the line itself, which, as previously mentioned, represents one of the most expensive infrastructure projects ever undertaken by the City.

35. This issue of a lack of public accountability was also addressed by Professor Anne Stafford in her testimony as part of the Inquiry’s expert panel.

36. Professor Stafford noted that many of the financial details connected with P3 projects tend to be protected by commercial confidentiality provisions.²² She explained that the privatized nature of these projects causes difficulties in ensuring both public accountability and public transparency in terms of value obtained for the often significant amounts of taxpayer money being spent:

“Let’s just start by looking at the concept of public accountability, which is obviously that people should be able to hold the government to account so, in a democratic public sector, people should be able to see that expenditure has been made as intended by government. The problem with PFI, and P3s, and so on is that, of course, the project as a whole is straddling the boundary between the public and the private sectors and, therefore, we have a lack of clarity on public accountability because the boundary is not clear for accountability purposes.

With DBFO-style projects, we have the situation where very large sums of public money are being spent outside the direct control of the public sector over long periods of time even though the public sector retains responsibility for the stewardship of that money. The public, therefore, want to see that the money is

²¹ Transcript of John Manconi’s Testimony at page 180, line 20

²² Transcript of Dr. Anne Stafford’s Testimony at page 45, line 3

being spent as intended. However, from the private-sector perspective, the private sector, in terms of accountability, is really only concerned with its primary stakeholder, the shareholder, so any concerns over issues of stewardship and decision usefulness relate to shareholders, not the wider public.”²³

37. Beyond this lack of public accountability, the structure of the P3 model adopted for the Confederation Line also served to undermine the cooperation needed between the operational and maintenance sides of the light rail system.

ii. Lack of Coordination Between Operations and Maintenance Functions

38. By design, the Confederation Line does not operate as a stand-alone operation but rather as an integrated part of OC Transpo’s network. It connects with the Trillium Light Rail line and with OC Transpo’s bus network at various stations.²⁴ As Troy Charter stated in his testimony, with the introduction of the Confederation Line, OC Transpo became “an integrated system, a true bus-rail network” with both the bus and rail elements integrated closely with one another.²⁵

39. Just as they do with OC Transpo’s diesel buses, it is OC Transpo staff that operate and supervise the Confederation Line trains operating in revenue service.²⁶ Unlike the situation with the buses, however, OC Transpo has no direct control over the maintenance operations related to the Confederation Line.²⁷

40. ATU 279 submits that this lack of control by OC Transpo over such an important element of the light rail system is a key failure of the P3 model.

²³ Transcript of Dr. Anne Stafford’s Testimony at page 46, line 27

²⁴ Transcript of Steve Kanellakos’ Testimony at page 78, lines 1 – 16

²⁵ Transcript of Troy Charter’s Testimony at page 171, line 7

²⁶ Transcript of Steve Kanellakos’ Testimony at page 77, line 15

²⁷ Transcript of Troy Charter’s Testimony at page 173 line 11

41. Witness after witness, many of whom have had long careers in the transit industry, testified before the Inquiry that close coordination between the maintenance and operational sides of a transit system is essential to providing reliable service to the public.

42. Larry Gaul was retained by the City as an expert consultant to assess the operational readiness of the Confederation Line. Before joining the consulting firm of STV, his career saw him hold senior leadership positions at the transit agencies of both Dallas and Washington, DC.²⁸ Both of these transit operations are large, urban systems that rely heavily on rail-based modalities to move their passengers.

43. Gaul agreed that close cooperation between the maintenance and operational sides of a transit operation was important to the efficient delivery of a transit service and that any lack of coordination of efforts between those two elements could result in the delivery of a poorer service to the travelling public.²⁹

44. Gaul agreed that in both Dallas and Washington, DC., the maintenance as well as the operational responsibilities for the transit system were performed by employees of the same agency — in both cases ATU members — and that having these two groups of employees working under the same umbrella allowed for better coordination and better cooperation in relation to these vital functions.³⁰

45. Mario Guerra of RTM, who's career before the Confederation Line included time at both the TTC in Toronto and the subway system of New York (representing two of the

²⁸ Transcript of Larry Gaul's Testimony at page 79

²⁹ Transcript of Larry Gaul's Testimony at page 80, line 9

³⁰ Transcript of Larry Gaul's Testimony at page 80, line 3

five largest transit systems in North America, both of which conduct maintenance using their own staff),³¹ also testified to the importance of cooperation between the maintenance and operational sides of a transit service.³²

46. Guerra went on to testify that not only were there occasions when there was not much cooperation between the City and the P3 Consortium, but also there were times when there was not even much cooperation between the various entities that made up the consortium and its subcontractors, namely RTM, RTG and Alstom.³³

47. While Guerra could not make a direct link between this lack of cooperation and a lack of reliability for the train system, he did comment that this lack of coordination “certainly didn’t help matters, that’s for sure.”³⁴

48. Members of the senior leadership team at OC Transpo also offered several specific examples in their testimony of instances where the maintenance and operational sides of the light rail system did not coordinate.

49. John Manconi, for example, testified that he had wanted to see Alstom “flood the system” with technicians leading into Revenue Services and that ideally, Alstom would assign “one technician per vehicle”³⁵ as a means of achieving reliable service but yet was told by RTG that he could not direct Alstom to comply with that request.³⁶

³¹ Transcript of Mario Guerra’s Testimony at page 127, line 23

³² Transcript of Mario Guerra’s Testimony at page 132, line 12

³³ Transcript of Mario Guerra’s Testimony at page 132, line 21

³⁴ Transcript of Mario Guerra’s Testimony at page 127, line 26

³⁵ Transcript of John Manconi’s Testimony at page 185, line 1 and then line 6

³⁶ Transcript of John Manconi’s Testimony at page 185, line 13

50. Troy Charter testified that in his discussions with RTG, he had indicated that he did not feel that the consortium had the right number of people in the right places to properly support the operations of the Confederation Line in revenue service. He testified that while some changes were made, his full staffing requests were rebuffed by RTG.³⁷

51. RTG's response to Charter's requests was to point to the distinct responsibilities of each party under the P3 agreement, noting that the contract was a "performance-based specification" and that RTG felt it had "the appropriate knowledge, skills, ability and the right number of people."³⁸

52. Lacking the ability to direct RTG to allocate a specific number of staff to specific locations under the terms of the P3 contract, Charter was forced to accept the level of maintenance support the consortium was willing to provide, despite his view that it was inadequate to support the operations of the Confederation Line.³⁹

53. Even on simple issues like routine communications between Alstom and the City, the P3 structure added complications and layers of difficulty that impeded the level of coordination that was vital to the reliable operation of the new system.

54. Richard France, Alstom's Ottawa Project Manager since June of 2019, testified that when he arrived, Alstom and the City did not have a direct chain of communication and that if he wanted to communicate with the City, he needed to pass the message up through RTM, which passed it on to RTG, which then passed it on to the City. Any

³⁷ Transcript of Troy Charter's Testimony at page 181, line 8

³⁸ Transcript of Troy Charter's Testimony at page 181, line 23

³⁹ Transcript of Troy Charter's Testimony at page 182, line 27

response from the City took a similar convoluted path to make its way back to Alstom.⁴⁰

55. France agreed that such an indirect chain of communication was far from ideal, that it had the potential to lead to miscommunications and that it “impedes your ability to carry out repairs, which then slow[s] down your ability to implement retrofits and other solutions that are ultimately going to be — bring a benefit to the final service”.⁴¹

56. Yet despite the clear dangers presented by the lack of a direct line of communication between the City and Alstom (Alstom being merely a subcontractor of RTG), this was precisely how the P3 contract was designed to work. The City would choke RTG’s throat and then RTG would in turn choke RTM, which would, finally, choke Alstom.

iii. Lack of Cooperation even within the P3 Consortium

57. Beyond the lack of coordination between the maintenance operations of the P3 Consortium and the transit operations of OC Transpo, there was also considerable evidence put before the Inquiry outlining the lack of cooperation and coordination within the P3 Consortium itself. This evidence made it clear that, despite what the City had thought it was getting when it entered into the P3 arrangement, it certainly did not get the “one throat to choke” envisioned by John Jensen.

58. It was also clear from the evidence that the lack of internal cooperation among the P3 partners undermined the maintenance of the Confederation Line and thus reduced the reliability of the train.

⁴⁰ Transcript of Richard France’s Testimony at page 100, line 9

⁴¹ Transcript of Richard France’s Testimony at page 101, line 9

59. For example, Mathew Slade, currently EllisDon's Director of Canadian Transit Projects and who was responsible for leading OLRTC during the critical trial running phase of the light rail project, testified that he observed Alstom conducting routine maintenance on the light rail line in a manner that he considered to fall below rail industry best practices. His criticisms included that Alstom conducted daily track inspections from a hi-rail pickup truck rather than getting out to walk the track and that they inspected the system's overhead power lines from ground level rather than close-up using a bucket truck.⁴²

60. He testified that despite his position as the senior official for OLRTC, his suggestions that Alstom bring its maintenance practices up to industry standards were rebuffed and that as a result, the reliability of the Confederation Line was negatively affected.⁴³

61. Similarly, Mario Guerra testified that despite the belief within RTM/RTG that Alstom was understaffed and under-resourced in relation to its maintenance responsibilities, it was not open to RTM/RTG to simply direct Alstom to hire more personnel: "The contract is performance-based, so we cannot simply tell Alstom they must have x number of employees. We can simply say it's performance-based, the reliability is such, and we believe one of the reasons [for this lack of reliability] is a lack of resources."⁴⁴

62. Alstom and its partners in the P3 Consortium were also in conflict over who among the private sector partners was responsible for providing such vital maintenance

⁴² Transcript of Mathew Slade's Testimony at page 135

⁴³ Transcript of Mathew Slade's Testimony at page 136, line 6

⁴⁴ Transcript of Mario Guerra' Testimony at page 25, line 9

equipment as additional wheel lathes needed to repair recurring flat spots on train wheels⁴⁵ and an additional set of lifting jacks — a critical tool used to lift a train off the tracks so as to work on its wheels and bogies.⁴⁶

63. Richard France of Alstom testified that, despite the critical need for a second lifting jack, he spent “considerable time and effort trying to get RTG”⁴⁷ to provide the needed equipment and ultimately, after the first derailment, had to borrow a lifting jack from a maintenance facility in Kingston that Alstom had acquired through a recent merger with Bombardier.⁴⁸

64. France agreed that the several months’ delay in obtaining this piece of equipment “absolutely” undermined Alstom’s efforts to maintain the Confederation Line trains⁴⁹ and that it was an example of the poor collaboration or cooperation between the P3 partners that afflicted this project. As he noted, it was an example of “the pieces not working as well as they should.”⁵⁰

C. The Impact of the Profit Motive on the Behaviours of the P3 Consortium

65. As John Manconi conceded in his testimony, the unwillingness of the P3 Consortium to improve the coordination of its maintenance teams with the operational teams staffed by OC Transpo was likely due to the costs that doing so would have been for the consortium.⁵¹

⁴⁵ Transcript of Steve Kanellakos’ Testimony at page 73

⁴⁶ Transcript of Richard France’s Testimony at page 97, line 23

⁴⁷ Transcript of Richard France’s Testimony at page 98, line 16

⁴⁸ Transcript of Richard France’s Testimony at page 99, line 16

⁴⁹ Transcript of Richard France’s Testimony at page 99, line 15

⁵⁰ Transcript of Richard France’s Testimony at page 99, line 26

⁵¹ Transcript of John Manconi’s Testimony at page 186, line 6

66. The need for the P3 Consortium to make a profit on the Confederation Line contract and the impact of this need was a recurring theme in the evidence before the Inquiry.

67. Several witnesses, including John Manconi and Mario Guerra, testified that the relationship between the consortium and the City of Ottawa was ultimately a commercial one, whereby the consortium needed to turn a profit on its participation in the project.⁵²

68. Like any business, the consortium's profit potential is driven by a simple formula — it needs to deliver the contractually required services to the City at a cost below the amount it is in turn paid by the City.

69. ATU 279 submits that, while there is nothing unique about a commercial relationship being driven by profit motive, in the context of the delivery of a public transit service, such an arrangement creates the clear potential for the profit interests of the commercial parties to be put before the interests of the public. Keeping maintenance costs low can become more important than providing a safe and reliable transit service.

70. This is exactly what happened here.

i. The Need for Profit and its Impact on Staffing Levels

71. ATU 279 submits that Alstom and RTG repeatedly chose courses of action that prioritized their profitability over the reliability of the light rail system — something that is most evident in their decisions regarding staffing.

⁵² Transcript of Mario Guerra's Testimony at page 129 line 2

72. Various witnesses testified that leading into and during the summer of 2019 (inclusive of the trial running period) as well as in the initial months of revenue service, Alstom was understaffed in relation to the responsibilities it had for the maintenance of the light rail system.

73. Tom Fodor, a consultant retained by the City from Parsons, testified that in his opinion, during the critical trial running period, it was clear that Alstom did employ the number of maintenance staff it needed to ensure the reliability of the light rail system.⁵³

74. He observed at the time that, given the many issues that kept arising with the Alstom trains, their technicians became “overwhelmed with trying to keep the trains running” and that they were overworked with the level of corrective maintenance needed to keep the trainsets operational.⁵⁴ As a result, the technicians were not able to keep up with the preventive maintenance required by the trains, which in turn, further impacted the reliability of the system.⁵⁵

75. Adding more technicians was, he noted, a budgetary issue,⁵⁶ and his suggestions to Alstom (which he also passed on to Richard Holder at the City)⁵⁷ that they were understaffed were rebuffed by Alstom.⁵⁸

76. Troy Charter and John Manconi each offered testimony (canvassed earlier in these submissions) that they did not view Alstom as having a sufficient number of staff on

⁵³ Transcript of Tom Fodor’s Testimony, page 190, line 19

⁵⁴ Transcript of Tom Fodor’s Testimony, page 189, lines 6 through 17

⁵⁵ Transcript of Tom Fodor’s Testimony, page 189, line 6

⁵⁶ Transcript of Tom Fodor’s Testimony, page 190, line 6

⁵⁷ Transcript of Richard Holder’s Testimony, page 106, line 17

⁵⁸ Transcript of Tom Fodor’s Testimony, page 190, line 23

hand to meet the maintenance needs of the new light rail system,⁵⁹ with Charter testifying that the P3 Consortium did not appear to have the ability to “maintain the constant grind that’s required to maintain a public transportation fleet.”

77. Charter went on to testify that it was critical that Alstom employ sufficient maintenance staff to keep up not only with the urgent, day-to-day corrective maintenance needs of the system, but also with the system’s longer term, preventive maintenance needs. He provided the specific example of Alstom failing to keep up with the preventive maintenance cleaning schedule for the roofs of the train cars as being the cause of the widespread failure of the light rail system on New Year’s Eve 2019.⁶⁰

78. The senior contractor within the P3 Consortium, RTM, also viewed Alstom’s staffing levels as being too low given the needs of the Confederation Line, with Mario Guerra testifying that the understaffing of Alstom had been a topic discussed at the RTM Board level.⁶¹

79. Guerra went on to testify that in his opinion, Alstom continued to be understaffed even up to the point of the second train derailment.⁶²

80. This was echoed by Mathew Slade of RTG, who testified that it was his view that Alstom was understaffed through the fall of 2019 and that this understaffing in part impacted the overall reliability of the light rail system.⁶³

⁵⁹ Transcript of Troy Charter’s Testimony, page 181 and 177 and John Manconi’s Testimony, page 185

⁶⁰ Transcript of Troy Charter’s Testimony, page 175, line 26

⁶¹ Transcript of Mario Guerra’ Testimony at page 24, line 5

⁶² Transcript of Mario Guerra’s Testimony, page 129, line 28

⁶³ Transcript of Matthew Slade’s Testimony, page 133, line 24

81. Even at one of the lowest level positions within Alstom's operations, yard hostlers (a position necessitated by the failure to fully automate the maintenance facility),⁶⁴ there was evidence provided by another City consultant, Larry Gaul, that there were an insufficient number of staff available, and that this shortage impacted Alstom's ability to move trains around the yard to have them ready for revenue service.⁶⁵

82. Alstom was not, however, alone in limiting the number of staff employed on the Confederation Line to keep costs in check. In cross examination by counsel for Alstom on the issue of the hostlers, Mario Guerra of RTG acknowledged that it was RTG and not Alstom that bore the cost of these employees because they were needed only as a result of RTG's failure to implement the planned automatic train control system within the maintenance yard.⁶⁶

83. Despite the lower skill nature of the position (and therefore the lower costs associated with it), Guerra agreed with counsel for Alstom that RTG had twice refused Alstom's requests to hire more hostlers to work at the maintenance facility because there had been "insufficient evidence provided that [Alstom] needed them."⁶⁷

84. Thus, despite a City consultant's and their own maintenance contractor's views that more of these specific staff members were needed to ensure reliable train service, RTG's unwillingness to cover the costs involved meant that the Confederation Line had to do without.

⁶⁴ Transcript of Larry Gaul's Testimony, page 84, line 28

⁶⁵ Transcript of Larry Gaul's Testimony, page 85, line 10

⁶⁶ Transcript of Mario Guerra's Testimony, page 105, line 20

⁶⁷ Transcript of Mario Guerra's Testimony, page 113, line 6

85. And it was, ATU 279 submits, the public who ultimately paid the price for RTG's and Alstom's unwillingness to increase their staffing (and thus their costs) in relation to the Confederation Line project.

ii. *The Profit Motive and Contractual Penalties were Ineffective in Correcting Poor Performance*

86. As was outlined by Rob Pattison of Infrastructure Ontario and acknowledged by Peter Lauch of RTG⁶⁸, the theory behind public-private partnerships is that economic forces, specifically the payments and penalties provided for by the contract, will compel the private sector players to cooperate with one another to deliver a high level of performance.

87. The structure of this particular P3 model and the tensions and lack of cooperation within its consortium, suggest that this theory does not work well in reality.

88. As was agreed to by the CEO of RTG, Mr. Nicolas Truchon, "the contractual structure and the misalignment that's described in this document (#FTM592807.8) made it harder for RTG to solve the problems that ... arose in the project."

89. Simply put, the various financial carrots and sticks and the internal commercial tensions provided for by the P3 contract did not prove effective in obtaining the safe and reliable light rail system that the public was promised.

90. For many months, none of the private parties was paid for their services by the City, yet the light rail system did not suddenly become reliable.⁶⁹

⁶⁸ Transcript of Peter Lauch's Testimony at page 135, line 23

⁶⁹ Transcript of Peter Lauch's Testimony at page 136, line 24

91. The testimony offered by RTG's Peter Lauch indicated that even the imposition of penalties flowing through the P3 contract from the City down to Alstom did not succeed in improving that company's performance. As Lauch testified, "RTG ran out of stick in respect of Alstom."⁷⁰
92. Lacking a financial stick to wield over Alstom, RTG came instead to rely on appeals to Alstom's "good will and to their sense of pride and so forth," something that Lauch agreed should not be the basis of ensuring that a commercial partner performed adequately in the context of a 30-year P3 contract.⁷¹
93. Mario Guerra similarly testified that the P3 model did not seem to motivate a good performance from Alstom as, in part, Alstom did not seem to understand the extent of the penalties and other negative implications that ultimately flowed down to it because of Alstom's poor performance.⁷²
94. Guerra further testified that when penalties were applied by the City, there was often debate within the consortium as to who bore the responsibility for the deductions because each entity within the consortium maintained separate cost centres. He gave the example that a penalty for poor system performance would be levied by the City against RTG. RTG would flow those deductions down to RTM, which, if it was train or infrastructure related, would then pass them down to Alstom. Alstom's maintenance arm would then claim the work in question was covered by project warranties and was

⁷⁰ Transcript of Peter Lauch's Testimony at page 136, line 3

⁷¹ Transcript of Peter Lauch's Testimony at page 137, line 6

⁷² Transcript of Mario Guerra's Testimony at page 131, line 5

the responsibility either of RTC or Alstom's supply arm.⁷³ Guerra indicated that such finger pointing caused friction within the P3 Consortium.

95. Internal issues such as this demonstrate the limited ability of the economic penalties provided for by the P3 to ensure the light rail system performed as reliably as had been promised.

96. ATU 279 submits that it is clear that the economic incentives and penalties that this P3 project was structured around were simply not a sufficient tool to force the delivery of a safe and reliable light rail system — something that does not bode well for the decades remaining in the maintenance contract between RTG and the City.

D. Changes to the Testing and Acceptance Criteria Led to Where we are Today

97. Residents of the City of Ottawa were repeatedly told that any acceptance by the City of the Confederation Line as being ready for revenue service would only come after the train had passed a rigorous testing process showing that it could operate almost flawlessly over several weeks of trial, hitting the same 98% AVKR reliability metric that the consortium was contractually required to deliver when the system was in operation.⁷⁴

98. As Mathew Slade indicated in his testimony, the trial running period began almost immediately after the system was accepted as substantially complete by the City⁷⁵ as everyone was eager to see the system reach RSA.⁷⁶ This eagerness of all concerned

⁷³ Transcript of Mario Guerra' Testimony at page 27, line 22

⁷⁴ Transcript of Mathew Slade's Testimony at page 32, line 11

⁷⁵ Transcript of Mathew Slade's Testimony at page 23, line 1

⁷⁶ Transcript of Mathew Slade's Testimony at page 33, line 19

was not surprising given the significant contractual payment owed to the P3 Consortium by the City once RSA was achieved as well as the public statements made by the Mayor and councillors about the train being ready for public service in the fall of 2019.

99. It is clear from the evidence presented to this Inquiry though, that the system simply was not ready or fit for service in July of 2019, notwithstanding the declaration of substantial completion.

100. In fact, at the time substantial completion was declared, there continued to be a significant number of open defects, including defects relating to every one of the system's 34 light rail vehicles.⁷⁷

101. Both the trains specifically and the overall system more generally, were still afflicted by significant reliability issues, something that was known both to the City and to the P3 Consortium,⁷⁸ with Alstom struggling in the weeks immediately before trial running began to deliver the required number of trains each day.⁷⁹

102. Richard France, who arrived in Ottawa to take over as Project Manager just before trial running began, testified that no one — not the City, not RTG not Alstom — was ready for trial running, and that when he arrived “there was lots of work to be performed by all the parties that were involved.”⁸⁰

⁷⁷ Transcript of Richard Holder's Testimony at page 43, line 19

⁷⁸ Transcript of Mathew Slade's Testimony at page 33, line 12

⁷⁹ Transcript of Larry Gaul's Testimony at page 81, line 23

⁸⁰ Transcript of Richard France's Testimony at page 102, line 25

103. The initial days of the trial running process reflected the light rail system's lack of readiness. There were multiple days that the system failed, this was then followed by a need to take a pause to allow the consortium to regroup and then ultimately, by a full-on restart of the trial running procedure.⁸¹

104. Larry Gaul, one of the City's consultants, testified that based on the first three or four days of the trial running that he observed, it seemed likely that trial running would continue for quite some time and that it was not at all clear to him that RTG was going to be able to pass the trial running process.⁸²

105. The solution that was found to address the problems with the trial running process was not to add the additional resources or staffing that might have improved the reliability of the trains. Instead, the decision was made to water down the trial running standards.

106. Rather than the stricter criteria developed in 2019 that was designed to mirror the requirements of the project agreement, it was decided that RTG would be permitted to pass the trial running process if it could meet the much less onerous criteria that had been developed back in 2017.⁸³

107. In addition, the City reduced the number of trains that Alstom was required to make available for service, reducing the requirement from 15 to 13 trains at peak.

⁸¹ Transcript of Mathew Slade's Testimony at page 34, line 7

⁸² Transcript of Larry Gaul's Testimony at page 86, lines 9 and 14

⁸³ Transcript of Peter Lauch's Testimony at page 54, line 20

108. Next, the City lowered the AVKR required to be demonstrated by the system from the agreed upon 98% daily to 96% daily — a standard that was lower than the threshold for performance penalties against RTG under the P3 contract.⁸⁴

109. Finally, the City agreed that RTG would pass the trial running if it could meet those performance targets on just 9 out of 12 days rather than the previous need for RTG to meet the required standard each and every day.⁸⁵

110. And when even those changes were insufficient to get the system through the trial running process, senior City officials exercised their discretion to issue a passing grade for days that would otherwise have been considered to be failures.⁸⁶

111. While there is conflicting evidence as to whether it was RTG or the City that first requested these changes to the trial running criteria, ATU 279 submits that very little turns on that determination. What matters most from this line of testimony is that in the interests of bringing the Confederation Line into service in the fall of 2019 as had been publicized, the City willingly and knowingly weakened the testing and evaluation process, resulting in a system that was neither ready nor reliable.

112. ATU 279 submits that the impacts of the decisions made in the summer of 2019 — decisions that allowed the system to be declared substantially complete in the face of significant lists of defects and that allowed the use of a weakened testing and

⁸⁴ Transcript of Larry Gaul's Testimony at page 88, lines 1 through 24

⁸⁵ Transcript of John Manconi's Testimony at page 105, line 3

⁸⁶ Transcript of Troy Charter's Testimony at page 157, line 6

evaluation process continue to resonate today. The light rail system has never achieved the degree of reliability that the public has a right to expect.

E. Elimination of Surplus Bus Capacity

111. When the Confederation Line initially entered service and then for about three weeks afterward,⁸⁷ the City continued to run parallel bus service alongside the new train to cushion the new system from the need to carry all the City's commuters at once.

112. The provision of this parallel bus service was at the City's cost,⁸⁸ and the evidence before the Inquiry offered by Matthew Slade was that the City was "eager" to end this service and proceed with the planned reduction in bus operator staffing levels as quickly as possible.⁸⁹ This eagerness to eliminate the cushion provided by the parallel buses was not shared by Slade and others connected with the light rail project; they felt that ending the bus service would be unwise and not in keeping with "good industry practice".⁹⁰

113. Despite the concerns being raised by those closely connected with the project, OC Transpo proceeded in mid-September to withdraw the parallel bus service. This resulted in the redeployment of staff and the retirement of between 30 and 40 diesel buses. In total, OC Transpo reduced the number of FTEs for bus operators by 201.⁹¹

⁸⁷ Transcript of John Manconi's Testimony at page 188, line 1

⁸⁸ Transcript of John Manconi's Testimony at page 188, line 12

⁸⁹ Transcript of Mathew Slade's Testimony at page 132, line 5

⁹⁰ Transcript of Mathew Slade's Testimony at page 131, line 28

⁹¹ Transcript of John Manconi's Testimony at page 191, line 24

114. While the elimination of these positions and the retirement of a number of undoubtedly saved the City money in the short term, it also served to eliminate any ability of the bus system to provide a buffer for the unreliability of the light rail system. As OLRTC noted in a subsequent lessons learned exercise (document # RTM-00592807.0002), one of the issues that impacted the overall reliability of the light rail system was the “hard stop” the City imposed on the parallel bus service. buses

115. In his testimony, Mario Guerra indicated that this hard stop deprived the new train system of an opportunity for a “soft start or a vetting in period”⁹² and that continuing with the bus service would have provided a welcome “insurance policy in case the system [wasn’t] working.”⁹³

116. As both Mr. Charter and Mr. Manconi acknowledged in their testimony, a further impact of the elimination of these bus operator FTEs and buses was that when the train later ran into problems and buses were needed to pick up the slack, both bus operators and buses had to be found from elsewhere in the transit system to provide the replacement service.

117. This meant having to steal operators from other routes and resorting to expensive operator incentives and overtime pay, both of which served to undermine the reliability of the bus network, something Charter agreed could have been avoided had the City chosen not to eliminate these positions.⁹⁴

⁹² Transcript of Mario Guerra’ Testimony at page 12, line 5

⁹³ Transcript of Mario Guerra’ Testimony at page 19, line 8

⁹⁴ Transcript of Troy Charter’s Testimony at page 187, lines 11 through 15

118.ATU 279 submits that eliminating these operators and the buses they drove was a mistake and one that was solely the responsibility of the City.

F. Recommendations

119.ATU 279 believes that the evidence presented before the Inquiry calls into question the current preference for P3 structures as the basis for new public transit projects in this province.

120.As has been outlined above, the P3 model here served to introduce a profit motive into what should have been operated as a public service, thereby creating incentives to both Alstom and RTG/RTM to understaff and under-resource the system — to ensure the profitability of their contracts with the City.

121.As has also been shown by the evidence before the Inquiry, the P3 model served to isolate the maintenance and operational sides of the new light rail system while preventing effective communication between Alstom and the City.

122.Each of these factors impacted the reliability of the system and negatively affected the transit riders of this City. Future projects that use P3 or Alternate Financing and Procurement face the same risks given the inherent structure of the model.

123.ATU 279 would therefore suggest that the Inquiry include as part of its findings a recommendation that the P3 model should no longer be used to build transit infrastructure in Ontario because the risks and disadvantages of the P3 model outweigh any potential cost savings that the privatized model may promise.

124. With respect to the specific factors that led to the lack of reliability for the Confederation Line (and in turn led to its two derailments), ATU 279 submits that the evidence before the Inquiry should undoubtedly lead to the conclusion that a lack of adequate staffing and equipment within the P3 Consortium generally and within Alstom specifically, was the most significant contributing factor.

125. Finally, ATU 279, submits that the decision of the City to prematurely end the parallel bus services and then reduce the number of buses and staff within OC Transpo removed a critical cushion that would otherwise have been available to serve the public once the inevitable reliability issues with the Confederation Line arose.

126. ATU 279 suggests that a recommendation should be made by this Inquiry calling on the City maintain sufficient staffing and bus resources to augment or replace the Confederation Line when that becomes required.

All of which is respectfully submitted this 11th day of August 2022.

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