



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 48

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

28 November 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

Sir, you remain under oath at this time.

MR. BENNETT: Yes.

THE COMMISSIONER: Ms. O'Brien?

MS. O'BRIEN: Good morning.

Could we please bring up Exhibit P-01183, please? While that's happening Commissioner, I'd like to ask to have three exhibits entered. One is Exhibit P-01479 – that's the affidavit that we referred to yesterday – and the other two exhibits are P-01481 and P-01482.

THE COMMISSIONER: All right, those will be entered then –

MS. O'BRIEN: Thank you.

THE COMMISSIONER: – as marked.

MS. O'BRIEN: All right, Mr. – good morning, Mr. Bennett. Showing on the screen before you is a Nalcor document, "Decision Gate 3 Key Deliverables List." This is not a final version, Mr. Bennett, it's just a B1 – it's not the signed off version.

MR. BENNETT: Okay.

MS. O'BRIEN: But I have purposely gone to the draft. Can we look at page 14, please? So this is the section of the DG3 deliverables that covers third party reviews.

And at this – on this draft, five different reviews – third party reviews are anticipated. One is the "IPA Pacesetter Evaluation ..."; another is an "Independent Readiness Review ...", which I would understand that to be the IPR; then the "Public Utilities Board Review Complete" on –

for the DG2 Decision; and "Navigant DG3 Review Complete"; and then something else referred to as a "Cold Eyes Review of DG3 Cost Estimate."

And I'm – just wanna look now at the final version of this document – P-01185 please, Madam Clerk – and this one is at tab 48 of your book, but it's just gonna be one page that I'm gonna bring up. And can we go to page 12, please?

And here under this same section – this is in the final version of the document, Mr. Bennett – and we only have two independent reviews: one being the Independent Project Review for Gate 3, and the other being Manitoba Hydro International Review.

Now, Mr. Harrington has testified – I asked him why the number of, you know, reviews for Gate 3 was reduced between the draft document and the final document. And his testimony was that would not be his decision, that would be Nalcor executives. And so I'm going to ask you the same question. Why were, when you were originally anticipating five reviews, including the – well, the ones that were listed there – why was it ultimately just reduced to these two?

MR. BENNETT: I don't have a specific answer, other than to say that the Manitoba Hydro review was a significant one and it looked at the DG3 review in some detail based on the terms of reference.

MS. O'BRIEN: Okay. Well was this – would have this been – and Mr. Harrington says: This wasn't his decision to do this. Was it yours?

MR. BENNETT: I don't recall a specific conversation on changing the draft to the final document. At the end of the day, the reviews that were undertaken were ultimately satisfactory for decision-making process. Ultimately, the DG3 presentation of the associated reviews would be inputs for our Gatekeeper in terms of accepting the DG3 decision.

MS. O'BRIEN: Okay.

MR. BENNETT: And, you know, from my perspective, if further reviews were desired, they would have been asked for.

MS. O'BRIEN: Okay. So I just want to clarify here. So, we've heard Paul Harrington's testimony that, look, the project management team – it wasn't up to him to decide what reviews were necessary for Gate 3. Would you agree with that?

MR. BENNETT: No, I wouldn't. He could do as many reviews as he wanted to do using internal resources within the team. So if he thought that additional reviews are warranted or beneficial, he could have made that decision himself as well.

MS. O'BRIEN: Okay. Are you aware he testified that that – he did not see that as his decision?

MR. BENNETT: That's – I understand that's what he said, but if he had come to me and said I'd like to do an additional review, I inevitably would have said if you think that's a good idea, I'd have no issue with that.

MS. O'BRIEN: Okay. So it seems to be maybe there was not a clear understanding between you and Mr. Harrington about his responsibilities in that regard?

MR. BENNETT: I don't see it as any lack of clarity there. No one would ever say to Mr. Harrington, if you think a review is warranted – there's never a situation where I would say well I don't think that's necessary. If he felt that it wasn't necessary for a reason, then we would have a conversation about that. But, you know, from – I don't see anything in our process that would limit his ability to engage a consultant and undertake a review in a given area.

MS. O'BRIEN: But, his testimony was that: Look, it wasn't my responsibility to determine what reviews, what independent reviews were required for Gate 3. That wasn't my responsibility to determine that.

MR. BENNETT: I agree with that.

MS. O'BRIEN: Okay.

So, whose responsibility was it?

MR. BENNETT: Ultimately, that's – the level of review that required – that the Gatekeeper requires for decision making, that level lies with the Gatekeeper.

MS. O'BRIEN: So, what you're saying is it was Ed Martin's responsibility to determine what third-party reviews were done at Gate 3.

MR. BENNETT: To identify, it would be his call to say: These are the level that I would require in order to support decision making, yes. But if within the project team, somebody felt that they would like to do an additional review in a given area, they absolutely have the authority to do that –

MS. O'BRIEN: Okay.

MR. BENNETT: – as part of our quality process.

MS. O'BRIEN: But ultimately, the person who had to decide what was required at DG3 was Ed Martin.

MR. BENNETT: What was required, yes?

MS. O'BRIEN: Okay.

And did you have no responsibility for that decision at all?

MR. BENNETT: I inevitably would have consulted on that, but in terms of the requirement and what the Gatekeeper requires in order to satisfy him or herself that they have a sufficient level of review to give them a sufficient level of confidence the Gatekeeper has that authority and makes that call.

MS. O'BRIEN: Did you have any responsibility for that decision?

MR. BENNETT: I don't recall conversations in regard to any further reviews that might be required.

MS. O'BRIEN: Did you have any responsibility for that decision?

MR. BENNETT: I don't see that I did.

MS. O'BRIEN: So, no, you didn't?

MR. BENNETT: It's a Gatekeeper decision.

MS. O'BRIEN: Okay, so it wasn't your responsibility.

MR. BENNETT: My answer is it's a Gatekeeper decision. The decision-maker is the Gatekeeper in terms of satisfying him or herself that they have the requisite level of review to inform their decision.

MS. O'BRIEN: And if my question is did you have any responsibility for that decision, your answer is?

MR. BENNETT: I don't see that I did.

MS. O'BRIEN: And do you recall having any discussions with Ed Martin as to what third-party reviews should be done at Gate 3?

MR. BENNETT: I can't say that I did or that I do recall.

MS. O'BRIEN: Now, Dick Westney testified, gave some evidence to the Commissioner about project assurance. And, I'm just going to summarize some of his evidence in that regard. And so, he said: Look, if you are looking at an oil company – and they were about to sanction a project when they have, you know, multiple projects on the go at any one time – he said: I'm going to set that the level of due diligence or project assurance one would expect before that decision was taken would be a level 10.

And he said for a Crown corporation making a decision on a very significant megaproject, particularly given that it's a utility project and thus it's going to be paid for by the ratepayers, he would expect a higher level of due diligence or project assurance and he put that level up at about a 15.

Now, I don't want you to get too hung up on the numbers; I didn't understand there was any real magic to Dick Westney's numbers of 10 and 15. I think the point he was making is that in a case such as this one, that a higher level of due diligence, project assurance, would be expected. Do you agree with that?

MR. BENNETT: I would agree that a significant decision requires or would – would benefit, would justify a significant review. I agree, the numeric definition is a little bit hard to interpret.

MS. O'BRIEN: No, but the – the idea here is – his point is that Nalcor should have done a higher level of project assurance, more due diligence than we would expect for an oil company sanctioning one of their projects.

MR. BENNETT: I don't have a – I've got no reason to question his opinion.

MS. O'BRIEN: No, I'm asking you for your opinion.

MR. BENNETT: Well, my opinion was that at the time we felt the level of review that was being undertaken, collectively, I didn't see any particular issue with it. I also recognize that this, at the time, wasn't just a utility decision in terms of the overall business objective and that we've talked about before there are other – there were other considerations, there were other revenue streams that are involved in this decision-making. The analysis was completed on a utility basis –

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: – there's no doubt about that, the CPW analysis supports that, but there were other considerations involved with the decision taken at the time. And, at the time, we weren't hearing, or the – I should say that the approval process and the people involved in the decision-making weren't looking for additional review beyond what was done.

MS. O'BRIEN: Either you're not understanding my question or you're just choosing not to answer it.

MR. BENNETT: No.

MS. O'BRIEN: But I'm going to ask it again, okay?

All right, so I'm going to put together – put before you an opinion that Mr. Westney expressed to the Commissioner and then I'm

going to ask you whether or not you agree with Mr. Westney. So it's as simple as that, okay?

So Mr. Westney said that for a project such as this with a Crown corporation – and he was talking about the Lower Churchill Project. So for the Lower Churchill Project, he would expect a higher level of due diligence, a higher level of project assurance than he would expect that an oil company would do for a large project, when they have a larger portfolio of projects, before an oil company would take that decision to sanction. He would expect that the Lower Churchill Project due diligence and project assurance would be greater than that – that he would expect from an oil company.

Do you agree with him or not?

MR. BENNETT: So, for clarification, when you asked me the question the first time, you used the word utility, and I questioned that consideration in framing your question. As an energy corporation, I didn't see the difference in level – I don't agree that the level of due diligence would be different for this investment, compared to a comparable one.

MS. O'BRIEN: Okay. No, it's not –

MR. BENNETT: Well, you said –

MS. O'BRIEN: – a comparable one.

MR. BENNETT: No, but –

MS. O'BRIEN: We're talking about ones that –

MR. BENNETT: Well, you –

MS. O'BRIEN: No, but the issue here, Mr. Bennett, is he's saying, look, you have a – one of the big oil and gas companies, they have any – they have a number of megaprojects in their portfolio. And when they make a decision to go sanction any one – particular one of those projects, there's a certain level of due diligence that one would expect.

Now, when we are talking about a Crown corporation and you're looking at sanctioning a project, or whether you want to consider it a utility project or not, it is a project, you would

agree with me, that's going to be paid for by the ratepayers in this province, is it not?

MR. BENNETT: It may not be completely paid for by ratepayers, we've consistently said that there are other revenues streams that may be used to address the cost of the project. The analysis was done on a utility basis, I accept that, but we have never said that the only source of revenue – that there aren't other opportunities for rate mitigation to deal with the cost of the project.

MS. O'BRIEN: Doesn't the PPA require the ratepayers to pay for the cost of the Muskrat Falls Project?

MR. BENNETT: The commercial frameworks are set that way; however –

MS. O'BRIEN: The answer is, yes, right? Yes.

MR. BENNETT: Yes, the PPAs are set –

MS. O'BRIEN: Okay.

MR. BENNETT: – that way.

MS. O'BRIEN: All right, so what Mr. – I mean, we can be at this a long time this morning, Mr. Bennett. I – you know, I'm not giving up on this, I'll tell you that right now. I want an answer to the question.

Mr. Westney has testified that he would expect that the due diligence project assurance level that should've been done by Nalcor, given the fact that it's a Crown corporation, and, ultimately, the commercial arrangements are the ratepayer has to pay for it – given that's the case, it should've been a higher level of due diligence and project assurance than what one would expect from an oil and gas company making a decision to sanction one of their megaprojects when they have a whole portfolio of them.

Do you agree with him or not?

MR. BENNETT: I don't necessarily share his unqualified opinion, in the sense that the opinion is not complete. I'm not saying Mr. Westney is not qualified, okay?

MS. O'BRIEN: So you don't agree with him. Is that your answer?

MR. BENNETT: I don't necessarily agree with that, no. I understand the difference in portfolio risk, I understand the magnitude of the investment, but I don't agree that there wasn't due diligence undertaken at the time.

MS. O'BRIEN: That's not the question whether there was due diligence, but I'm understanding you to say that you did not agree with Mr. Westney –

MR. BENNETT: As a blanket statement, I appreciate that if the investment is relatively small in the context of their portfolio, I understand that one might look at it and say, I'm less worried about that risk. So I appreciate his point that for a significant investment it's appropriate to do an appropriate level of due diligence and ask yourself if the business case is supportable, can we afford it? But to look at the breadths of policy decisions that are involved in this type of investment it's not simply a given to say, well, this one needs more due diligence than that one.

I would – my position or my view of this is they both require due diligence, but to say one needs less or one needs more, that's a blanket statement that's not very helpful to me.

MS. O'BRIEN: That you don't agree with?

MR. BENNETT: I think it requires further definition of qualification before you get to a conclusion on it.

THE COMMISSIONER: I'd say he doesn't agree with it.

MS. O'BRIEN: Yes. Thank you.

All right, let's look at P-01070. This is a Briefing Note – draft Briefing Note from government here, but I just wanted to go – we've looked at it already in the hearing room. On the first page of the note here it does talk about – I have it on the first page now, let me just ...

I'm not finding the reference there I want. If we can go to P-00807, please. Okay, this is a

Decision/Direction Note. Can we go to page 2? Thank you.

This is a direction note, Department of Finance and Natural Resources. It is – I believe, it is dated – if we go to the bottom we get the date, it's dated May of 2011. And at the bottom of page 2 here, it's looking at – the top of the note, it discusses what it's doing. It – the – “Whether to approve the selection and retention of a qualified consultant to provide an independent review and report” with respect to the Muskrat Falls Project.

But it's this part here I want to speak to you about: “In addition to the above, Nalcor is also planning to undertake additional due diligence as follows:

“Completion of a project cost analysis by” IPA “Inc., an international organization that specializes in ... review of large scale projects.”

Now, we already talked yesterday to some extent about IPA, so I understand you're aware of that company. And they were retained to do an evaluation at Gate 2, correct?

MR. BENNETT: They – yes, that's right.

MS. O'BRIEN: Okay.

And in this note, would you agree with me that in May of 2011, the information that government has is that Nalcor was also planning to undertake a review by IPA at Decision Gate 3?

MR. BENNETT: That's what it says there, yes.

MS. O'BRIEN: Okay, and that would be consistent with the first draft of the – that the Gate 3 deliverables that we looked at, would it not?

MR. BENNETT: Looks that way, yes.

MS. O'BRIEN: So why wasn't IPA engaged at Gate 3?

MR. BENNETT: I don't have a recollection of the decision-making process that looked at IPA being dropped. I think we've covered that – we covered that, and I don't know that this report –

does this report, or this note at this point in time, include MHI in it? So was the MHI review contemplated in this document?

MS. O'BRIEN: I believe, at this time, the government was considering what else they would be doing.

MR. BENNETT: Right.

MS. O'BRIEN: I don't believe, you know, MHI was necessarily –

MR. BENNETT: Right.

MS. O'BRIEN: – engaged at this time.

MR. BENNETT: So I think maybe the – there is certainly a significant discussion on the reviews that are going to be undertaken at DG3. MHI comes along after, and needless to say, although I wasn't involved in those conversations, there was consideration to what reviews would be done at DG3.

MS. O'BRIEN: Okay, so you don't know why IPA was – the IPA review was not undertaken?

MR. BENNETT: I don't know, but I'm gonna speculate that, with MHI involved in the review, there was obviously thinking about what reviews were going to be undertaken later.

MS. O'BRIEN: But I understand what IPA does is this benchmarking against a larger number of projects, so that would be a different exercise than what was done by –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: – MHI, would –

MR. BENNETT: It's –

MS. O'BRIEN: – it not be?

MR. BENNETT: Well, terms of reference, we need to look at that if that's important. IPA does, remember – we saw previous Pacesetter evaluations and the other work that they've done, so depending on terms of reference, it could be different; it could be overlapping.

But all I'm saying is, at this point in time, if the reviews for DG3 weren't nailed down, then obviously further thinking was applied to the question later.

MS. O'BRIEN: Okay, IPA does have a large database –

MR. BENNETT: Well, they did a –

MS. O'BRIEN: – of megaproject data that they can compare your project against, don't they?

MR. BENNETT: They do that, yes.

MS. O'BRIEN: And MHI does not?

MR. BENNETT: MHI had their own – experience with their own projects.

MS. O'BRIEN: They don't have this – a large database?

MR. BENNETT: No, they don't. That's right.

MS. O'BRIEN: No. Okay. All right.

Were you aware that the – at Gate 2, were you aware that the project management team had suggested edits to IPA's key findings in its report at Gate 2?

MR. BENNETT: I don't know if I was specifically aware. I mean, I'm aware that we do have comments on reports from time to time.

MS. O'BRIEN: Do you recall discussing this in our interview?

MR. BENNETT: We talked about a couple of examples in the interview, yes.

MS. O'BRIEN: Okay. Let's bring up P-01174.

So this is an exhibit we've looked at already before. This is Jason Kean corresponding with Deepesh Singh, who is with IPA. And what he's doing is he is sending back, to Mr. Singh, Nalcor's comments to IPA's draft report.

And can we go to page 5, please.

So this was a slide that IPA had done with their key findings, and, here, these are – I mean, the

slide speaks for itself. I won't bother to read it in; we've already had it read into evidence. But these were some of the key findings.

And what was happening here was Nalcor had suggested removing the findings as they had been worded by IPA and was suggesting alternate wording over there. And when we read the wording I'm going to put it to you – and please take your time to do it. I know we have looked at it before. But these suggested edits are not fact-checking edits. They go beyond just, you know, completing facts. What they're really doing, I would submit to you, is that they're changing the message of the opinion.

Do you believe that it's appropriate for Nalcor to be rewriting the consultant's key findings or conclusions when they get a draft report?

MR. BENNETT: I prefer that this not happen. So no, I don't agree with making findings go away. It's important for us to understand what they are. And just for clarity, this is – were there two versions of this document? Was there an internal and external document?

MS. O'BRIEN: This was forwarded back to IPA.

MR. BENNETT: Yes, I understand, but I think I saw a note from Jason – Mr. –

MS. O'BRIEN: This is the public version.

MR. BENNETT: Public version, okay.

MS. O'BRIEN: This is the public version.

MR. BENNETT: I don't think the issue was hidden internally, but I'd prefer that this not happen. My – I think, in my interview, I had a couple of points. Facts need to be addressed. If there are factual errors that – or further information that helps the consultant explain or understand the situation, that's helpful.

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: If there's context, that's helpful for the reader. I think it's appropriate for us to be talking about that, but I don't like seeing findings edited. The value of our consultants and their input is important to us.

MS. O'BRIEN: Okay. So Mr. Harrington and Mr. Kean should not have been rewriting the consultants' key findings here?

MR. BENNETT: I'd prefer that it not happen. There's no question on that. Now –

MS. O'BRIEN: When you say I prefer it not happen –

MR. BENNETT: I need to hear what the consultants have to say. That's my point, right? So it should not – that should not, in my mind happen.

MS. O'BRIEN: Okay. And –

MR. BENNETT: Now, where rewriting –

MS. O'BRIEN: – does it cause you concern that it was happening?

MR. BENNETT: These examples cause me concern.

MS. O'BRIEN: Yes.

MR. BENNETT: Like, over the course of my engagement, I have not seen many examples of this kind of thing. You're pointing out a couple that I wasn't aware of.

MS. O'BRIEN: Okay. So this does – I just want to be clear. This does cause you concern?

MR. BENNETT: It would cause me concern. Yes.

MS. O'BRIEN: It does?

MR. BENNETT: Yes. It does.

MS. O'BRIEN: Thank you.

But I understand, from yesterday – we looked at Navigant – where Navigant had made findings with respect to how – what should be done at DG3. Those were edited out following feedback from Nalcor. But I understand, there, you did not have concern with that yesterday because it involved DG3 as opposed to the report on DG2. Is that right?

MR. BENNETT: Well, it wasn't a finding. Just to clarify.

MS. O'BRIEN: It was a –

MR. BENNETT: It was a recommendation for further work at a later date.

MS. O'BRIEN: Is a – what's the difference between a recommendation and a finding?

MR. BENNETT: Again, we're looking at – from my perspective – I'm looking at context here. The – this wasn't a conclusion that was drawn at DG2. That was a forward looking statement about what work might be done at a future date. I see that a little differently than a conclusion that a consultant has drawn internally –

MS. O'BRIEN: Okay.

MR. BENNETT: – based on their work to date.

MS. O'BRIEN: Okay. Now, have you heard any of the evidence on the Independent Project Review report at DG3?

MR. BENNETT: The engagement between Mr. Harrington and Mr. Owen –

MS. O'BRIEN: Yes. Mr. –

MR. BENNETT: – after their presentation was made to – I think it was myself and Mr. Martin?

MS. O'BRIEN: Yes.

MR. BENNETT: Right.

MS. O'BRIEN: Have you heard the evidence on that?

MR. BENNETT: I haven't heard all of the evidence, but I've seen the emails and the back-and-forth.

MS. O'BRIEN: Okay. So we can bring one of those up. P-00508 – I think it's at tab 33 of your book. So what the evidence is – and I'll summarize – is that the IPR presented what they considered to be their final report to you and Ed Martin, among others. And do you recall getting a presentation of that report?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay, and then if we just go to the bottom of this email chain, what we see here was that Paul Harrington – after that final report had been submitted – he was proposing back to Mr. Owen, wording for what he then calls the draft IPR report. And that included changing – some changes to the – what had been recommendations from the IPR.

And ultimately, this – Mr. Owen has one view of it. He then consults with Mr. Westney, and Mr. Westney takes a very strong stance against it, essentially saying that we, you know, we're not changing our recommendations in our report – it was our report and to do otherwise would be – would compromise our professional ethics. So are you generally aware with that – of that evidence?

MR. BENNETT: I'm generally aware of that, yes.

MS. O'BRIEN: Okay. When did you first learn that this had happened?

MR. BENNETT: I think it was in my interview.

MS. O'BRIEN: Okay, and is that – does this cause you concern, that Mr. Harrington was looking to edit the recommendations of the IPR?

MR. BENNETT: I have some concerns. I'm also pleased that Mr. Owen and Mr. Westney said this is not on; you've got our opinion, and it stands.

MS. O'BRIEN: Okay, what about Mr. Harrington's behaviour? Would you condone this behaviour by Mr. Harrington?

MR. BENNETT: I think at the time I was clear I wasn't supportive of this behaviour – in my interview when you asked me that question first.

MS. O'BRIEN: Okay, so fair to say that you do not condone this behaviour?

MR. BENNETT: I don't condone it, no.

MS. O'BRIEN: Okay, so this shouldn't have been happening – Mr. Harrington shouldn't have been doing this – should he have?

MR. BENNETT: I don't agree with this approach – I don't agree with this action, okay?

MS. O'BRIEN: Now, we know that the IPR report for DG2 was included in the decision support package that went to the board of directors, but at Gate 3, the report from the IPR team was not included. Why not?

MR. BENNETT: I have no explanation for that – I don't know.

MS. O'BRIEN: As the vice president of the Lower Churchill Project, was it your responsibility to ensure that the board was getting a full and complete decision support package prior to Gate 3?

MR. BENNETT: The package of information that was provided to the board – as we understood it – was what they required. Presentations that go to the board are reviewed by our CEO before they go to the board. At the time, I felt that what was going to the board was appropriate.

MS. O'BRIEN: Okay.

Do you not think that the board would be interested in knowing that the IPR team had recommended that the – adequate provisions for management reserve and schedule reserve be included in the project sanction costs and schedules? Would you not agree that would be information that the board of directors would want to have?

MR. BENNETT: I believe that the board was aware that there may be a possibility for cost overruns and schedule delay and I understood that the board was aware of those risks.

MS. O'BRIEN: Okay.

Do you not believe that the board would want to have the information that the IPR team had recommended that adequate provisions for management reserve and schedule reserve be included in the project sanction cost and schedule?

MR. BENNETT: I believe that that information – not necessarily in the format provided in this

presentation – that that information was communicated to the board.

MS. O'BRIEN: You believe the board was told that the IPR –

MR. BENNETT: I –

MS. O'BRIEN: – recommended that management reserve be included in the project sanction costs and schedule reserve be included in the project sanction schedule?

MR. BENNETT: I think what I said was that the information regarding the potential for cost overruns and schedule delays and that the board needed to be aware of that was communicated to them in a message from our CEO.

MS. O'BRIEN: Okay.

MR. BENNETT: Not necessarily the IPR. The IPR report was not – was not to – I understand, was not given to the board but the information underlying that message was provided to them.

MS. O'BRIEN: At project sanction there was no schedule reserve –

MR. BENNETT: That's correct.

MS. O'BRIEN: – included?

MR. BENNETT: We've been through that.

MS. O'BRIEN: We've been through that.

MR. BENNETT: But the risk –

MS. O'BRIEN: And the IPR team had recommended that schedule reserve be included.

MR. BENNETT: Yes.

MS. O'BRIEN: Now, was the board aware that the IPR team had recommended that schedule reserve be included?

MR. BENNETT: I don't believe that the IPR – the specific IPR report was provided to the board.

MS. O'BRIEN: Okay.

Was the – that information provided to them: Look, we're not including a schedule reserve but we just want to let you know the IPR team had recommended we do so, but we decided not to?

MR. BENNETT: The recommendation to the board in relation to this was provided by the CEO, okay? The – this information – the IPR work was presented to myself, and Mr. Martin, and he gave careful consideration to all of these issues and made a recommendation to the board. And ultimately, gets to have that – he had that conversation with the board.

But the specific recommendation, I don't know that it's important because there are other ways of communicating that concern or that issue in relation to risk.

MS. O'BRIEN: You don't think it's important that the board of directors be informed that the cold eyes review team that was brought in recommended that schedule reserve be included in the project schedule?

MR. BENNETT: I believe that that information was provided in its – provided directly to the CEO and that the decision-making and information at an appropriate level for the board ultimately was provided by him to the board of directors.

MS. O'BRIEN: That is not responsive to my question, Mr. Bennett, so we're going to go through the whole thing again. Okay? Do you not believe that the board of directors of Nalcor Energy would want to know that the IPR team at DG3 had recommended that schedule reserve be included in the project sanction schedule?

MR. BENNETT: So two points. First of all –

MS. O'BRIEN: I hope one of them is an answer to the question.

MR. BENNETT: Well, there – it is – not every report that comes into the organization goes in unfiltered form or direct form to the board of directors. This information was provided to the CEO for his advice and his consideration. The review team reports to our CEO. How that information is considered, translated, condensed and put in a format that is at a reasonable level for the board to consider is up to him.

So I'm confident that Mr. Martin considered this recommendation and talked about the underlying risk. How that risk is managed between the CEO and the board of directors, is not simply saying here's this recommendation, here's a sentence, this is what the board – what the IPR team recommends, and this is what you should do with it.

The real question is what should you do with that risk and what did the board and the CEO think about that?

MS. O'BRIEN: Commissioner, I don't know what to do here. I am not getting an answer to what I perceive to be a fairly straightforward question from this witness.

THE COMMISSIONER: Mr. Simmons?

MR. SIMMONS: Commissioner, I think Mr. Bennett has given an informative response to the questions that have been asked. He's given a full explanation. And I think the responses that he has given are getting at the important aspects of what are being asked about. So I think it is a fulsome answer and should be regarded as adequate.

THE COMMISSIONER: I want to be very careful what I say here. I don't really need to hear from you.

So, message to you, Mr. Bennett, I'm not sure I am getting answers to those questions. And your evidence is extremely important. Questions are being asked. My sense is that you're trying to somehow contextualize your answer without answering the question.

MR. BENNETT: Okay.

THE COMMISSIONER: Now, in this particular case, you know, I think the issue – the pure – the simple question is, I think, is that if IPR, who had been required to do an independent review had made a recommendation and that recommendation related to the schedule risk. The question, I think, Ms. O'Brien is asking you is: Do you not think it's important that that – the fact that IPR made that recommendation – was communicated to the board?

And my sense is your answer is saying: Well – and you can correct me if I’m wrong – well, yeah, it’s important but it could be given in another way. In other words, Mr. Martin could’ve talked about risk and made them aware of risk or whatever. I don’t even know if you were present at the board meeting when this happened, but I’d just like you to stick to the question that was asked.

And I’ll let you ask it again.

MR. BENNETT: Okay.

MS. O’BRIEN: Thank you, Commissioner.

So my question is: Do you not believe it would be important for the board of directors to have – to know that the IPR team had recommended that schedule reserve be included in the project sanction schedule and that adequate provisions for management reserve be included in the project sanction cost?

MR. BENNETT: So I agree that the – that that recommendation should have been communicated to the board.

MS. O’BRIEN: Okay.

MR. BENNETT: Okay.

Now, how the underlying concern was communicated and what context was put around that, that’s ultimately Mr. Martin’s call. But the recommendation from the IPR team that there be reserve needs to be communicated.

MS. O’BRIEN: To the board?

MR. BENNETT: Yes.

MS. O’BRIEN: Okay.

And should it also have been included to the – been communicated to the shareholder?

MR. BENNETT: Again, the recommendation that management reserve and schedule reserve be available, yes, that message need to have been – should have been communicated, in my view.

MS. O’BRIEN: Okay. Thank you.

And now, I’m just going to put a question – and I’m not sure you’re gonna be able to answer this. But if you weren’t – if you weren’t initially planning to put the IPR report in the decision support package and provide it the board of directors, okay, if that wasn’t the initial plan, what would be the point of Mr. Harrington seeking to make edits to that report after it had been communicated to you and Mr. Martin?

MR. BENNETT: I have no information on the basis for those edits. The report existed, the presentation was made, the interaction happened with myself and Mr. Martin in the meeting, right, it’s documented. So I don’t – I didn’t see any benefit in going back on that.

MS. O’BRIEN: P-00502, please. Page 6.

This is the Decision Gate [sp 3] Independent Project Review Charter.

MR. BENNETT: Okay.

MS. O’BRIEN: The last sentence on this page says: “The findings, observations and recommendations from IPR, as well as a gap closure plan, will be included in the Decision Gate Support Package when submitted to the Gatekeeper.”

Were you aware that the IPR project charter stated that their findings, observations and recommendations would go in the decision support package?

MR. BENNETT: I didn’t connect the dots, no.

MS. O’BRIEN: You weren’t aware of that?

MR. BENNETT: No.

MS. O’BRIEN: Okay. But you are now aware that ultimately that didn’t –

MR. BENNETT: Right.

MS. O’BRIEN: – happen?

MR. BENNETT: The IPR observations and findings were provided directly to the Gatekeeper.

MS. O'BRIEN: But they didn't go in the decision support package –

MR. BENNETT: I appreciate that.

MS. O'BRIEN: Right? You're aware of that now.

MR. BENNETT: I appreciate that.

MS. O'BRIEN: And you're aware that the decision support package is what went to the board.

MR. BENNETT: Yes.

MS. O'BRIEN: And the IPR review report did not go to the board.

MR. BENNETT: I understand that to be the case.

MS. O'BRIEN: Okay.

Were you aware that, at DG3, MHI did not review Nalcor's treatment of strategic risk and time-cost risk?

MR. BENNETT: I understand that to be the case.

MS. O'BRIEN: Okay. When did you – when did you learn that to be the case?

MR. BENNETT: I'm thinking about that because, needless to say, all I have to do is look at the MHI report; I've looked at a body of evidence here in this proceeding, so it's difficult for me to get my head around when I knew that.

MS. O'BRIEN: Did you know it when the project was sanctioned? Did you know it at Gate 3?

MR. BENNETT: I suspect I would've because I would've read the MHI report.

MS. O'BRIEN: Okay. And would you agree with me that in reading the MHI report – now you're saying you – I got to ask – actually ask you a further question on that – sorry.

Why are you saying you would – it would've been clear to you from reading the MHI report

that they had not included a review of strategic risk?

MR. BENNETT: Strategic risk, as I recall, wasn't discussed in the report. No, and I –

MS. O'BRIEN: Okay, but from reading that report – can we bring up P-00058, please?

I believe – I think I advised your counsel that I'd be putting this question to you. But I'm just trying to get, like, from you – what in this report do you believe would inform the reader that MHI had not reviewed the strategic risk work?

MR. BENNETT: I don't think they discussed strategic risk in the report.

MS. O'BRIEN: Okay. So there's not – but they don't say: We did not review –

MR. BENNETT: No –

MS. O'BRIEN: – strategic risk?

MR. BENNETT: – no, they didn't. That's right.

MS. O'BRIEN: Okay. And just – if we look at page 39. They say here: "Sufficient contingency has been allocated to this portion of the project to offset any unforeseen project risks."

Would you agree with me that someone reading that sentence, who wasn't aware of the differences between tactical risk and strategic risk – the way that Nalcor had used those terms – would you agree with me that someone reading this sentence would just assume that any unforeseen project risks would include things – you know, any risk would include things that include strategic risks?

MR. BENNETT: You could draw that conclusion. I mean, there's a relatively small audience who would understand the difference between tactical and strategic risk, and I understand that.

MS. O'BRIEN: Yeah. So would you agree with me that many people in government, for example, or in the public reading this would assume that there's sufficient contingency to cover all project risks – any unforeseen ones?

MR. BENNETT: That's what it says. I mean, the plain –

MS. O'BRIEN: Okay.

MR. BENNETT: – reading, I'm not objecting to the plain reading of that sentence.

MS. O'BRIEN: Okay. Page 44, please.

It's another page – “At this stage, the major risks to be addressed for the transmission line complex remain as contractor costs, labour availability and productivity.”

Now, I understand labour availability and productivity were risks that Nalcor categorized as strategic.

MR. BENNETT: I believe that to be –

MS. O'BRIEN: Okay.

MR. BENNETT: – the case.

MS. O'BRIEN: Okay – “Nalcor has identified this as a major risk and has identified mitigation strategies to attract skilled labour back into the province through a master labour agreement, training, and other self-development programs.”

Would you agree with me that if you were – if someone was just reading this, they would be led to believe that MHI had reviewed these types of risks, which includes strategic risk?

MR. BENNETT: They wrote that. There was a communication; they communicated that in this report. And mitigation of strategic risk is an important consideration for us.

MS. O'BRIEN: No, but my question is: Do you – would you not agree that someone reading this report – and if this is what they're given to read, this is what they have – someone reading this report would be led to believe that MHI had looked at strategic risks, such as labour availability and productivity, and how Nalcor was handling those?

MR. BENNETT: I think it would be a stretch to take that sentence where they've identified some specific risks that are relevant to the project and

translate that to, well, they've looked at all the strategic risks.

MS. O'BRIEN: Okay, but would you not at least think that they've looked at labour availability and productivity?

MR. BENNETT: Oh, well, they said that they – I – they understood that they were risks without categorizing them as to being tactical or strategic.

MS. O'BRIEN: But you're aware that MHI did not review – that the work that Nalcor had done with Westney Consulting in trying to evaluate what would be an appropriate reserve to address risks such as labour availability and productivity.

MR. BENNETT: I understand that.

MS. O'BRIEN: You would know that.

MR. BENNETT: Right.

MS. O'BRIEN: And that was not provided to them by Nalcor, that information, you know that.

MR. BENNETT: Right. I understand that.

MS. O'BRIEN: Okay.

All right, page 57, please. So this is where they talk about – where they talk about the schedule. So they say, look, the schedule – this is the schedule, first power date is July 2017. So this is this P1 schedule, right?

MR. BENNETT: The target schedule, right.

MS. O'BRIEN: Right and they – so when you review this section – I won't read the two paragraphs out loud here, but would you agree with me that anybody reading this would think that Westney had, you know, reviewed, looked at and evaluated the appropriateness of that schedule.

THE COMMISSIONER: Westney or MHI?

MS. O'BRIEN: MHI, sorry, Commissioner.

MR. BENNETT: So MHI definitely reviewed a schedule because in the following paragraph in the third sentence they say that they, you know, completed the selective review and looked at a very detailed work breakdown structure.

MS. O'BRIEN: But what they didn't do is they didn't get to see the work that Westney had done that indicated that that was a P1 schedule.

MR. BENNETT: As I understand it, looking at that they looked at the SNC-Lavalin schedule, which is a very detailed work breakdown structure, and I think I talked about that earlier, that they had the benefit of that. And they've identified – looking down on the next paragraph, they talk about the issues that Westney had raised concerns about.

MS. O'BRIEN: But you're aware that they weren't provided the information by your project management team that Westney had determined that schedule to be a P1.

MR. BENNETT: I understand that and I agree with that.

MS. O'BRIEN: Okay.

And so do you not think that independent reviewers who are being asked to look at the schedule and who are writing this type of section in their report should have been provided that work by Westney?

MR. BENNETT: As I understand it they were basing these conclusions on their own experience with hydroelectric construction. But I don't disagree that – or I would agree that if they had wanted to get it – there's no harm – there would be no harm in giving them the additional work if it was in – within the scope of their investigation or their review. So –

MS. O'BRIEN: Doesn't this suggestion itself suggest that looking at the schedule was in – within the scope of their review?

MR. BENNETT: They did look at the schedule.

MS. O'BRIEN: Okay.

MR. BENNETT: And they looked at – as I understand it, looking at this, they looked at the

detailed SNC-Lavalin schedule that was put together and all of the considerations that are contained in the work breakdown structure, and drew their own conclusions on the achievability of that schedule.

MS. O'BRIEN: Okay.

Would there not be, you know – okay, MHI, you'll agree with me, was looking and reviewing the schedule as an independent reviewer.

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

And would it not be incumbent upon Nalcor to ensure that MHI was provided with all the relevant information that Nalcor had regarding their schedule. To the independent reviewer who is doing the project assurance on behalf of the Government of Newfoundland and Labrador, would it not have been incumbent on Nalcor to ensure they had all the relevant information?

MR. BENNETT: As I understand the situation, they had all of the relevant information. They had the very detailed schedule and they drew their conclusions.

Whether the review completed by somebody else was helpful to inform their investigation – that is debatable. But, as I understood, they had everything that they were looking for and they had the detailed work that was completed to that date and they drew their conclusions from that work.

So I'm not sure that it's helpful to give them somebody else's review to – I guess the potential is there for that to, you know, to cloud their independent review of the work – the detailed work that was actually being done.

MS. O'BRIEN: Okay, now –

MR. BENNETT: But if it were relevant –

MS. O'BRIEN: – Mr. Bennett, I'm going to put it to you, that doesn't make much sense, given –

MR. BENNETT: Okay.

MS. O'BRIEN: – the fact that you did provide them with the work that Westney did on tactical risks.

MR. BENNETT: So that –

MS. O'BRIEN: Did you not?

MR. BENNETT: They explained how the –

MS. O'BRIEN: Sorry, did you not give them –

MR. BENNETT: Yeah, I think we –

MS. O'BRIEN: – Westney's review –

MR. BENNETT: Yes, we did.

MS. O'BRIEN: – on that?

MR. BENNETT: Yes, we did.

MS. O'BRIEN: Okay.

And yet, Mr. Harrington has said in this hearing room that because they didn't ask, he wasn't going to volunteer the information of the work that Westney did with respect to strategic risk and the schedule reserve.

MR. BENNETT: And the question that begs itself is: Was it in their terms of reference and did they want to look at it? Needless to say, if they wanted it, we would have provided it.

So I'm not trying to be evasive on this but –

MS. O'BRIEN: Are you aware that one of the members of MHI has said he was angry that he hadn't been provided this information?

MR. BENNETT: He's angry when he found out about it today, I understand that. But at the time, the information that they requested, we gave them consistent with their terms of reference and they asked, based on their terms of reference.

MS. O'BRIEN: You believe there was a duty on Nalcor to make full disclosure to MHI of information regarding schedule?

MR. BENNETT: I believe that we had given them what they were asking at the time. So –

MS. O'BRIEN: Do you believe there was a duty on Nalcor to make full disclosure to MHI on information regarding schedule?

MR. BENNETT: I would agree with that.

MS. O'BRIEN: The – we've had – there's a fair bit in the documentation about third party reviews and the importance of oversight and the importance of validation and check estimates. Yet, as I'm understanding the evidence to date, at DG3 Nalcor did not have its strategic risks or its assessment of the cost and schedule delay reviewed by any independent reviewer. Is that correct?

MR. BENNETT: Try that again, because I thought that strategic risk was – had been looked at by Westney.

MS. O'BRIEN: Westney worked with Nalcor to evaluate strategic risk.

MR. BENNETT: Yes.

MS. O'BRIEN: So they were a consultant involved in doing the work. But in terms of a third party independent review, nobody looked at it.

MR. BENNETT: I think that's accurate.

MS. O'BRIEN: Okay, so the PUB didn't look at it, the IPR have testified that they weren't provided that work that had been done by Westney. Are you aware of that?

MR. BENNETT: The IPR team wasn't aware of ...?

MS. O'BRIEN: They weren't provided the work that Westney had done on the owner's reserve – management reserve calculations and the schedule risk. I think Mr. Westney knew that there'd been a P1 evaluation, he would've communicated that, but the work that Westney had done was not provided to the IPR.

MR. BENNETT: Okay.

MS. O'BRIEN: Are you aware of that?

MR. BENNETT: No, I wasn't, but – and I'm also not aware that the IPR team had asked for it. But I wasn't aware that they didn't have it.

MS. O'BRIEN: Does Nalcor take the – sort of this position of, you know, don't ask, don't tell?

MR. BENNETT: No.

MS. O'BRIEN: Okay, so is there not a duty for you to be – you know, when you've got independent reviewers, for you to be forthcoming in the information?

MR. BENNETT: So we're trying to address what they're looking for, to provide the information that they ask.

MS. O'BRIEN: But maybe they don't know it exists unless you – I mean, if – like, you keep saying, well –

MR. BENNETT: Oh –

MS. O'BRIEN: – I say wasn't it provided, and you say, well, nobody asked for it.

MR. BENNETT: But part of the challenge though is that you have reviewers who have a scope and are looking for particular aspects of the project based on their review terms of reference, based on their experience and based on their work plan. And they have a series of information that they would ask for –

MS. O'BRIEN: Okay.

MR. BENNETT: – in order to – and we – every time, we've tried to co-operate with what they're looking for.

MS. O'BRIEN: Right. So this work – despite the fact that your DG3 deliverables discussed the importance of third party reviews and there were supposed to be third party reviews, this critical piece of work, it wasn't reviewed by Navigant at DG3 because you decided not to continue on with Navigant, correct?

MR. BENNETT: MHI did the work, that's right.

MS. O'BRIEN: Okay. So Navigant didn't review it. IPA, you decided not to bring in IPA at DG3?

MR. BENNETT: Yeah.

MS. O'BRIEN: And it was not provided to MHI, correct?

MR. BENNETT: As I understand, yes.

MS. O'BRIEN: And in fact, the look at – to look at the assessment of strategic risks was actually removed from MHI's contract?

MR. BENNETT: I understand that.

MS. O'BRIEN: Okay. And the IPR team wasn't provided with Westney's work?

MR. BENNETT: The IPR team had the summary of Westney's work. That's right.

MS. O'BRIEN: How do you justify that no independent, third party reviewer reviewed that work prior to sanction?

MR. BENNETT: If I look back at that, I'm – I guess my biggest concern here is how the MHI review didn't get into the – those strategic risks. I think my – when I read the report, I'm looking at their view of the world. They've identified what the risks are. The distinction – in their mind – the distinction between tactical and strategic risk is not the most straightforward concept to communicate. And what we were – what I would have expect – what I was looking from MHI, you know, was a conversation and a document that reviews the risks in their mind. And I don't think that their –

MS. O'BRIEN: You mean you want – you expected MHI to review strategic risks?

MR. BENNETT: I'm expecting them to review the risks.

MS. O'BRIEN: Including strategic risks as Nalcor terms them?

MR. BENNETT: And they have commentary on some of those in their report that –

MS. O'BRIEN: So are you expecting them to review all the strategic risks?

MR. BENNETT: I would like to hear what they had to say about what they believed the risks were.

MS. O'BRIEN: So –

MR. BENNETT: The risks globally.

MS. O'BRIEN: Were – would you –

MR. BENNETT: Which they have – looking at this section, they have considered what they believed the project risks were in relation to the development.

MS. O'BRIEN: We're talking about the work that was done on the management reserve, to calculate the management reserve, which was supposed to deal with strategic risks. You understand that, right?

MR. BENNETT: I understand that.

MS. O'BRIEN: And the work that was done to evaluate the reasonability, the confidence level of the schedule, right?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. That's what I'm talking about here. How do you justify that Nalcor proceeded to sanction this project without having had any third party, independent reviewer look at that work?

MR. BENNETT: I think that the first-hand work, that was facilitated by Westney, informed decision-makers, and, from my view, I've never heard anybody raise a question about what that was communicating. Westney was involved in that process; they were facilitating that review, and – the review of the work and the review of the considerations and the risks inherent in the project – and they prepared a document that communicated that.

I never – it never crossed my mind, at the time, to have another review of the work that was facilitated by Westney. We were relying on the output and the work and the information and the

advice that they provided us in a – in the process that they facilitated with the team.

MS. O'BRIEN: It never crossed your mind that there would be benefit to have an independent, cold eyes review of the work done around strategic risk and schedule reserve? Is that your answer?

MR. BENNETT: There – I never saw the benefit of an additional review of that work.

MS. O'BRIEN: They didn't do a cold eyes review. They were involved in doing the work. That's not a cold eyes review –

MR. BENNETT: No.

MS. O'BRIEN: – is it?

MR. BENNETT: But they looked at the work that was completed by the project team and, you know, through that process, offered their advice. A cold eyes review to come in and completely look at it from day one and do it again? No, they didn't do that. I agree with that.

MS. O'BRIEN: No.

MR. BENNETT: But they –

MS. O'BRIEN: Not – a cold eyes review doesn't do the work again. That's not my understanding of what evidence has been about a cold eyes review.

MR. BENNETT: Oh, that's fair.

MS. O'BRIEN: You understand that differently?

MR. BENNETT: I understand. I understand the distinction.

MS. O'BRIEN: Okay.

MR. BENNETT: Yes, I'm sorry.

MS. O'BRIEN: So I understand an independent, third party review is someone who comes in, who hasn't been involved in doing the work on the day-to-day, and they look at what was done, and they're people who have knowledge and expertise, experience, and they

look at what the work is done, and they give an opinion as to whether that work was good, not good, deficient or exceeding expectations.

MR. BENNETT: Right.

MS. O'BRIEN: Okay, now can we just agree with that that's (inaudible) –

MR. BENNETT: I agree with that premise.

MS. O'BRIEN: Okay.

MR. BENNETT: Yes.

MS. O'BRIEN: So how do you justify that no third party review was done of this critical work?

MR. BENNETT: I don't have an explanation. The work wasn't – we did not do a third party review of the strategic risk. The work that was completed was provided to our – to the key decision-maker in our organization, and we didn't see – I didn't hear any conversation about doing further work with that.

MS. O'BRIEN: Okay. Can we bring up the P-01320, please?

Now, this is an email going back – there's Charles Bown, Robert Thompson –

THE COMMISSIONER: Tab 21.

MS. O'BRIEN: Sorry. Thank you, Commissioner.

P-01320. Attached is a Tactical Plan for Muskrat Falls Approval. And can we go to page 3, please?

So this is a document that's been circulated – again, a tactical plan for getting approval or sanction, and we see here that there is various people on the plan, some from government, like Charles Bown – he's on a number of these – some from Nalcor, so Ed Martin is there. I think Brian Taylor was with – the chief of staff with government. We have a number here, going on.

Can you describe for the Commissioner how the Government of Newfoundland and Labrador and Nalcor were undertaking this work together

leading up to sanction of the Muskrat Falls Project?

MR. BENNETT: How they were –?

MS. O'BRIEN: Working together. 'Cause here we see a tactical plan for approval, and we see, clearly, there's government people and there's Nalcor people here. So I take it from this, they – you – the two groups were working together to some – at least to some extent.

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: And I'm asking you to describe that for the Commissioner.

MR. BENNETT: Yeah. Okay.

So if we look at the items that are required to get to sanction, there are areas of that work that involve government; there are areas that involve Nalcor, and there are areas that involve both. So – and if we go through this – the federal loan guarantee, needless to say, is an important agreement between Canada and the province. We have information in relation to the project and financing. So, you know, in that regard there – it's not a surprise that Mr. Sturge and Mr. Bown would be working together in order to see that everybody's collective interests are required.

Similarly, with the UARB and the Nova Scotia Government, we have an interest in our relationship with Emera; the province has an interest in the relationship with the Government of Nova Scotia and their regulatory bodies.

In the context of the Emera agreements, we were the – we being Nalcor – were the negotiating lead. There are considerations for the province in those negotiations, so the importance of having certain legislative standstills to make sure that Emera has a certainty associated with their investment brought the province into those conversations, and there were representatives from the Department of Justice involved in the negotiations, at the negotiating table, understanding how things were unfolding.

Nalcor-Hydro agreements, associated legislation – neither party can do that unilaterally. The information in the House of Assembly, at the

time, the province would be – obviously the province has a key role in that and we provide information. Materials, there are relevant – there’s relevant information from both parties involved in pulling information together, so I’m not surprised to see Mr. Martin and Mr. Bown working together there. Public relations and community government relations – from the province’s perspective – on any of these major files – that is an important question that the province would take the lead role on. Legislation is the –

MS. O’BRIEN: And would they work – again, I’m hearing a lot of co-operative work between –

MR. BENNETT: Yeah, absolutely.

MS. O’BRIEN: – government. And would that be the same for public relations communications – a co-operative approach?

MR. BENNETT: It would absolutely –

MS. O’BRIEN: Okay.

MR. BENNETT: – be required there. If you had one party being out of line or misaligned or not having consistent messaging with the other, that’s going to be a problem in the public domain.

MS. O’BRIEN: Okay.

MR. BENNETT: Legislation, is the province’s process and certainly the sanction, Cabinet approval, decision-making – Mr. Martin would lead.

MS. O’BRIEN: Okay, and that’s because you’re looking to give presentations both to the board and Cabinet?

MR. BENNETT: It has to go both ways.

MS. O’BRIEN: Okay.

Okay, P-00926, please.

Are you generally familiar with this slide deck?

MR. BENNETT: This is ringing a bell.

MS. O’BRIEN: Okay. So there’s a – it has come up before. Can we go to page 34?

Okay, so we’ve had – have you heard any of the evidence to date regarding this House of Assembly debate; sample messaging for the hit squad? Have you heard –?

MR. BENNETT: I’ve heard some of this, yes.

MS. O’BRIEN: Okay.

Can you give that some context for the Commissioner? Because I understand there was a – you know, there’s a communications team that had both Nalcor and government members on it. I understand you were involved in that work at the time, were you not?

MR. BENNETT: Not in the development of messaging directly. I wasn’t heavily in the communications effort. The other thing I can say here is I don’t agree with the choice of words. It’s not something that I would’ve –

MS. O’BRIEN: The “hit squad” wording.

MR. BENNETT: Yeah.

MS. O’BRIEN: Okay. But just I’m trying to – wanna get to, you know, how – I understood that because you were, sort of, involved in that work at the time you may be able to give some insight to the Commissioner why we have this type of, you know, House of Assembly debate, you know, information on a Nalcor slide deck.

MR. BENNETT: I – I’m surprised that that information would have originated from Nalcor. I mean, this is very political messaging when I look back to that language. And I don’t know how it ended up on our letterhead or on our presentation template, but that is – we’re – this is political messaging and that’s not the domain I have worked in.

MS. O’BRIEN: Okay, yeah. So, I mean, really – I mean, would you agree that the public service should remain non-partisan? Would you agree with that?

MR. BENNETT: Absolutely.

MS. O'BRIEN: Okay. And that would be truer for a Crown corporation, like Nalcor?

MR. BENNETT: Now, with the – sometimes with communications we get – it's not a surprise that some of this – some of these conversations happen between our communications staff and the communications colleagues in government. But this is not where I want to be, or I would have wanted to be or I have worked. You're right, we –

MS. O'BRIEN: Is this where Nalcor should be?

MR. BENNETT: Nalcor operationally? No. I would agree with you. We should not be there. Does our work align with the policy or priorities of the province? Yes. But in terms of planning the debate, no, this is not where we would be or we should be.

MS. O'BRIEN: No, and this is really highly political partisan messaging, right? “The Liberals have no credibility when it comes to the Lower Churchill, and neither do the NDP.” I mean, this is really political messaging –

MR. BENNETT: I agree.

MS. O'BRIEN: – right? And, I mean, I know that, you know, political parties are really important in the role of democracy, so I understand that partisan politics plays a role. But I think what I'm hearing you say is, you know, Nalcor shouldn't be involved in that.

MR. BENNETT: I wouldn't expect – I'm not in that space –

MS. O'BRIEN: Okay.

MR. BENNETT: – and I'm not in the communications world.

MS. O'BRIEN: Yeah.

MR. BENNETT: But I understand, too, that, you know, at the communications level these kinds of conversations – I'm sure they do happen.

MS. O'BRIEN: You mean, you're sure that Nalcor gets involved in these –

MR. BENNETT: I'm sure the –

MS. O'BRIEN: – political-type conversations?

MR. BENNETT: I can't imagine that there wasn't messaging shared. I mean, this is an example here at the communications level, but –

MS. O'BRIEN: I guess the question is: Is that an appropriate role for Nalcor?

MR. BENNETT: I'm not – I don't think so.

MS. O'BRIEN: Okay.

P-00130, please.

THE COMMISSIONER: Tab 23.

MR. BENNETT: Oh, thank you.

MS. O'BRIEN: Thank you, Commissioner.

This is – no, that's only going to be one page –

MR. BENNETT: Oh, one, okay.

MS. O'BRIEN: – because this is a very large QRA document at DG3. I'm going to go to page 159, please. Here it is.

So this is discussing these key risks. We've looked at this before and we've actually looked at this risk 19 before.

MR. BENNETT: Right.

MS. O'BRIEN: But I just want to put down – this is where we get in the action plan. And we've looked at this in the hearing room already before, but this is, again, a Nalcor document talking about the action plan for the risks – trying to mitigate risks of protest.

And one of the actions here is: “Leverage Quebec versus NL debate to rally support for this venture.”

Is this an appropriate role for Nalcor to be getting involved in – I don't know – interprovincial relations, trying to fire up a – to leverage a Quebec versus Newfoundland and Labrador debate? Is that an appropriate role for Nalcor Energy?

MR. BENNETT: I'm not sure that it's – it's certainly not – I'm not sure it's inappropriate. The extent to which you do it and how the communications team looks at public opinion, develop strategies to address that, to actively manage, you know, our reputation. They use a lot of levers that I don't work with. So it's – I'm not gonna say it's inappropriate to look at the general political landscape, but not necessarily on a partisan basis to say: Okay, well where do we fit in the world?

MS. O'BRIEN: No, I don't – I'm not suggesting that this is a partisan issue. I think it's an interprovincial relations issue. The question to you is not – I wasn't asking whether it's appropriate for Nalcor to look at the political landscape.

What I'm asking you: Is it appropriate for Nalcor to be leveraging Quebec versus Newfoundland and Labrador debate to try to gain support for the Muskrat Falls Project?

MR. BENNETT: I don't think it's – I wouldn't – I don't think it's inappropriate, if that's not – as long as that's not the only message.

MS. O'BRIEN: Okay, well – and presumably it wasn't the only message –

MR. BENNETT: No.

MS. O'BRIEN: – you put out there –

MR. BENNETT: Right.

MS. O'BRIEN: – about the Lower Churchill Project. So you're saying you believe this to be appropriate?

MR. BENNETT: I think that's okay. But like I said, it's – it better not be the principal message, and it better not be the only message and it better not be the only way that we're communicating information.

MS. O'BRIEN: Now, yesterday you and I spoke a bit about SNC-Lavalin, and overnight your counsel has provided me with some information; that you looked through your calendar and he gave me some dates, and I'm gonna – just gonna look up to those up to the date of sanction. But he said you had recorded in

your calendar one meeting in August of 2011, with SNC VP and Mr. Paul Harrington. And then, three meetings at various times in 2012, at which there was present other people, in all cases including project people, but also there was one of the VPs of SNC-Lavalin there, Joe Salim.

MR. BENNETT: Yeah.

MS. O'BRIEN: Okay.

MR. BENNETT: That's correct.

MS. O'BRIEN: So this was following our discussions yesterday. So is it fair to say that you didn't uncover any information where you were meeting independently with SNC-Lavalin executives without your project management team?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay. And is it – am I – is it fair to say that you don't have any notes – or – to – record what was discussed at these meetings?

MR. BENNETT: No, I don't.

MS. O'BRIEN: All you were able to do is go into your calendar and see you were at these meetings so you don't really know what was discussed?

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: Okay. All right. Thank you. Those are all my questions for Mr. Bennett.

THE COMMISSIONER: All right. The Province of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner, thank you.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: (Inaudible) Mr. Bennett.

MR. BENNETT: Good morning, Mr. Budden.

MR. BUDDEN: We've met before of course.

MR. BENNETT: Yes.

MR. BUDDEN: And as you know, I'm the lawyer for the Concerned Citizens Coalition. As I'm sure you know as well, the Coalition is a group of individuals who for a number of years have been critical of the Muskrat Falls Project.

I have some – a number of questions for you today. I'm going to start with just a few about your background. In your interview with Commission counsel, and again in your evidence, you indicated that you were recruited to the – to Newfoundland Hydro by Dean MacDonald who, at that time, was chair of Newfoundland Hydro. This is just before the Nalcor days. That's correct, isn't it?

MR. BENNETT: That is correct.

MR. BUDDEN: And I believe you would have known Mr. MacDonald because you both worked with Mr. Williams' company, Cable Atlantic, I believe, it was called at the time?

MR. BENNETT: That's correct.

MR. BUDDEN: Okay. So – and your previous career as an electrical engineer, although it was quite an accomplished career, didn't really have a whole lot to do with what you undertook with Hydro. That's correct as well, isn't it?

MR. BENNETT: Ultimately, as we get to the point of building the project, yes, you're right.

MR. BUDDEN: Okay. Was it a steep learning curve for you?

MR. BENNETT: It was a long learning curve in the sense that I had been there, you know, before we got to some of these key decisions. But yes, there's a lot of new material to – and a lot of new issues – to deal with. I'd agree with that.

MR. BUDDEN: Sure.

MR. BENNETT: I'd agree with that.

MR. BUDDEN: Okay.

And, once you arrived and were given this responsibility, it began to build up your team –

and just as a very general question – by the time you got to sanction, how many people were on the Lower Churchill Project management team, not including SNC-Lavalin?

MR. BENNETT: Not including SNC – round numbers at that point in time – not including SNC we would have had, I think, about 100 to 150 people.

MR. BUDDEN: Okay, and if we added SNC-Lavalin to that?

MR. BENNETT: Team is getting much closer to 300.

MR. BUDDEN: Okay.

MR. BENNETT: Three hundred, 350 in round numbers.

MR. BUDDEN: Sure.

Perhaps, Madam Clerk, we could call up Exhibit 01002 – one, zero, zero, two? And bring us to page 13 when it's convenient.

Just by way of background, as you probably recall, because you and Ms. O'Brien went through this, these are some notes from the Westney workshops that were held in late twenty – late 2007. Do you recall – I know you weren't there, but you recall being examined about these?

MR. BENNETT: Right.

MR. BUDDEN: Perhaps you could read to us paragraph 6.

MR. BENNETT: Okay – that the – “... experience on Terra Nova” was “instructive – the project appeared to do everything right with respect to risk management – yet they had a 100%” cost “overrun. We discussed the many reasons for this ... The approach on LCP must ... address these reasons and not repeat the same mistakes. Lessons Learned must be considered carefully.”

MR. BUDDEN: Sure.

And, again, you weren't at the meeting, but you were, after all, project manager. What sense did

you have as to the lessons learned about risk management –

MR. BENNETT: So –

MR. BUDDEN: – to take away from Terra Nova?

MR. BENNETT: – just to clarify, I wasn't project manager.

MR. BUDDEN: Pardon?

MR. BENNETT: I wasn't the project manager.

MR. BUDDEN: You were not the project – no, I realize that, but you had – you were at a higher level of authority still.

MR. BENNETT: Yes.

MR. BUDDEN: Okay.

MR. BENNETT: One of the most important take-aways that we had learned in terms of mitigating risk here was making sure that we had as much engineering done as possible – that we were minimizing change with our contractors. That was a critical take-away, and I think you'll find a reference to that in some of the early IPA work, where they talked about the need for front-end loading and making sure that we knew as much as early as possible.

MR. BUDDEN: Okay.

Just to – we'll – okay, I hear what you're saying there, but if we look at that paragraph, sort of, in a – more in totality – quote "... the project appeared to do everything right" with "risk management – yet they had a 100% overrun."

Were there broader lessons specific to risk management lessons learned that you were aware of?

MR. BENNETT: Not specifically from this meeting, but we – if you look at the other reviews – the risk-management plan, the risk-management framework, the change-control process, those are all important processes in relation to risk management.

MR. BUDDEN: Sure, so the experience – the takeaway from the Terra Nova project was that it was important to get expert advice, expert input with respect to risk management.

MR. BENNETT: And a lot of –

MR. BUDDEN: You would agree with me?

MR. BENNETT: I agree with that generally, yes.

MR. BUDDEN: Sure, okay. And you were saying: A lot of?

MR. BENNETT: There was a lot of experience from a lot of projects brought to bear at the project team and a lot of the processes that have been developed for the project have actually been fairly widely implemented.

MR. BUDDEN: Okay.

Well perhaps we could scroll, just a little more, Madam Clerk so that paragraph 10 comes up, thank you.

Could you as well read paragraph 10, Mr. Bennett?

MR. BENNETT: Sure, okay.

This is a note on the PMT, which is the project management team. "NLH has about 1000 people of whom 130 are engineers – most are involved in the Regulated Assets. So LCP has to hire from outside. There is something of a culture clash ("old" NLH vs the new young guns from the oil patch). About 50% of LCP is heritage Hydro, 50% are new. The Energy Corporation needs to define and build an org with the needed engineering and related competencies; the LCP needs to build a team similarly...plan is for PSC." Public services contract is what PSC stands for. "Question of what roles and competencies should be LCP, and what can be outsourced to PSC? (WCG ...)" – I'm not sure whose initials those are – "Paul's authority as PM is evolving – he does not have all he needs yet."

MR. BUDDEN: Sure, is there anything there that you would regard as inaccurate, as of that time?

MR. BENNETT: At that time, no. I would consider that to be an accurate assessment of where things are.

MR. BUDDEN: Sure. So, there's a bit of a culture clash between the oil guys, I assume that would be Harrington, Martin, perhaps, and a few others.

MR. BENNETT: Yes and maybe some other members of the project team.

MR. BUDDEN: Sure, versus the old hands from Hydro.

MR. BENNETT: Correct.

MR. BUDDEN: Okay and you, of course, were from a third culture still.

MR. BENNETT: I was.

MR. BUDDEN: So what we have here, I would suggest, is: we have individuals, accomplished individuals from one culture integrating somewhat uneasily, perhaps, with those from another culture, being supervised by a person from yet a third culture – I use the word supervisor, headed by somebody from yet a third culture – about to do something that none of you have ever done.

MR. BENNETT: This is – These were early days –

MR. BUDDEN: Yes.

MR. BENNETT: – this is a – there's – there's important learning going on here. And I think, if you go back and, you know, look at some of the other testimony – maybe Mr. Mallam's conversation – the point on this is that the project was very large in comparison to other projects that Hydro had undertaken. Other Hydro projects developed by Hydro – if you go back and look at Granite Canal, some of the early work – I think, Mr. Mallam described that there was a – you hired an engineering firm, as an EPCM contractor and the owner had a small team that interfaced with the contractor. Project team felt, very early on, that it was really important to have a set of management systems, processes and controls in place that were

consistent and capable of dealing with a large project.

Early days, some people from – what I'll call the old organization – were looking at that framework and saying, what's this all about?

MR. BUDDEN: Sure.

MR. BENNETT: So there's – there's a process where you put the team – the team gets – is growing quickly and being put together, roles and relationships are being established, all these new functions and capabilities are being put together and not everybody is understanding why.

MR. BUDDEN: Sure, and I realize this is a few years ahead of sanction, so –

MR. BENNETT: Right.

MR. BUDDEN: – you know, there's time to work the bugs out, but the fact remains – a lot of moving parts are coming together here to do something that none of you have ever done, really. Not at this level, certainly.

MR. BENNETT: I think the megaproject team would say they have done projects of similar magnitude.

MR. BUDDEN: Similar magnitude –

MR. BENNETT: But –

MR. BUDDEN: – but in a totally different area.

MR. BENNETT: – in a different industry, yes.

MR. BUDDEN: And the people who had experience in the area hadn't done anything of this magnitude.

MR. BENNETT: Right.

MR. BUDDEN: You hadn't done any of it.

MR. BENNETT: So the challenge is –

MR. BUDDEN: And –

MR. BENNETT: – merging those. And I have

–

MR. BUDDEN: Yes.

MR. BENNETT: – I have done some of that in the past.

MR. BUDDEN: Sure, I realize with – I mean, I'm not denigrating your accomplishments at all, but you certainly hadn't managed a megaproject.

MR. BENNETT: That's right.

MR. BUDDEN: Yeah.

So I would suggest with all of this, wouldn't that make it even more important to have a steering committee – one with outside experts – and again one looks at the verb there, a steering committee to steer this project towards this challenging goal.

MR. BENNETT: I think, in terms of that culture, what's really important is we help align everybody's collective understanding and how – and help them understand the breadth of issues.

MR. BUDDEN: Yes. But we've already discussed – and I won't review the evidence –

MR. BENNETT: Yeah.

MR. BUDDEN: – but clearly, the evidence is that steering committees are the norm, not the exception –

MR. BENNETT: I agree with that.

MR. BUDDEN: – do you agree with that?

MR. BENNETT: I'm – yeah. We've been there.

MR. BUDDEN: And you guys, perhaps even more so, I would suggest. You know, not – again, not denigrating the talent here, but this is new, and wouldn't that make it even more imperative to not be the exception, to actually go with a steering committee?

MR. BENNETT: I'm not sure how the steering committee would ultimately address this issue. But I think in terms of, you know, communication, top of the house, we've been through some of the challenges with a steering committee and the need for open communication

– I acknowledge that the steering committee was discussed at length in some of the paper –

MR. BUDDEN: Even proposed.

MR. BENNETT: Yes it was.

MR. BUDDEN: Okay.

MR. BENNETT: Right.

MR. BUDDEN: Were you personally an advocate for a steering committee?

MR. BENNETT: It's – I'm – I'm supportive of the – of having a process where we have an opportunity to meet and discuss and align on issues. One of the challenges I see with the committee is that it really needs to be timely and the right people need to be there. And, in terms of those conversations, what I was seeing was that that was happening more informally than having a large committee.

MR. BUDDEN: Okay.

So, let me be more specific still. We have a proposed steering committee and there's even names named. I mean they've had – obviously a lot of thought had been gone into developing that.

MR. BENNETT: Right.

MR. BUDDEN: Were you in favour of, or were you opposed to the implementation of that particular steering committee?

MR. BENNETT: I was not opposed.

MR. BUDDEN: Okay.

So, I take it you were in favour.

MR. BENNETT: I was in favour, but it needed to work. And what we were finding is it wasn't working too effectively.

MR. BUDDEN: Okay.

Who ultimately made the decision not to formalize the steering committee as per that proposal? Was it you?

MR. BENNETT: I think there was – the last set of terms of reference, I think Ed was – Mr. Martin was looking at those.

MR. BUDDEN: Okay, so –

MR. BENNETT: I think we saw a communication where it ultimately went to Ed and we didn't get out of that. We didn't get through that process.

MR. BUDDEN: So Mr. Martin was the one who chose not to go forward with that proposal.

MR. BENNETT: Whether he chose who didn't – or didn't ultimately sign off.

MR. BUDDEN: Okay.

MR. BENNETT: We had a couple of attempts at building a committee structure. We had, you know, a series of meetings at various times. The Executive Committee was running. I'm not sure if the terms of reference were finally signed off, but later in the process, we see that there are minutes from the meeting.

It didn't – it had – from looking back at it, it really didn't have critical mass in the sense that it didn't continue with the key people and the key decision-makers. And I think Mr. Humphries may have said that there were times when there were very few people in the room with him.

MR. BUDDEN: Sure.

The – with this particular – and this is my last question on this point – but one – I would suggest to you one advantage of a steering committee is that it does sort of formalize the input of outside voices; individuals from outside the, you know, the echo chamber of Nalcor.

MR. BENNETT: I agree with that.

MR. BUDDEN: So that opportunity was lost.

MR. BENNETT: We didn't take advantage of that opportunity. I agree with that.

Yes, I agree.

MR. BUDDEN: Yes.

MR. BENNETT: We didn't take advantage of that opportunity.

MR. BUDDEN: The opportunity was lost, yeah.

Madam Clerk, can we call up exhibit P-00014. That, of course, is Grant Thornton and it's page 24 I'm interested in.

And perhaps you could scroll so that the witness can see all of it. I think that should do it.

We've seen this before, Mr. Gilbert [sp Bennett] – it was in your direct evidence and it's come up in various forms throughout the inquiry. It is the – a chart or a presentation from DG2, I believe, that was – it's quoted here by Grant Thornton. '

I'm interested in discussing the imports from Hydro-Québec option, that's what I'm – my next number of questions would be about. And could you read into the record the comments that are there under risks, and also those under reliability –

MR. BENNETT: Right.

MR. BUDDEN: – please.

MR. BENNETT: So the two risks that are identified there are the "Ability to secure long-term firm supply" and "Market price volatility". The reliability consideration is that we would be "Interconnected to the North American Grid however, continuity of supply not assured".

MR. BUDDEN: Okay, thank you.

Just before I get into those comments, the numbers here – the CPW in particular, this very specific number – Mr. Humphries has advised us that he wasn't the – it wasn't his team, I believe, that created these numbers.

Do you know from where they originated?

MR. BENNETT: Well, if they didn't originate from Mr. Humphries' team, I think that the Investment Evaluation team would be doing these numbers.

MR. BUDDEN: That would be Mr. Moulton and his –

MR. BENNETT: No, that –

MR. BUDDEN: – that this – they’re the same people aren’t they, yes.

MR. BENNETT: So I think Mr. Moulton would’ve reported to Mr. Humphries in System –

MR. BUDDEN: Yes.

MR. BENNETT: – Planning. So I think it must’ve been Investment Evaluation, which might’ve been Mr. Warren or somebody in the finance side of the organization.

MR. BUDDEN: Okay.

I realize that in this moment in time it’s highly unlikely you can break these down for us, but would at any point you have known that some of the key inputs into that CPW – the 11 billion, 559 million of, for instance, the contemplated purchase price from Quebec – would you have ever known those numbers?

MR. BENNETT: I would not have seen those typically. We have market price forecasts from – I think it’s PIRA – those are held by the finance team, and they’re used for that – also our marketing team, when they’re looking at opportunities in the market.

MR. BUDDEN: So which number –

MR. BENNETT: I wouldn’t see those directly.

MR. BUDDEN: So this number was presented to you, much as in the form it’s there now.

MR. BENNETT: This point, yes.

MR. BUDDEN: Okay.

And, just so I understand correctly, the import option was removed from consideration because of the belief that Hydro-Québec was – would not be a reliable provider of power to take us through to 2041.

MR. BENNETT: As I understand it – well, first of all, we need a firm supply of electricity, right, and, at the time, Hydro-Québec was, I think, building the Romaine project, so they were

adding capacity to their system. You had energy price forecasts that are not necessarily firm; so in other words, while you may have long-term arrangements to sell into the market, needless to say if Hydro-Québec is building a transmission system to New England, they’re there for the long haul, and they’re able to commit to supply to a given market.

Whether they supply all the time, in other words a firm product, is maybe a different question, and we –

MR. BUDDEN: Okay.

MR. BENNETT: – hadn’t seen them doing firm sales into the market. And if you don’t have a firm sale, then we don’t have confidence that we’re actually replacing the assets we have.

MR. BUDDEN: Understood. Perhaps this would a perfect time to call up Exhibit P-00275. And this is one that we touched on briefly on Monday in your evidence, your direct evidence. I’d like to return to it.

Perhaps you could for me – the date is 13 August, 2010. It appears to be a press release from the Province of Quebec. Could you read the headline? Then you can skip the caption of the pictures and read the first two paragraphs?

MR. BENNETT: Right.

So “Québec and Vermont agree on new electricity supply contract.” And this is –

MR. BUDDEN: So a number of smiling faces there. And once we get past that, the two paragraphs beginning at: Quebec premier.

MR. BENNETT: Okay.

So: “Québec Premier Jean Charest and Vermont Governor James H. Douglas have unveiled the details of an electricity supply contract between” HQ, “Central Vermont Public Service ... and Green Mountain Power” Announced at a press release “in the presence of representatives of all three public utilities, the 26-year contract ... to buy 225 megawatts of electricity generated by large-scale hydro”

MR. BUDDEN: Okay, I'd suggest to you – and, obviously, correct me if I'm wrong – but if we make a couple of minor changes here, you know, Danny Williams rather than James Douglas, Nalcor rather than these utilities and maybe I move the dates a couple of years further down the road, this would be a pretty useful deal for Newfoundland, would it not?

MR. BENNETT: Well, we don't know what the price-smoothing mechanism is and we don't know what the volume of power is. We need a firm supply so –

MR. BUDDEN: Well, let's read that paragraph beginning – the next paragraph beginning at: The agreement.

MR. BENNETT: Okay.

So: "The agreement includes a price-smoothing mechanism that will shield customers from volatile market prices." And the price starts at about at six cents –

MR. BUDDEN: Per kilowatt-hour.

MR. BENNETT: – per kilowatt-hour which is not trivial in 2010.

MR. BUDDEN: Okay. Perhaps you can continue reading?

MR. BENNETT: Okay.

MR. BUDDEN: Yeah.

MR. BENNETT: "Central Vermont Public Service and Green Mountain Power negotiated the contract on behalf of other Vermont utilities, which have confirmed the volumes of power they plan to buy under the agreement and will be taking part in the Vermont Public Service Board's review procedure."

MR. BUDDEN: Okay, so you say that price is not trivial in 2010. How would you compare it to – contextualize that comment, please?

MR. BENNETT: That energy cost is – I said it's not a trivial number, I mean it would be fairly attractive today compared to natural gas prices today. But the devil is in the details here

in understanding how firm it is, when the seasonal deliveries take place; are they in the summer, are they in the winter? And we need a firm product in the winter when Hydro-Québec's demand is at its highest.

MR. BUDDEN: Okay.

MR. BENNETT: So –

MR. BUDDEN: Obviously, we have to do a certain sort of overview at this point. We're not – I realize here today we can't get down in the weeds. We can do that, perhaps, with other witnesses, other days. But – so, again, the devil may be in the details, but certainly on its face this would appear to be something that would be of interest to Newfoundland to at least pursue, suss out a bit. Would you not agree?

MR. BENNETT: Well, we knew that Hydro-Québec was building La Romaine project at a similar time they were adding capacity to their system with a new hydro project.

MR. BUDDEN: Okay.

MR. BENNETT: And they were – we may have to get some additional information on this if it already isn't in the record, but my recollection on this is they were not long on capacity in their system. They had lots of energy but, you know, the key point here is we need a firm product.

MR. BUDDEN: Okay.

Can you think – and, again, we'll return to some of this, but can you think of any reason why Hydro-Québec would enter into an agreement like that with Vermont, but wouldn't with Newfoundland?

MR. BENNETT: We don't know what this agreement is.

MR. BUDDEN: Okay, but you cannot think of any reason why they wouldn't sell to Newfoundland?

MR. BENNETT: Well, if they don't have the ability to offer a firm product, that's a problem.

MR. BUDDEN: Obviously. You can't sell what you don't have.

MR. BENNETT: That's a problem.

MR. BUDDEN: So that would be a reason.

MR. BENNETT: That would be a big reason.

MR. BUDDEN: Okay.

MR. BENNETT: If you don't have firm capacity to displace Holyrood in the winter when we need it and they need – and they're keeping their electric heat customers on, that's a big problem. There are many situations where Hydro-Québec has historically exported to the US. And around back in these planning days, the US market was ideal for Hydro-Québec. They meet their own domestic demand in the winter, they would meet the air conditioning demand in the summer in the US and they would generally have capacity available in their system –

MR. BUDDEN: Yeah.

MR. BENNETT: – to meet those loads.

MR. BUDDEN: I've been to Vermont. Vermont is not Florida.

MR. BENNETT: Vermont is not Florida, but New England –

MR. BUDDEN: In winters they have ski chalets; they have all that stuff like we do.

MR. BENNETT: They do. They do, I agree.

MR. BUDDEN: Yeah.

MR. BENNETT: And I think what I was getting at was their electricity demand historically – and things are changing recently with natural gas supply. But historically they were a summer peaking electricity market and –

MR. BUDDEN: Vermont was?

MR. BENNETT: The New England in general.

MR. BUDDEN: Okay.

MR. BENNETT: Okay? And it was a good fit. They would export their surplus in the summer when they have capacity available in their system, and in the winter they would be heavily – heavy on demand to meet their own domestic needs.

MR. BUDDEN: Okay.

MR. BENNETT: That's a general – the general view of how Hydro-Québec has historically worked in the marketplace.

MR. BUDDEN: Okay. So – and, again, we'll get into this in a minute, but – so just to sort of pull all that together, do I take it correctly that you're saying, well, this – while this may be superficially attractive, we don't know whether it is a firm supply that would, in Newfoundland's case, meet the needs, keep the lights on in February as opposed to air conditioners on in August. That's one concern, the firmness of the supply.

MR. BENNETT: Yeah.

MR. BUDDEN: And the other concern would be the price mechanism.

MR. BENNETT: Absolutely.

MR. BUDDEN: Okay.

MR. BENNETT: Those are concerns.

MR. BUDDEN: Okay, so – okay, we'll park those for a bit.

Was there any obstacle in Nalcor at the time to even talking to Quebec about purchasing power? Was that something that, you know, if you said that you'd be frowned on?

MR. BENNETT: I don't think anybody ever said, you know, don't talk to Hydro-Québec. There's – you know, we have an ongoing relationship at Churchill Falls, right? So I mean, we're both – both Nalcor and Hydro-Québec own that facility and they operate that facility.

MR. BUDDEN: That's not at all what I asked though.

MR. BENNETT: Okay.

MR. BUDDEN: Obviously, you've got to talk to Hydro-Québec because you – it's like divorced couples have to talk about their children.

MR. BENNETT: Right.

MR. BUDDEN: But what I'm asking is: Were there – was there any cultural obstacle to anybody at Nalcor proposing the purchase of power from Quebec, from Hydro-Québec.

MR. BENNETT: I can't place any, you know, direct cultural issue. I am aware of the relationship, I am aware of the difficulties that we were – that there were – you know, we were at the Régie dealing with that Open Access application. I think there was some consternation at Hydro-Québec when the recall contract wasn't renewed and we actually used Open Access to get to the market. So at the commercial level, you know, relationship is not great.

The other point that's relevant here in sort of – in pricing – and I think I talked about this earlier as well – that, you know, in – you put two counterparties together, the seller is also incented to look at the purchaser's alternatives and try to price accordingly.

MR. BUDDEN: Oh yeah. The alternative we'll get to in just a moment.

MR. BENNETT: Right.

MR. BUDDEN: But I'll – don't worry, you'll have a chance to speak to that.

But, first, I'd like to call up 01463, Madam Clerk, as an exhibit that was just added the last couple days. I don't believe it's among your tabs, but for ease of reference – because I'm going to ask you to read a bit of it – I do have an official copy.

THE COMMISSIONER: Actually at – did you say 014 –?

MR. BUDDEN: Sixty-three, I believe.

THE COMMISSIONER: 01463, tab 68.

MR. BUDDEN: Oh, it is before you. Good.

MR. BENNETT: Thank you, Commissioner.

MR. BUDDEN: This – have you found it, Mr. Bennett?

MR. BENNETT: I'll get it there now, sorry. Okay.

MR. BUDDEN: Yeah, that's it.

Just to give you a bit of a head start, this is a letter dated August 2, 2010, just a few days, coincidentally, different from that Vermont announcement. And it's a letter to Ms. Anne-Marie Erickson of the National Energy Board over your signature. Plus, there's three or four pages of attachments there, I'm not particularly interested in those.

MR. BENNETT: Okay.

MR. BUDDEN: Why don't you just take a moment to re-familiarize yourself with this letter you wrote a couple of years ago – about eight years ago?

MR. BENNETT: Yes, okay. I think I'm generally familiar with this.

MR. BUDDEN: Sure.

Just to give us all a bit of context, perhaps you could read the subject line and the first two paragraphs, please?

MR. BENNETT: So it's – this letter's in relation to: Hydro-Québec's Application for an Electricity Export Permit dated February 19, 2010 and revised/republished in July of 2010 – July 3.

MR. BUDDEN: Correct.

And if you could read those first two paragraphs I'd appreciate it.

MR. BENNETT: Okay.

MR. BUDDEN: I am writing ...

MR. BENNETT: All right.

"I am writing in response to the public notice published July 3, 2010 regarding" HQ's – I'll

abbreviate if that's okay – HQ's – "application ('**Application**') for an Electricity Export permit to export 30 TWh annually. ... ('**Nalcor**') is Newfoundland and Labrador's Crown corporation responsible for development of energy resources.

"In accordance with section" 119(2) "of the *National Energy Board Act*," we wish "to bring to the attention of the National Energy Board ('**Board**') facts relevant to the Board's assessment of all considerations relevant to Hydro-Québec's Application, and particularly under section" 119.02(2)a "of the Act:

"the effect of the exportation of the electricity on provinces other than that from which the electricity is to be exported."

MR. BUDDEN: I'm going to stop you there. So you're quoting there from a section of the act. I believe, by the way, we'll get this in a moment, but that should actually read 119.08(2).

MR. BENNETT: Okay.

MR. BUDDEN: There's a slight typo in that line. So quote: *"the effect of the exportation of the electricity on provinces other than that from which the electricity is to be exported."*

From what I gather from this correspondence, Nalcor was objecting to Quebec – Hydro-Québec's application to export power to the US and essentially arguments were founded on some of the back history between Hydro-Québec and Newfoundland on broader issues around transmission of power.

MR. BENNETT: We were concerned at the time about their use of their transmission facilities conformance to their open access tariff.

MR. BUDDEN: Okay.

And it was deemed appropriate for Nalcor to file this written objection to argue before the National Energy Board that it not permit Hydro-Québec to export power as Hydro-Québec was proposing to do.

MR. BENNETT: But our point wasn't in relation to the export. Our point was in relation

to how they were handling their transmission facilities, making them available –

MR. BUDDEN: Yes.

MR. BENNETT: – to other customers.

MR. BUDDEN: Because the effect would be that if they were allowed to export this power, their finite capacity to export power would be used up so that Newfoundland would not be able to avail of it. Is –

MR. BENNETT: Avail of –

MR. BUDDEN: – am I right there?

MR. BENNETT: – the transmission system, yeah.

MR. BUDDEN: Yes.

MR. BENNETT: The dispute was about the access to the transmission system.

MR. BUDDEN: Okay, but the form in which the dispute played out was Hydro-Québec's application to export power to the US.

MR. BENNETT: We put notice – yes, that's right. We put the NEB on notice that we were concerned about the use of transmission.

MR. BUDDEN: Sure. And I take it that the – Nalcor's understanding was that the approval of the National Energy Board was required before Hydro-Québec would be allowed to export its power to the United States.

MR. BENNETT: That's correct.

MR. BUDDEN: Okay. And I take it that the amount of power that's – Hydro-Québec proposed to export here, 30 terawatt hours, annually, would be far more than would be necessary to supply Newfoundland. And this is a fairly substantial block of power.

MR. BENNETT: Yes, and I mean in round numbers, 30 terawatt hours is approximate production from Churchill Falls on an annual basis –

MR. BUDDEN: Okay, so –

MR. BENNETT: – under the power contract.

MR. BUDDEN: – 10 times what Newfoundland would need. Perhaps more.

MR. BENNETT: It's a big number.

MR. BUDDEN: Yeah.

Your letter quotes section 19.08(2)(a) the National Energy Board, but I'd also like you to read out into the record, the following paragraph of the *National Energy Board Act*, and I have a copy here for you. It's not a formal exhibit, because my understanding is we don't need to formally file statutes as exhibits. I have a copy here for you, if you wish.

THE COMMISSIONER: I think we might need to get this actually formally filed as an exhibit. I think –

MR. BUDDEN: Okay.

THE COMMISSIONER: – it'd be better to do that in the future.

MR. BUDDEN: Okay, I will in the future and we can now. But my understanding was we didn't need to, but in any event – perhaps what I'll do, I'll start, I'll read a certain part and then have you kick in.

So as your letter quotes section 19.08 paragraph 2, which is criteria – and this is all in the heading: Issuance of licences.

“In deciding whether to issue a licence, the Board shall have regard to (a) the effect of the exportation of the electricity on provinces other than from which the electricity is to be exported.” And there's another paragraph immediately after the one you quoted, which is paragraph (b). Could you please quote that for us, Mr. Bennett?

MR. BENNETT: Okay.

MR. BUDDEN: Please read that into the record.

MR. BENNETT: It says, “whether the applicant has informed those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service

available for sale, and (ii) given an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions specified in the application to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada”

MR. BUDDEN: Okay. So I would suggest to you that paragraph 2 – well those two paragraphs together, could well – would obviously encompass Newfoundland, if Newfoundland indeed had the desire to purchase power from Quebec.

MR. BENNETT: If we were a summer-peaking system that needed electricity in the summers as opposed to the winter, I'd agree with you.

MR. BUDDEN: Well –

MR. BENNETT: And on a stock market in a non-firm form, which Hydro-Québec, historically, at that time, had been selling into the market. So –

MR. BUDDEN: I don't see any of that in what the statute says.

MR. BENNETT: “... terms and conditions as favourable as the terms and conditions specified in the application”

MR. BUDDEN: Yeah. So it basically provides, I would suggest, avenue should Newfoundland wish to intervene before the National Energy Board, and essentially say, look, Quebec – Hydro-Québec proposes to export quite a substantial amount of power. Look, here a week before they did it – they sold power to Vermont. Here they are before the board on another application seeking to export power in relatively vast quantities.

Did it not occur to Nalcor to intervene – as that section appears to permit – to seek the opportunity to purchase that power for the needs of Newfoundland rather than see it exported to the States?

MR. BENNETT: I think in our attachment we actually discuss: we're not sure where the power is coming from.

So on page 6 of our background document that's attached to that letter, we're raising questions about how much energy they actually had available for export and where it was coming from, and whether they actually had justification to tie up the transmission system that was associated with this large block of energy. That was the really the crux of our argument at the time.

MR. BUDDEN: Yeah. This is an enormous block of energy. We already know they've exported energy to Vermont within a few days of this intervention. We just had that Exhibit 00275.

So my question to you is: Did it occur to Nalcor, to your knowledge, to intervene before the National Energy Board, say with that Vermont application, to essentially say, look, rather than sell it to Vermont on those terms, it should be sold to Newfoundland on those terms.

MR. BENNETT: In that – in relation to that specific application, no, we didn't.

MR. BUDDEN: Okay. So it's not like you can say that you looked at it and can stand concluded that that was utterly unsuitable. As far as you know, there was no intervention, no consideration at all.

MR. BENNETT: That's right. We didn't go after that Vermont application.

MR. BUDDEN: Okay.

I'd like to review some of the things you said before in your evidence on Monday when Ms. O'Brien was asking you again about this Hydro-Québec, and I have a copy of your transcript here just for (inaudible) for you. It's draft.

MR. BENNETT: Okay.

MR. BUDDEN: I understand that it's a transcript from Monday. So we're looking at page 46. I'm just – two or three comments by you up from the bottom and you say: Mr. Bennett – your answer to Ms. O'Brien was: Looking at Hydro-Québec's market approach, they were selling energy into the North American market at that time not on a long-term basis.

Given that you've now seen the Vermont application, that's completely untrue isn't it?

MR. BENNETT: Well, I think that the clarification that I should have made at the time is that a long-term firm basis, and I think I talked about that a little bit –

MR. BUDDEN: Did you –

MR. BENNETT: – later. But I wouldn't say – but the point I'm getting at is their general approach is not to have a long-term fixed price, and that's an omission that I made at the time.

MR. BUDDEN: But with respect, on Monday you didn't even – you weren't – didn't even appear to be aware that this (inaudible) had taken place.

MR. BENNETT: I wasn't thinking of the Vermont deal.

MR. BUDDEN: Okay. But your answer here: Looking at Hydro-Québec's market approach they were selling energy into the North American market at that time not on a long-term basis. Would you now concede that that statement is incorrect?

MR. BENNETT: Yes, it is.

MR. BUDDEN: Okay.

MR. BENNETT: The word "firm" needed to be qualified there.

MR. BUDDEN: Okay, but you're speculating. You have no idea whether this Vermont sale is firm or otherwise. You just don't know.

MR. BENNETT: Okay.

MR. BUDDEN: Okay. You agree with me?

MR. BENNETT: Yeah, we didn't pull the details on the Vermont deal.

MR. BUDDEN: Okay.

The following sentence: They were opportunistically – talking about Hydro-Québec – taking the market price and deciding when they would sell. But again, that is not what

appears to have happened here in the Vermont deal, is it?

MR. BENNETT: I'm not sure that it's not.

MR. BUDDEN: It's a 26-year term –

MR. BENNETT: Yes, it is.

MR. BUDDEN: – that's not short term.

MR. BENNETT: It's not short term, but again firm-fixed-price; we need to have some more details on that.

MR. BUDDEN: Okay, fair enough. We'll move on.

Now, this is a comment you made a moment ago, and I'll give you a chance to speak to. You said on the bottom of that page: We've always had a conversation with our potential customers on the basis that we are pricing against your alternative and our alternative, and buying from Hydro-Québec would be something very similar to the Isolated Island case.

So if I take what you're saying here correctly, is you're saying that Hydro-Québec would come to Newfoundland and say: Look, I know what you guys are paying; that's what we're interested in – pricing ourselves against.

MR. BENNETT: They would try to get there.

MR. BUDDEN: Yeah.

But, I mean, it wouldn't be obvious to them, I presume. You're not looking at power estimates 30 years in the future. You're talking about, perhaps, 15 or 20 or 25 years. So they wouldn't necessarily know what even they're bidding against, would they?

MR. BENNETT: Oh, I wouldn't underestimate Hydro-Québec's market knowledge and insight.

MR. BUDDEN: Okay, well if that follows, if they're aware of that, they would also be aware, I presume, of Hydro's – of Nalcor's plans by 2010 – pretty well developed plans to develop Muskrat Falls. Hydro-Québec would be aware of that.

MR. BENNETT: They would be aware that we're thinking of that, yes.

MR. BUDDEN: Well, by 2010 you were a lot more than thinking about it.

MR. BENNETT: We weren't to a sanction decision, but they knew we were planning. We had open-access applications. We knew that they knew that Muskrat Falls –

MR. BUDDEN: Sure.

MR. BENNETT: – was being actively considered, yes.

MR. BUDDEN: Yes.

And so I would suggest to you that the alternative that they – if you're correct and – which I doubt, given the National Energy Board provision – but let's assume you're correct, that Hydro-Québec can basically say: Look, we'll – you know, we know you're vulnerable, it's cold and dark and you're on an Island, so we'll sell you the power at the highest price we can get for it.

I would suggest to you they're not really bidding against the Isolated Island, they're bidding against Muskrat Falls. I mean, why wouldn't they? 'Cause that's where Newfoundland was heading.

MR. BENNETT: Well, if you take that argument to its extension, then, you know, we're talking about basically, you know, some form of the 1998 arrangements where we're jointly developing.

MR. BUDDEN: No, I'm not at all. What I'm suggesting to you is that you're talking here – I mean, I'll just read your quote back to you –

MR. BENNETT: I understand.

MR. BUDDEN: Yeah, we're – our alternative –

MR. BENNETT: We were pricing off – we were – they would be pricing off Holyrood, because we're not building Muskrat Falls.

MR. BUDDEN: Yes. But I'm saying – here we are in the lead-up to sanction. Let's imagine the

scenario. It's leading up to sanction. Newfoundland is facing a decision: whether we continue with the Isolated Island – we've heard from Mr. Humphries and others that that was a problematic scenario. And plus we know, you know, it's expensive, maybe more or less – maybe more expensive than Muskrat Falls, maybe less. That's what this Inquiry's about. But clearly that is one option – Isolated Island.

There is a second island – option, building Muskrat Falls. Can you not imagine a scenario where in, say, 2011, even the fall of 2012, Nalcor approaches Newfoundland – or Hydro-Québec and says: Look, we're at the point where we gotta pull the trigger; here's our project, MFI – MHI have looked at it, other experts have looked at it. It's a go. However, before we pull the trigger, are you guys interested in selling power to us in – so that we don't have to build Muskrat Falls?

MR. BENNETT: That conversation, to the best of my knowledge, never happened.

MR. BUDDEN: Okay. But you can think of no reason why it couldn't have happened?

MR. BENNETT: I guess it could've. Either party could've said yes, you know, as a pre-emptive opportunity –

MR. BUDDEN: Sure.

MR. BENNETT: – let's see what we can do here. It never happened.

MR. BUDDEN: And I would suggest to you, in that scenario, certainly – which is, I would suggest, a realistic scenario – the alternative Hydro-Québec is bidding against is not the Isolated Island, it's bidding against this DG3 version of Muskrat Falls.

MR. BENNETT: If they elected to bid.

MR. BUDDEN: If they elected to bid. If they – and you also said in your evidence – I won't come to the quote unless you wish me to – but that the – Hydro-Québec was not really interested. They viewed you as a competitor. They weren't really interested in selling power to Newfoundland. Do you stand by that assertion?

MR. BENNETT: Their – the relationship at this time, with the open-access conversations going on, the relationship was strained. There's no doubt about that. I've talked about the, generally, summer export sales that they had. Those conversations never opened up.

MR. BUDDEN: Okay.

I would suggest to you, when one looks at it, Hydro-Québec might have every incentive to sell to Newfoundland and pre-empt Muskrat Falls, because among other – well, for one reason it's a customer. A customer right here, across the border and the structures there, and no other – no borders, no National Energy Board, all pretty straight forward. But perhaps even more importantly, Muskrat Falls was sending power through the Maritime Link that would, directly or indirectly, compete with Hydro-Québec power. Newfoundland was no longer isolated.

MR. BENNETT: That would've been great, if they had done that.

MR. BUDDEN: Okay, but they didn't do it, but why didn't Nalcor reach out? What I'm saying here is that, look, we've got this chart that – that's up – it was up on the screen a minute ago that basically said Hydro-Québec is not reliable. They're – essentially, they're not interested in selling power to us and we feel the power is not reliable.

But you didn't ask. You have no idea how reliable the supply was because you didn't ask.

MR. BENNETT: Well, if we're making the request, we're gonna be the taker. But I would suggest in response that if it was such a great idea and Hydro-Québec had an opportunity to shut down the relationship with Emera and deliver power and stall the development of the Lower Churchill – that would've been a really good proposal that they could've made.

MR. BUDDEN: Well, wouldn't it be equally true that Nalcor could've made it?

MR. BENNETT: Then we're asking.

MR. BUDDEN: Yeah.

MR. BENNETT: So we're – but we're on the – we're not getting – there's – if it was strategically worthwhile for Hydro-Québec to do that they equally could've picked up the phone and said: Have I got a deal for you.

MR. BUDDEN: Yes, but you, equally, or Mr. Martin could've picked up the phone and said: Look guys, we're getting pretty close to sanction, we're spending money here. Before we pull the trigger on this dam, are you guys interested in selling us power?

MR. BENNETT: So that conversation, to the best of my knowledge, never happened – one way or the other.

MR. BUDDEN: Sure. Should it have happened?

MR. BENNETT: If they had taken – I think I would've expected, if they had a real proposal to make, that they would've taken the initiative and called us and said: This is a good time for you guys to stop. We're gonna – we would like you to do something different. That broader strategic objective for them might've been something that they would've considered.

MR. BUDDEN: Okay.

MR. BENNETT: As opposed to us saying: Well, you know, we're really concerned here. I think the negotiating position in that conversation would've been different, depending on which way the call was made.

MR. BUDDEN: Well surely, I mean, we're all adults here. When we look at this picture on this Exhibit 00275, we see a bunch of smiling adults, sitting down, doing a deal. Meanwhile, our premier is talking about Quebec courts being biased and the Régie being the worst decision he ever read.

MR. BENNETT: So that's part of the context.

MR. BUDDEN: It is definitely –

MR. BENNETT: It –

MR. BUDDEN: – part of the context.

MR. BENNETT: – it is part of the context. I can't argue with that.

MR. BUDDEN: Okay.

So in the result, we have a situation where it is very difficult for anybody at Nalcor to pick up the phone and initiate that call. That's the reality, isn't it?

MR. BENNETT: And I would, again, look the other way and say that they could've called as well.

MR. BUDDEN: Okay. Well, we'll, you know, leave for the moment, you know, who should've been making the first call. But I would suggest to you that on a – if we're talking about business cases here, on a business case of – way of seeing things, an informed person would've picked up that phone and made – initiated that conversation, I would suggest to you. Would you agree with me?

MR. BENNETT: This is a complex relationship. Our insight, from a market perspective –

MR. BUDDEN: Mmm.

MR. BENNETT: – I'm looking at – and I'm still looking at my – that Exhibit 01463 – they don't have, from our information, a lot of energy available. We weren't sure where that energy was coming from. We viewed the action, at the National Energy Board level, for this big block of power, to be more tied to transmission as opposed to having a large surplus of firm capacity and energy available for us.

MR. BUDDEN: Sir, you're trying to put a spoke and a wheel on another issue.

MR. BENNETT: But – no, but it is important. If they have something to sell, then that – whether or not they do is an important consideration, of course. But I will agree that we, collectively, never got to the point where we saw a benefit of calling Hydro-Québec.

MR. BUDDEN: Okay.

So we can briefly – just to make a final comment – go back to Exhibit 00014, page 24. So we see risks and reliability. I would suggest to you that risks and reliability here are most

political than they are having to do with the actual ability to supply power.

MR. BENNETT: Firm consideration is an important one.

MR. BUDDEN: Okay.

MR. BENNETT: And so –

MR. BUDDEN: Of course, that was never pursued.

MR. BENNETT: It was identified as a risk

MR. BUDDEN: But it wasn't evaluated as a risk.

MR. BENNETT: We never went out and said: Can you give us a price for a firm price; can you give us a firm proposal?

MR. BUDDEN: Okay.

MR. BENNETT: I agree with that.

MR. BUDDEN: Okay, well, let's leave it there.

THE COMMISSIONER: (Inaudible.)

MR. BUDDEN: And –

THE COMMISSIONER: Wait – okay, go ahead. I'm sorry, I was just thinking about –

MR. BUDDEN: Break time?

THE COMMISSIONER: – taking a break, but if you were just trying to end this train of questions –

MR. BUDDEN: I'm about to, just another question or two.

THE COMMISSIONER: Okay, go ahead.

MR. BUDDEN: I think it's only a question or two.

Obviously, whether we're bringing power down from Quebec or bringing it down from Muskrat Falls, the LIL is much the same, isn't it?

MR. BENNETT: It is, yes.

MR. BUDDEN: Though, I suppose, arguably, it might be a little more expensive if it's not being sized up for the power that has to be delivered on to Quebec. That surely adds to the price tag, doesn't it?

MR. BENNETT: I'm not sure if all –

MR. BUDDEN: To bring it up to 900 megawatts?

MR. BENNETT: Maybe you can help me with that again.

MR. BUDDEN: Okay, sure. The LIL is sized – it's not the technical term, obviously, but it has to carry 900 megawatts of power because a good chunk of that is going to be sold on through the Maritime Link.

MR. BENNETT: It is rated – you're right, it is rated for 900 megawatts. That's right.

MR. BUDDEN: Okay. Would it be a cheaper project if it was rated, say, for 500 megawatts?

MR. BENNETT: It may be. I'm not sure if it's material. There are a couple of puts and takes. The operation of the transmission system is dependent on reactive power provided at Muskrat Falls, so there's going to be some investment there. But I would agree with you that the transmission line could be somewhat cheaper.

MR. BUDDEN: Okay.

So, well, we'll –

MR. BENNETT: There are a lot of components that are very similar.

MR. BUDDEN: Sure.

MR. BENNETT: The transmission line may or may not be at the same operating voltage; therefore, the right-of-way is the same. The access would be similar; the reliability considerations would be similar. The design criteria would be similar in terms of return period. The converters would be a little bit smaller and, therefore, somewhat less expensive, but there's some offsetting equipment that may be required to bring that –

MR. BUDDEN: Sure.

MR. BENNETT: – bring that closer in line.

MR. BUDDEN: So I'll give you that the LIL is a wash. So, basically, if we're comparing importing power from Hydro-Québec versus Muskrat Falls, we're really comparing the cost of purchasing power from Hydro-Québec through, essentially, an existing grid –

MR. BENNETT: Right.

MR. BUDDEN: – versus the cost of building Muskrat Falls and then purchasing that power. That's –

MR. BENNETT: You trade –

MR. BUDDEN: – the true comparison.

MR. BENNETT: You trade that off. You trade that off, yeah.

MR. BUDDEN: Okay, thank you.

This might be the time to take the break.

THE COMMISSIONER: All right, so we'll take our 10 minutes here then.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: Mr. Budden, when you're ready.

MR. BUDDEN: Yeah, I have seven or eight questions for you about the North Spur, Mr. Bennett.

First one just is a general introductory one. How certain are you that this modified dam will remain intact for the life of the project?

MR. BENNETT: Based on the input from our engineering consultants, the work that's been done, I'm confident in the work –

MR. BUDDEN: Do you have a –

MR. BENNETT: – that's been done on the North Spur.

MR. BUDDEN: You have a person level of absolute certainty that it will remain intact for the life of the project?

MR. BENNETT: Personal level. Can you help me understand what you mean by that?

MR. BUDDEN: I mean you, as an engineer, as the vice-president for the Lower Churchill Project, as the, I would suggest, the person who is ultimately responsible for the project – at least one of them. Are you certain that this modified dam, the North Spur, will remain intact for the life of the project?

MR. BENNETT: So I'm not a geotechnical engineer, so I'm not offering a professional opinion in that discipline; but we have been diligent in terms of the investigation over the years – in my view – the advice we've received from our consulting engineers, including our qualified geotechnical people. We've done – completed third-party reviews, and I'm personally satisfied with the work they've done. Yes, I'm confident in the work that they've done.

MR. BUDDEN: Okay. So your own level of certainty, how would you qualify it?

MR. BENNETT: I would qualify it as – quite high.

MR. BUDDEN: Okay.

You are familiar, of course, with Dr. Stig Bernander, who made a presentation here in Newfoundland back in 2016, and I believe you would have played a lead role. Correct me if I'm wrong, but you would have played a lead role in arranging for the peer review of Dr. Bernander's paper, am I correct?

MR. BENNETT: I'm having trouble hearing –

MR. BUDDEN: Oh, sorry about that.

You are familiar – am I being picked up?

THE COMMISSIONER: Yes you are, yeah.

MR. BUDDEN: You're familiar, of course, with Dr. Stig Bernander, the Swedish academic.

MR. BENNETT: Yes.

MR. BUDDEN: And that – the fact he delivered a paper in St. John's in, I believe, 2016 that raised some concerns he had about the stability of the North Spur. There is a – Nalcor commissioned a peer review in response to Dr. Bernander's paper. You are familiar, I would assume, with that peer review?

MR. BENNETT: Yes.

MR. BUDDEN: Okay. And you would have personally reviewed that peer review?

MR. BENNETT: I've read the peer review, yes.

MR. BUDDEN: Okay. And I presume that – and that satisfied in your mind any concerns which Dr. Bernander may have raised?

MR. BENNETT: Yes, I mean, the work that was completed in relation to that peer review, the terms of reference were carefully reviewed by our engineering consultants – by SNC-Lavalin, multiple individuals within that organization – and I was personally pleased with the work that came back.

MR. BUDDEN: Okay.

Madam Clerk, could we please call up Exhibit 00434. And I doubt you have this in your tabs, but you may. Yeah.

THE COMMISSIONER: No.

MR. BUDDEN: What this is – while the Clerk is calling it up – this is Dr. Bernander's further response, Dr. Bernander and others, dated July of 2018, and as you can see, the headline is: "Response to and Comments on 'Geotechnical Peer Review of Dr. S. Bernander's Reports and Analysis of the North Spur'".

So, I guess my first question is – and it's 34 pages and it's fairly dense, so we're not gonna review it now – but have you reviewed this response, Mr. Bennett?

MR. BENNETT: I have looked at it, not in detail. I referred it to our engineering consultants, SNC-Lavalin –

MR. BUDDEN: Okay.

MR. BENNETT: – for their consideration and advice in relation to those comments.

MR. BUDDEN: Okay, to your knowledge have SNC-Lavalin, or anybody else associated with Nalcor, provided a written response to Dr. Bernander's – to this document?

MR. BENNETT: My recollection is that there were emails in relation to this response.

MR. BUDDEN: Okay.

And you have personally seen and reviewed those emails?

MR. BENNETT: I have seen those. I wouldn't be able to quote them, but I know that when – any time that this type of material arises, we'll be asking – or we would be, as a normal matter of course – ask our engineering team to review the commentary.

MR. BUDDEN: Sure.

And those emails, I presume, could be provided to this Inquiry if – on request.

MR. BENNETT: I'm – I'd be surprised if they're not in our database already, depending on the timing and what's been transmitted to the Inquiry.

MR. BUDDEN: I think the report's dated August – or rather July 18 or something so, you know, it's quite recent.

MR. BENNETT: It's – okay.

MR. BUDDEN: Just, perhaps you could give us a gist of the response that you received from SNC-Lavalin with respect to this.

MR. BENNETT: So, just for clarity, July 18 of this year?

MR. BUDDEN: 2018.

MR. BENNETT: Of 2018.

MR. BUDDEN: Just a few –

MR. BENNETT: So –

MR. BUDDEN: – months ago.

MR. BENNETT: I'm gonna look to Mr. Simmons to give some detail to the Commissioner on how – of what documents are in the Commission's database at this point.

MR. SIMMONS: Yes. So what – we know, Commissioner, that we're in the sanction Phase and we're looking at sanction matters, and I was interested to see where the questioning was going, what the concern was.

But it looks like we're up to matters that are pretty current, dealing with the North Spur here, and I – might be appropriate to get some indication from Mr. Budden as to how this fits into the questions that are under examination in this Phase, which is bringing us up to sanction.

THE COMMISSIONER: Right. Even more specifically, I guess, there are still documents that are coming in to the Commission. And whether or not we have these documents – I have no idea whether we have these documents or not yet.

MS. O'BRIEN: (Inaudible.) Thank you. I have just taken a note, obviously, to follow up. I'm listening to the questions and I will have someone look for those emails to see if we have anything relevant. And if I do, they will be provided to Mr. Budden and others.

THE COMMISSIONER: All right. But they probably would have come in lately as opposed to earlier because –

MR. BUDDEN: Understood.

THE COMMISSIONER: – because when our – when the first summons went out – and counsel can correct me if I'm wrong – but my understanding was when the first summons went out back in January of 2018 it was for the documents that were in place up to then. And then there was a continuing obligation; and that obligation, of course, we're trying to – with the

volume of documents we're getting, we're trying to review what we can. So there are still documents that continue to come in.

MR. BUDDEN: Oh yeah. I wasn't criticizing the witness.

THE COMMISSIONER: Okay.

MR. BUDDEN: Yeah.

THE COMMISSIONER: No, no. So the issue here though, is a good one, because if there was a document that was produced in 2018, and there were responses to that, I hardly think that that specifically relates right at the moment to the issue of the sanction decision. And so, again, I know there's an interest here. And – but I think we need to make sure it's in the right Phase that we're actually going to raise this.

MR. BUDDEN: Sure. Well I guess two responses to that. The simplest one is I really have just one last question, which is if those reports satisfied any concerns that were – in his view – were raised by Dr. Bernander and others. That's all I want to know, so.

THE COMMISSIONER: Isn't that more of a Phase 2 Issue than a Phase 1 issue?

MR. BUDDEN: I would suggest not, with respect, because much like with methylmercury or other issues, this really goes to decisions that were made pre-sanction, and how they have played out. However, obviously it's your call. And that's all I intend to do, to wrap up this line of questioning, is just to pose that one last question.

THE COMMISSIONER: All right. Is Mr. Bennett being called in Phase 2?

MS. O'BRIEN: Yes.

THE COMMISSIONER: Okay. That's a question for Phase 2.

MR. BUDDEN: Okay. We'll – you'll – we'll return to that.

THE COMMISSIONER: Okay.

MR. BUDDEN: Moving on to another topic entirely, what kind of Lower Churchill Project engineering work would have had to have been done to prepare for the sanction decision? (Inaudible) – just to contextualize that. We realize that, obviously, to inform the sanction decision some work had to have been done so as to make an intelligent decision. Just give us a sense of what kind of work would have been done in order to have an informed debate around sanction?

MR. BENNETT: So, I think in general terms, if you look at the total hours of engineering effort that were required to do the detailed engineering for every aspect of the project, approximately – if I recall, approximately 40 per cent of that engineering work had been completed. So that – you know, the level of detail at that point, powerhouse layout, concrete, quantities of concrete, size of the structures, alignment, excavation volumes, they were well-defined, and, certainly by the time we get to the contract process for some of the major packages, there was actually completed detailed engineering available for those packages.

So I think in general terms, you'd be looking at sort of the overall engineering for the structures. I'd be fairly confident in saying that the details, you know, piping arrangements inside the powerhouse and those kinds of things were – would not be defined, but they weren't a big value component of the project.

MR. BUDDEN: Okay. So obviously a fair bit of work has to be done in order to make any kind of intelligent decision as to the ultimate cost of the structure. You need to know the geotechnical specifications and so forth.

MR. BENNETT: For the powerhouse and so on, there was a fairly extensive investigation done there, yeah.

MR. BUDDEN: And sure on the North Spur and all that stuff.

MR. BENNETT: Right.

MR. BUDDEN: Okay. Then we get to base estimate, which says – we've heard it was prepared by Mr. Kean and his team including Mr. Lemay and others. Was there any – was

there ever an executive review of that estimate performed, spot-checking or any other form of review within the executive or at the direction of the executive?

MR. BENNETT: Yeah, I didn't look at the estimate in detail, no. I didn't go back and check quantities in the estimate, so there was no executive review at that level, no.

MR. BUDDEN: Okay.

I'm a bit surprised by that. Is that not a relatively standard feature of project review that the executive would do spot checks or would do reviews?

MR. BENNETT: It's a massive estimate, and you know, for me to go in and double-check quantities that were signed off by our engineering consultant, that had – you know, were completed by professionals with, you know, the review process and the team. No, I wouldn't have expected to go in and pick apart the estimate.

MR. BUDDEN: Okay, and I'm not suggesting a total and absolute review but perhaps a – you know, perhaps a sampling process, something like that. In any event, that wasn't undertaken, you're saying?

MR. BENNETT: It wasn't undertaken at the executive level, no.

MR. BUDDEN: Okay. Was it contemplated –

MR. BENNETT: No.

MR. BUDDEN: – to your knowledge?

MR. BENNETT: No.

MR. BUDDEN: Okay, it wasn't proposed by any of your consultants?

MR. BENNETT: That the executive would review the estimate?

MR. BUDDEN: Or one at the direction of the executive. I'm not suggesting you roll up your sleeves and do it yourself.

MR. BENNETT: But I think – so the MHI team, for example, did look at the estimate.

MR. BUDDEN: Okay. And the executive relied on that?

MR. BENNETT: Yes.

MR. BUDDEN: Okay.

The – are you able to tell us to what degree were labour-productivity factors informed by the labour-productivity experience of Vale and Hebron?

MR. BENNETT: Well, Hebron, you didn't have much experience at that point. Vale was a consideration. I recall those conversations, and there was a lot of effort in the – put into the development of the collective agreement framework to try to build on improving productivity on the job site.

MR. BUDDEN: So the answer is that they were informed by the Vale experience?

MR. BENNETT: It was certainly a consideration, and I think one of the – if I recall – one of the considerations the team identified in relation to Vale was that this engineering topic we talked about earlier where things were happening almost in real time, was a significant issue at Vale –

MR. BUDDEN: Okay.

MR. BENNETT: – in terms of their engineering progress. And that was a hugely important factor in guiding our thinking on engineering in the EPCM contract.

MR. BUDDEN: Okay, and with respect to the unique conditions or, at least, unusual challenging conditions of Labrador. To what degree were efforts made to particularize the estimates for the Labrador environment?

MR. BENNETT: I –

MR. BUDDEN: Labour productivity I'm talking –

MR. BENNETT: Right.

MR. BUDDEN: – about here.

MR. BENNETT: I guess, labour productivity, it's a little harder to get a proxy, but the estimator was drawing – as I recall – was drawing on experience from Quebec –

MR. BUDDEN: Okay.

MR. BENNETT: – with similar conditions.

MR. BUDDEN: Okay, and the theory being that those would be similar conditions to –?

MR. BENNETT: So in terms of winter – work in the winter, those kinds of things. That was – I would've looked to our consultant – our engineering consultant, estimating consultant – to be bringing that expertise and knowledge to the table.

MR. BUDDEN: Okay, so there's specific reference made and adjustments for the winter conditions that the project would be facing in Labrador?

MR. BENNETT: The conditions were understood. If I look at the meteorological history – I mean, I've seen documents that speak to snowfall, temperature, so on and so forth. And yes, I'm looking for our engineering consultant to factor those into consideration.

MR. BUDDEN: Okay, and obviously, with all that work that was done pre-sanction, there would've been tenders issued pre-sanction for some of the work that informed the sanction decision?

MR. BENNETT: Well, in terms of that type of climatic and meteorological information?

MR. BUDDEN: No, I'm not talking more generally. I apologize, that was an abrupt transition. But again, if we're looking, as you've acknowledged, a fair bit of work must necessarily be done to inform the sanction decision, and that presumably would've involved tenders to contractors and subcontractors to perform that work.

MR. BENNETT: To perform – I'm still trying understand which work.

MR. BUDDEN: Okay, nothing to do with my previous couple of questions about labour productivity. More referring back to the broader question of the significant work that needed to be done pre-sanction so as to inform the sanction decision.

MR. BENNETT: Okay, so geotechnical investigations, engineering investigations, field studies, modelling, you know, a lot of that work had been done earlier on and then was provided to SNC-Lavalin as some of the deliverables from us to them when they started their EPCM work.

MR. BUDDEN: Where you're building in some cases on the stuff from the late '90s I presume and –

MR. BENNETT: (Inaudible.)

MR. BUDDEN: – others, newer stuff?

MR. BENNETT: I mean, not much. I mean, there's general background information and geotechnical information available, but at this point, when you're doing the detailed design, this is a bottom-up detailed –

MR. BUDDEN: Okay.

MR. BENNETT: – engineering design, not building on the previous work directly.

MR. BUDDEN: Okay. But there would, I presume, have been third party tenders in there? Not in-house – third party tenders.

MR. BENNETT: No question that there were consultants engaged to do investigation work and prepare and inform that estimate.

MR. BUDDEN: Okay. And that would have obviously been – involved bids being accepted, and I guess my question is to what degree did the bids conform to the budget estimates for those jobs?

MR. BENNETT: Okay. So – just so I'm clear – when you talk about bids, are you talking about bids for planning, pre-sanction or actual construction? 'Cause I'm getting a little bit –

MR. BUDDEN: Planning and delivered pre-sanction.

MR. BENNETT: Okay.

MR. BUDDEN: So as of the moment of sanction – just to be clear – third party contractors would have performed tasks. Those tasks would have been budgeted. What I'm wondering about is did the prices – how did the prices come in comparable to what had been budgeted out of cost come in?

MR. BENNETT: My recollection is that some of them were – certainly for materials, some of them were highly aligned. Some of them were as expected at that time. In terms of construction there was very little – I mean, there was very little actually awarded at sanction.

I mean, I'm going from memory here, but we had the access road, the camp, the bulk excavation contract was awarded. Right around sanction there was a LNP – limited notice to proceed – provided a couple of months – maybe a couple of months earlier, and then that work was executed in 2013 – after sanction.

MR. BUDDEN: Okay. That leads us in to something that you covered in your interview, and what I have here is just a couple of pages from – second page there, Mr. Bennett.

I have here pages 185 and 186 from your August interview with Commission counsel O'Brien. And if you turn to the next page – and I've provided both in case you feel the need to go back for context, but we have Ms. O'Brien leading with a question at the top there of 186.

Yeah. What about just prior to financial close? So financial close was in 2013, and we know there was significant developments. You know, in 2013, by that point you've had, you know, a change in your strategy. You removed SNC as the EPCM. Your bids are coming in, and they're at about 25 per cent approximately over what you had been expecting them to come in. There was some – there were some – I'm going to say – some early warning signs, and you say: Yeah, okay.

And I'll stop there for a second – and I can see Ms. O'Brien is talking about the perhaps the period immediately post-sanction.

What I'm asking you is this pattern, this 25 per cent over each pattern, was that apparent at the moment of sanction?

MR. BENNETT: No.

MR. BUDDEN: Okay. So there was –

MR. BENNETT: Certainly – Certainly, not across the board. The civil contract, for example, wasn't completed and I didn't – I wasn't seeing numbers out of that process until well into late 2013, when that contract was executed at financial close, in 2013.

MR. BUDDEN: So, if – we – you and I were sitting down December 1, 2012, and I were to ask you: Is it true, Mr. Bennett, that your bids are coming in and they're at about 25 per cent approximately over what you've been expecting them to come in. Would that have been true as of December 1, 2012?

MR. BENNETT: Twenty twelve – I'm just thinking about the contracts that were actually in-house at the time. I think we had the camp, the – we had completed the access road and the mass-excavation contract – the bulk excavation contract. My recollection of this was that the bulk excavation contract was pretty close to budget. And I think, there's a document that was provided by the project team. It gives a highlight on that one. The camp was a little bit high. But the majority of that was supply as opposed to installation.

MR. BUDDEN: Oh, so –

MR. BENNETT: So I wouldn't be able to say that at 2012, I'd be able to make the same blanket statement that some of these bids are coming in higher than we saw in 2013.

MR. BUDDEN: Okay, we'll – we will be returning to this in a few months, so think carefully about your answer here now. But as of 2012, as of, you know, these moments leading up to sanction, were there any such red flags? As I would suggest to you, this 25 per cent overage, was a red flag. Any that you were aware of?

MR. BENNETT: There's nothing that I can remember.

MR. BUDDEN: Okay. Okay. The – This maybe getting a little bit into post-sanction, just barely, but I'll ask it and we can discuss if it's appropriate: You are familiar, I presume, with the concept of the exit ramp in terms of a megaproject?

MR. BENNETT: So, you mean the notion that we had a way out, if –

MR. BUDDEN: Perhaps a – and the example I'm thinking about, we discussed, we won't call it the exhibit, but in Professor Holburn's evidence about a – about a regulatory review of – megaprojects, he spoke about in Darlington – they had an exit ramp that if certain targets weren't met, the project would be fundamentally re-evaluated, almost re-sanctioned of – Was there anything like that contemplated at any time with respect to Muskrat Falls?

MR. BENNETT: I can't recall commentary where we would say: Okay on this, you know, based on a given threshold, that we would stop or change course, or delay, or cancel.

MR. BUDDEN: So, at the moment of sanction the option basically was – and I guess we have FLG and all that, but basically – once the decision is made to sanction your evidence is: there's really no way of stopping after that point.

MR. BENNETT: I wouldn't say that at sanction. And this – I think, Ms. O'Brien and I had some commentary on this. The commitment is actually at financial close.

MR. BUDDEN: Okay.

MR. BENNETT: Okay. So, the work leading up to sanction, the purchase of the camp, the completion of the access road, the completion of the mass excavation were actually completed with equity from the province.

And, at that point in time, I think, we had early contracts for, maybe, the submarine cable. We had a production slot for the submarine cable and the turbine generator RFP was well advanced.

We'd be dealing with cancellation charges there, but the commitment was actually, in my view, at financial close.

MR. BUDDEN: Okay.

And, that's into 2013, so we'll return to that.

MS. O'BRIEN: Sorry, to interrupt.

I don't know if it's helpful but I could just advise Mr. Budden that we do intend to spend a lot of – significant time on financial close in Phase 2.

MR. BUDDEN: Fair enough, yeah.

Yeah, I just wanted to see there was any similar consideration. So perhaps, Madam Clerk, Exhibit P-00227, please. This is the term sheet between Emera and Nalcor, the November 18, 2010, which we've talked about.

And, Madam Clerk, its page 10 that I'm interested in, please.

Perhaps you could read to us, Mr. Bennett – and its right there on your screen – the paragraphs sub (d) and sub (e). (Inaudible) read those to us please.

MR. BENNETT: Okay, so starting at (d): "The approval process for the Maritime Link shall be as follows: ... Emera will make application to the" UARB "for incorporation of the Maritime Link in the NS rate base upon Nalcor providing Emera with the Estimated Capital Costs of the Maritime Link, approved by Emera, in sufficient detail, to permit such application in accordance with the rules and procedures of the UARB; ... Nalcor will assist Emera with this application. The Parties undertake to take all commercially reasonable" – efforts – or all commercially reasonable actions, rather "to preserve the project schedule as set out in Appendix 'F'. The Parties agree that the target date for making the application to the UARB is June 1, 2011."

MR. BUDDEN: Okay.

So, essentially I would suggest this basically gives the Nova Scotia UARB a veto over the Maritime Link. Without their approval, the Maritime Link wasn't going to be built.

MR. BENNETT: That's correct.

MR. BUDDEN: Yes.

MR. BENNETT: And it's also true that the federal loan guarantee effectively was dependant on the Maritime Link being approved.

MR. BUDDEN: I think it was fair to say that, yes, the federal loan guarantee was contingent on the project being a regional one and therefore, the Maritime Link was part of that understanding.

MR. BUDDEN: Sure. And we won't dwell on this, because there's been lots of evidence, but, clearly, we all acknowledge there was no similar veto, which the Newfoundland PUB was able to exercise – similar to what the UARB had.

MR. BENNETT: That's right. The province – our province didn't set up a process with the PUB at sanction.

MR. BUDDEN: Sure. It strikes me – and I would suggest to you, Mr. Bennett, that that really puts – really creates an asymmetric bargaining situation, because you strike a deal with Emera, then Emera comes – get a second crack at it – by the UARB. So does that not inherently create an asymmetric difficult bargaining situation for Nalcor?

MR. BENNETT: I think the parties understood that that's what Emera had to do. It was a consideration in terms of the pricing that, we understood, they could support in the arrangement. And the parties were aware of that. And were also aware of the potential benefit of the federal loan guarantee.

MR. BUDDEN: Yes. But within the awareness – I mean, if you're Emera, you basically know: Well, we can strike a deal here because, at the end of the day, we've got this third party looking at, and if we're overgenerous, they're going to put the breaks on it. That's the effect of it, isn't it?

MR. BENNETT: Well – but, the corollary to that is that you're in a regulatory process, and the alternatives are going to be carefully evaluated, and you'll see what those are, if there is –

MR. BUDDEN: But they're only being evaluated in one province.

MR. BENNETT: Oh, that's true.

MR. BUDDEN: Okay. And it was really in this moment, I guess, of – I would suggest, firstly, this creates, you know, terrific pressure on the Nalcor team, because you've struck a deal, and now you've to somehow rejig the deal to get it through the UARB.

MR. BENNETT: Well, the term sheet is – still early days. We're going to continue these negotiations, and as I recall, there were agreements that were signed through 2012, and I think, ultimately, into 2013, in relation to the Maritime Link, and the cost and the terms and conditions associated with it.

MR. BUDDEN: Yes, and we have a lot of questions about that 2013 deal, but we'll get to those this winter.

MR. BENNETT: Okay.

MR. BUDDEN: But, for now, at least, I guess I would suggest to you that the pressures under which – these were the circumstances – the highly pressured circumstances, under which you, and ultimately, Mr. Martin, were making these decisions about now to categorize risk.

MR. BENNETT: But you've also got to factor in the potential benefit of the federal loan guarantee and the advantages that came with that. So, you know, there are – maybe the long and short of my answer is – there are a lot of considerations, all right?

MR. BUDDEN: Okay. Sure.

MR. BENNETT: So, you know, this one – I don't think – was – you know – was looked at being negative in the sense that there's an opportunity and the benefit that comes from the federal loan guarantee, and there's also a benefit with interconnection to Nova Scotia, and there's – in terms of reliability and a path to market.

So I don't think this is a, sort of, a one-sided conversation, but it is part of the context of the project, and it has – you know, I mentioned I think earlier this week that, yes, we expected there would be a price beyond which Emera would be unable to get approval.

MR. BUDDEN: Yeah.

MR. BENNETT: But at the same time, it opens up another market access, it opens up a potential revenue stream and it has a reliability benefit. So you have to look at all of that in context together.

MR. BUDDEN: Sure, but in terms of negotiation, you basically have two people in a room, they strike a deal, but only one side gets to go out and basically has to get that deal approved by somebody else – the UARB.

MR. BENNETT: I'd agree with that. Our approval process would've taken this to the province.

MR. BUDDEN: Sure.

Could we perhaps call up 00453, Madam Clerk, and turn to page 5?

When we do get to page 5, Mr. Bennett, this is the Brockway report which looked at the term sheet, among other things. And could you just read lines 1 through 11? There's a bit there, but it's important, I believe.

MR. BENNETT: Okay. So:

"Emera would be responsible for the construction of" – the Maritime Link – "up to 20% of the estimated development costs of the Defined Assets, as well as 20% of the estimated operating and maintenance costs of the Defined Assets.

"In return, Emera would receive 0.98 TWh annually for 35 years which represents approximately 20% of the estimated output from MF, where the 0.98 TWh is guaranteed regardless of the actual output from MF. As well, Emera would receive Supplemental Energy expected to be 240 GWh annually for the first 5 years to compensate for the difference ..." – of – "the 35 year term of the Nova Scotia Block and the 50 year initial service life of" – the Maritime Link. "The Nova Scotia Block annual energy amount (excluding the Supplemental Energy) would be delivered to Emera during peak hours from 7am to 11pm throughout the year. The Supplemental Energy would be delivered to Emera during off-peak hours from 11pm to 7am

in the months of January, February, March, November, and December. Emera would also receive the right to invest into LIL” – the Labrador-Island Link – “and receive a return based on its investment.”

MR. BUDDEN: Okay, first thing there, that 20 per cent, that’s firm power, isn’t it?

MR. BENNETT: That is firm, yes.

MR. BUDDEN: Okay. So is – as firm power, then obviously it’s – what is 20 per cent of the power, that surely represents more than 20 per cent of the value of Muskrat Falls production. It’s the best 20 per cent, isn’t it?

MR. BENNETT: Well, the best ...

MR. BUDDEN: There is – let me phrase it better: Firm power inherently has more value than non-firm power, you’re with me there?

MR. BENNETT: I agree with that.

MR. BUDDEN: So it therefore follows that this 20 per cent of firm power is more valuable than the 80 per cent of the remaining power? At least potentially.

MR. BENNETT: Potentially, yes.

MR. BUDDEN: Okay. And I guess that begs the question: It’s not really a 20 for 20 if the 20 per cent that Emera is getting is more valuable than 20 per cent of the project, generally, is it?

MR. BENNETT: I think both are simplifications. The 20 for 20, they got 20 per cent of the energy, here’s the definition that was carefully negotiated between the parties. I think that, you know, we can – if we continue to simplify it we’re leaving a lot of important context out of the conversation. But I accept your point that it’s not simply 20 per cent of all the energy, firm and non-firm.

MR. BUDDEN: Yeah, is – the firm is more valuable?

MR. BENNETT: The firm is valuable, yes.

MR. BUDDEN: Why did Emera agree to this, then, because they seem to be giving up a more

valuable 20 per cent than the 20 per cent they were receiving?

MR. BENNETT: Why did Nalcor agree, you mean?

MR. BUDDEN: Nalcor – yes, why would Nalcor agree to it? I can see why Emera would agree to it. Why would Nalcor agree to it?

MR. BENNETT: Because there are still substantial benefits. The reduction in financing costs associated with the federal loan guarantee, the access into the, ultimately, the New England market through the arrangements with Emera are important as well. And I think that, you know, we’ve looked at sort of the surplus for Muskrat Falls in the short term and you gotta look at what we would have done with that additional energy in the short term, and ultimately the negotiation took us to a place where here is a package of benefits that collectively we all thought made sense.

MR. BUDDEN: Okay, and the FLG was pretty important in that calculation, I assume?

MR. BENNETT: Federal loan guarantee is very important.

MR. BUDDEN: Yes.

MR. BENNETT: Right. And the access to market is not trivial, either.

MR. BUDDEN: Okay.

The Public Utilities Board, there are a lot of questions about that; I plan to just ask a few. You know, of course, who Ms. Maureen Greene is, counsel for the Public Utilities Board at that time.

MR. BENNETT: Yes.

MR. BUDDEN: Okay. In her evidence, Ms. Greene testified that she and Fred Martin – you would know Mr. Martin, I assume –

MR. BENNETT: I know Mr. Martin, yeah.

MR. BUDDEN: That you and others met on June 17, 2011, and at that meeting she has testified that you promised her that the PUB

would, by June 30, receive a truckload of documents from Nalcor.

Do you remember making that promise to her?

MR. BENNETT: I've noted previously we've had the meeting, we made commitments on delivering a lot of material, and I'm not objecting to that statement. That I would – I'm not sure I can specifically remember saying a "truckload," but to the extent that she has a specific memory, I'm not arguing with that. So we –

MR. BUDDEN: Okay, so –

MR. BENNETT: – did meet, we said that we had a lot of documentation. No argument there at all. So yes, I accept that I said we have a truckload of material.

MR. BUDDEN: Sure.

This is June the 17 and you're promising her a truckload by June 30, which is less than two weeks away. What they've testified is they received more like an envelope on June 30 and the real information didn't flow for months. And I realize things come up, but did anything come up between June 17 and June 30 that totally blindsided you and made you unable to deliver on the province –

MR. BENNETT: We had –

MR. BUDDEN: – on the promise?

MR. BENNETT: – you know, we had lots of material. We started getting into conversations about what they were looking for and we very quickly were seeing some disconnect in, sort of, the extent, type, level of documentation. What they were looking for, in the context of what was beginning to very quickly look like a regulatory filing, compared to the information that we had in our files talking about various aspects of the project leading up to our Decision Gate 2 package of materials.

So we had lots of material to support the analysis. Formatted into terms that they were expecting? Now, that was challenging for us. So I think – one specific example that I recall was, you know, where is the – so the question was:

Where is the final feasibility study for Muskrat Falls? Now, in terms of that being a document, I remember in 1998 that's a two-volume bound document prepared by SNC-AGRA – they had a joint venture at the time, and it nicely packages the description of Muskrat Falls.

What we had was a whole series of documents that are looking at various field studies that have – at various aspects of the project which collectively gave us the information necessary for Decision Gate 2, but not packaged in the format, style of content organization that the team – that the PUB was looking for. So that –

MR. BUDDEN: If I –

MR. BENNETT: – that very quickly became a disconnect.

MR. BUDDEN: Okay.

I recall the evidence – and I'm not proposing to put it you here unless we absolutely need to. But I recall those conversations somewhat did take place. They took place several months later. So I guess what I'm wondering is if on June 17, you – and you are obviously, you know, a very senior person and you're talking to another very senior person, and you're saying: Look, you'll have a truckload of documents within two weeks. And there was no follow-up that I'm aware of where you said: Look guys, it's not going to be two weeks, we ran into this big obstacle. There's just silence.

MR. BENNETT: I think there – I think very quickly from there, there began to be – my recollection is that we started to engage on the material that they were looking for and started to pull that together.

MR. BUDDEN: Okay.

MR. BENNETT: Albeit not nearly as quickly as they were looking for. There's no debate about that.

MR. BUDDEN: I mean the way Nalcor tends to portray itself at this point that in, you know, 2011 and that they are going this reference confident that the Muskrat Falls was the least-cost option, confident that it was an

appropriately planned endeavour. That was your view at the time, I take it?

MR. BENNETT: Yes, we had put – pulled together the body of material necessary to support the decision.

MR. BUDDEN: Yeah.

I guess my question is: If you were so confident this is the right case, why were these obstacles and delays to actually delivering the information that would be required to evaluate the case? Does that seem consistent with that kind of confidence?

MR. BENNETT: I think there's a difference between the body of material that existed inside Nalcor and the type of information, the organization that the board staff were looking for.

For example, we had not prepared – for example, if I look at, you know, well, the equivalent to a general rate application, we did not have prepared at the time that package of material that we would submit and distribute to the parties.

MR. BUDDEN: Okay.

MR. BENNETT: Okay?

MR. BUDDEN: So –

MR. BENNETT: That didn't exist but the underlying analysis and data that supports that package did exist inside the organization.

MR. BUDDEN: You – we've all heard you from three days –

MR. BENNETT: Right.

MR. BUDDEN: – you're a man who chooses your words carefully. Why would you promise a truckload of stuff and not deliver it?

MR. BENNETT: Well, we had stuff and then –

MR. BUDDEN: Like, why would you promise it?

MR. BENNETT: Well, because I knew we had a lot of material available, and what quickly became apparent was that the material that we had wasn't necessarily what they were looking for at that point in time and organized in the manner that they were seeking. And that understanding developed fairly quickly.

MR. BUDDEN: It's not because you're sending them stuff and they're saying we don't need this, it's because they're saying we need stuff and you weren't sending it.

MR. BENNETT: Well, and there we get to the question about what stuff they were looking for at what time. Was that necessarily aligned with the information that I had readily at hand.

MR. BUDDEN: So there's no slow walking, no resentment of the PUB?

MR. BENNETT: This process is underway and it has a short period of time to carry out – we had – would have no interest in saying, okay, let's try to drag this along. That's not my –

MR. BUDDEN: Okay.

MR. BENNETT: – recollection of that process at all. We were struggling with the process in terms of getting it up to speed, getting it into our plans and moving it along.

MR. BUDDEN: Okay. I just have a couple more things to cover here; three more areas, really.

My understanding is that the scrubbers – that the CPW for the Isolated Island Option included about \$600 million for scrubbers for Holyrood to remove greenhouse gases and so forth. Is that my – is my understanding correct?

MR. BENNETT: Not quite.

MR. BUDDEN: Okay.

MR. BENNETT: The scrubbers and precipitators are a commitment to deal with particulates in the flue gas from Holyrood that have been a long-standing source of concern for residents in that general area.

MR. BUDDEN: Fair enough.

MR. BENNETT: Okay, so they didn't do anything to address greenhouse gases in fact.

MR. BUDDEN: We know that.

MR. BENNETT: The –

MR. BUDDEN: But they're – essentially they're intended to remove pollutants, we'll say, as a general term.

MR. BENNETT: Absolutely.

MR. BUDDEN: Okay.

My understanding as well, is that at approximately the same time there's a switch to a different grade of oil to fuel the Holyrood Generating Station that made the scrubbers unnecessary. Is that your understanding?

MR. BENNETT: No. The –

MR. BUDDEN: Okay, so those scrubbers – even with this change of fuel, those scrubbers, your evidence is, were and are still necessary?

MR. BENNETT: Well, they're necessary because there's a commitment – direct commitment in the Energy Plan that says if we keep Holyrood, we're going to require – the province will require scrubbers and precipitators on that facility.

MR. BUDDEN: Okay, that's a bit circular, I would suggest, but – so the only reason the scrubbers were needed is because the Energy Plan promised them?

MR. BENNETT: No, I wouldn't say that. I don't think that the reduction in sulphur content eliminated the complaints about particulate emissions and deposition in the Conception Bay South area. It was a hot topic for a long time and I have no expectation that the reduction in sulphur content was going to be a satisfactory answer for Holyrood.

The commitment was made. The problem could be connected – the commitment in the Energy Plan was abundantly clear: If Holyrood is to be kept we're going to have scrubbers and precipitators on that facility. And the reduction in sulphur content reduced particulates to some

extent, but certainly didn't eliminate the problem.

MR. BUDDEN: Okay.

Moving to another topic, you – when you were interviewed by Ms. O'Brien back in August you were asked about the sensitivities that were run at DG2 and DG3. You remember, I presume, being asked that.

MR. BENNETT: Right.

MR. BUDDEN: And your answer was essentially that you were unable to really say very much at all about what sensitivities were run, who selected them. Is that an accurate recollection of your conversation?

MR. BENNETT: Well, I think I knew which ones were run, we can point to the source documentation. What I wasn't clear on, and still am not, is how those were – like, who individually selected those particular sensitivities. Sensitivities themselves are documented in –0

MR. BUDDEN: Sure.

MR. BENNETT: – the various reports.

MR. BUDDEN: And why it was those particular ones that were selected. That would be the – so you were unaware who selected them and –

MR. BENNETT: Right.

MR. BUDDEN: – why these particular ones were selected.

MR. BENNETT: Well, I think I have a view as sort of the why in terms of how they expose various parameters associated with the project. I mean, the sensitivity on capital cost is trying to look at what the influence of capital cost is, the greenhouse gas legislation looks at greenhouse gases and so on and so forth. So we know – I think we can look at them and readily explain why. Who, I don't have a handle on.

MR. BUDDEN: Okay. My understanding as well that the sensitivities at DG2 were more extensive than those run at DG3. Am I correct on that?

MR. BENNETT: Some of them pushed harder, I'd agree with that. I think there was –

MR. BUDDEN: At 2?

MR. BENNETT: At 2, yeah.

MR. BUDDEN: Yeah. I guess it would surprise me. One thing, more information is available by DG3, more precision in the planning. And, also, this is really the paramount decision. Would that not suggest a more robust set of sensitivities should have been run at DG3?

MR. BENNETT: Well, the corollary is if you have more engineering detail, then the probability of some of the more extreme events that we saw at DG2 would be with – was going to be reduced somewhat. I mean we can take the sensitivity analyses and we can extrapolate them to, you know, wherever a reviewer wants to go, but –

MR. BUDDEN: Well, obviously, yeah.

MR. BENNETT: Right? But I think the – we – they were looked at and I didn't – from my perspective, I didn't think they were unreasonable.

MR. BUDDEN: Although they had been more comprehensive at DG2?

MR. BENNETT: They were probably wider, yes.

MR. BUDDEN: Okay.

MR. BENNETT: So if I can remember a specific example, I think there was a 50 per cent capital cost overrun sensitivity analysis done at DG2 and I think at DG3 it was 25 per cent.

MR. BUDDEN: Okay.

This is the last area I really wish to get into, and it follows up the transition, I suppose, for want of a better word, into a P50 factor. Obviously, you and Ms. O'Brien spent a fair bit of time on this; I don't plan to go through it –

MR. BENNETT: Okay.

MR. BUDDEN: – in that sort of granular detail, but there are things there I wish to discuss.

So my recollection of your evidence – and I've got your transcript here if you wish to refresh yourself – but that you basically said that you believed it would have been necessary to have a conversation with the shareholder about going with a P50 factor and that you believe that such a conversation took place, but that it wasn't led by you.

MR. BENNETT: Yeah, I wasn't in that conversation.

MR. BUDDEN: Okay, well, let's look at that just to make sure we're all on the same page. What I've got here is your transcript pages 74 through 76.

MR. BENNETT: Okay.

MR. BUDDEN: So at the bottom of page 74 you say – Ms. O'Brien says: Mr. Bennett, you are not answering my question. And you say: No, but I think I'm struggling with whether I thought I should take that individual report and simply give it – I think the Westney you're talking about there – send it to the shareholder and I don't think that would be appropriate. I think there's a different conversation needed to have been had, and I believe it should have been had and I think it was had in the context of the overall investment decision; hire a Gatekeeper through the board of directors and with the shareholder.

Ms. O'Brien: So you're saying that this was a conversation that was had, so let's talk about that. We came to confidence levels and let's just keep it at that now. So what would be the appropriate confidence level? What decisions did you have – what discussions did you have with anyone in the Government of Newfoundland and Labrador about that? And you say: I didn't.

MR. BENNETT: Right.

MR. BUDDEN: And she says: Ever? And you say: Right. And she says: Were you ever in the room when someone else was having it, when someone was having a discussion?

Then we skip down a bit to – there's a bit of uncertainty there. Then we get to Ms. O'Brien there at the bottom or just up from the bottom: I'm talking about the discussion about – look, this is a P-value, (inaudible). We want to talk about your risk appetite. Were you ever there when that conversation was had with anybody in government? And you say: I've heard those conversations in general terms.

Ms. O'Brien: Okay, now let's talk about who you've heard those conversations with. You: So I can vaguely remember, you know, Mr. Martin –

MR. BENNETT: Right.

MR. BUDDEN: – having that kind of conversation. You remember that?

MR. BENNETT: Yes.

MR. BUDDEN: Okay.

MR. BENNETT: And, certainly, in the briefing sessions I think there is a presentation on that.

MR. BUDDEN: There is, yeah. And I'll get to that, what I think may be it.

MR. BENNETT: Okay.

MR. BUDDEN: So you're thinking it was a briefing session leading up to DG3. There were various people in the room, a number of ministers and so on and – but you can't give us a date or names.

MR. BENNETT: I don't have the date. I think the presentation is around it. I don't have anything to add beyond what we have here.

MR. BUDDEN: Okay.

A couple of things here, I'm wondering – we know that by August of 2010 the project was using a P50, so whatever conversation took place, I would suggest, took place, you know, within the context of August 2010 or around then perhaps. Would that make sense to you? Because that's when the commitment prepares to have been made to a P50.

MR. BENNETT: Well, I don't think there's any commitment until you actually get to sanction.

MR. BUDDEN: Okay, but the project was working with a P50. We've heard of evidence from multiple sources from August 2010.

MR. BENNETT: Right.

MR. BUDDEN: Do you accept that?

MR. BENNETT: I agree with that, yes.

MR. BUDDEN: Okay.

MR. BENNETT: I think that was documented in our PUB submission.

MR. BUDDEN: Okay, perhaps we can call up Exhibit 00206, and this will be my last real line of questioning. And I don't know if it's a tab but I have it here in hard copy because I do have a couple of questions about it.

00206, Madam Clerk.

THE COMMISSIONER: No, it's not an exhibit – it's not in his binder.

MR. BUDDEN: Sure, so (inaudible) yeah. Here you go.

MR. BENNETT: Thanks.

MR. BUDDEN: So what this is – and we've heard evidence from various people on this, Mr. Bennett – is that a meeting took place in – or a presentation took place in April of 2010, April 23 at The Rooms. And there's another exhibit I won't bother to put you, it's Mr. Sturge's notes. But his evidence is that that meeting was attended by: Yourself, Mr. Martin, Derrick Sturge and Chris Kieley from Nalcor. And from the province: Premier Williams; Minister Dunderdale; Gary Norris, who I believe was clerk at the time; Brian Crawley, who I believe worked in the premier's office; ditto for Elizabeth Matthews, Robert Thompson and Charles Bown, who I believe were deputy ministers. So a meeting attended by significant people.

MR. BENNETT: Right.

MR. BUDDEN: Do you recall that meeting?

MR. BENNETT: I remember the meeting at The Rooms, yes.

MR. BUDDEN: Yes.

From what we have here is the presentation, I suggest, as it was given and then pages and pages of handwritten, or you know, marginalia handwritten comments on most of the pages. And we've had evidence that suggests that may be the handwriting of Gary Norris, so that's obviously – Mr. Norris himself hasn't said that.

I would suggest – and if you look through – look at page 5 for instance, what it appears is that there was considerable discussion arising out of the presentation. So we see the preprinted thing and then there'd be some comment in the margin that, to me at least, suggests that as this was presented, discussion would ensue. Does that correspond with your memory?

MR. BENNETT: Yes, and if I recall, this is a – this is really an important transition point. It's becoming evident that Gull Island is not – is less likely to be the lead project. And so there's a lot of thinking going on about what to do next –

MR. BUDDEN: Okay.

MR. BENNETT: – and what are the appropriate next steps.

MR. BUDDEN: Okay, so this was an important meeting and I assume a fairly lengthy meeting attended by, you know, most anybody who is anybody in the energy sector of Newfoundland.

MR. BENNETT: Right, there was a lot going on at this point in time.

MR. BUDDEN: Yes.

And, again, if we look at page 5 we see a lot of detail there, the handwritten stuff commenting on the printed stuff.

MR. BENNETT: Right.

MR. BUDDEN: Okay.

Perhaps we can scroll down – and you can leaf through – we can scroll down to page 17. What this is – I don't know if you're there yet, so –

MR. BENNETT: Just getting there.

MR. BUDDEN: No sweat. Let us know when you're there.

MR. BENNETT: Okay.

MR. BUDDEN: Okay.

What we have here – the heading of this – and this is following a discussion of the Muskrat Falls and, I believe, Gull Island as well. It says: "Scenario Economics – Key Assumptions" and then it says: "General Assumptions for all cases" And then we have the preprinted says: "P75 capital cost estimates." And would you just read for us the handwritten that is immediately to the right of it?

MR. BENNETT: Okay. The note says that there's "more stress placed on the project cost," it's a "very conservative approach."

MR. BUDDEN: Okay. What do you presently recall of that conversation, Mr. Bennett?

MR. BENNETT: Oh, nothing more than that. This is over eight years ago.

MR. BUDDEN: I understand, but it was also a meeting – it's not every day you meet with the premier and the minister of Natural Resources and so on to discuss such weighty matters.

MR. BENNETT: Yeah, that's why I have nothing – I have nothing I can add beyond the note that's there.

MR. BUDDEN: Okay, well, perhaps let's see if we can refresh you by going through it. So I would suggest, given that this is a preprinted presentation that Nalcor went into this meeting with a P75 capital cost estimates. That seem obvious, would you agree?

MR. BENNETT: That would be reasonable to conclude, yes, that the work that was being done in the office was consistent with what was on the deck.

MR. BUDDEN: Okay. And consistent with all the advice you received from Westney and so forth, the P75?

MR. BENNETT: To the extent we had work from Westney at the time, yes, it would be – I mean this was the assumption we had. I –

MR. BUDDEN: P75?

MR. BENNETT: Yeah, I don't have much more to say than that.

MR. BUDDEN: Okay, well, then we have – somebody seems to be saying the P75 places more stress on the project costs. And that's true, isn't it? It does.

MR. BENNETT: It is true. Yes, absolutely.

MR. BUDDEN: Like hundreds of millions of dollars of more stress. The difference between a P75 and a P50 is hundreds of millions of dollars, isn't it?

MR. BENNETT: Yes. I think in the overall project cost it's a single digit percentage, but I'm not trying to diminish the magnitude of the difference.

MR. BUDDEN: Yes. Yes, it's a big project.

MR. BENNETT: Yeah.

MR. BUDDEN: And then there's a notation, a "very conservative approach" which a P75 is a conservative approach, isn't it?

MR. BENNETT: Yes.

MR. BUDDEN: Okay. And do you have any recollection now who may have said those things?

MR. BENNETT: No.

MR. BUDDEN: Any at all?

MR. BENNETT: No.

MR. BUDDEN: Okay.

I would suggest to you that this, perhaps, is the conversation you've spoke of where Nalcor go

in with a P75 and there's some discussion about: Hey, a P75 – that's going to cost a lot of money. It's a very conservative approach, are there other approaches that Nalcor might consider? Do you recall anything along those lines?

MR. BENNETT: No.

MR. BUDDEN: Okay. Might this be the conversation you referred to? I know you don't remember in detail, but it seemed to square with that conversation.

MR. BENNETT: No, I'm not going to speculate. I don't have any specific knowledge of that meeting and what came out of it.

MR. BUDDEN: Okay. You would acknowledge that not long after this – this is late April and Nalcor's going in with a P75. By August it's P50, isn't it?

MR. BENNETT: Yeah, for the Muskrat configuration it ended up being P50, yes.

MR. BUDDEN: Which is not a very conservative approach; it's a very aggressive approach.

MR. BENNETT: I would say is more aggressive. I'm being very careful with the use of very and not very, but I would say, yes, it's more aggressive.

MR. BUDDEN: Yeah and it's about then, I would suggest, that the word aggressive starts appearing in Nalcor's material. Would that seem about right to you?

MR. BENNETT: I don't know. I can't – and I think this was a conversation I had with Ms. O'Brien in my interview. The – I don't – I can't put my finger on places where we started talking about it in the documentation.

MR. BUDDEN: Okay.

MR. BENNETT: Yeah.

MR. BUDDEN: All right, thank you Mr. Bennett. I have nothing further.

THE COMMISSIONER: Thank you.

Thank you, Mr. Budden.

Edmund Martin?

MR. SMITH: Mr. Bennett, Harold Smith for Edmund Martin.

MR. BENNETT: Good morning, Mr. Smith.

MR. SMITH: I'm going to start, I guess, a little bit with the fact that you have a varied and extensive history as an engineer and worked in various roles. And it's my understanding from your CV that you have varied between manager, and vice-president and director of a number of organizations. And I won't bore the Commission with any detail of those; I mean those are obvious on the fact that – on your CV, which is P-01314.

So, you know, looking at those it's been suggested that there was virtually no experience in the hydroelectric area up until the time you took a position with the Lower Churchill Project in May of 2005. Is that a fair summary of the situation as of May 2005?

MR. BENNETT: I think that's fair, yes.

MR. SMITH: Okay.

Now when you took over in May of 2005, could you identify to the Commissioner what experience you needed with hydro development in order to do your job in 2005?

MR. BENNETT: So, at that point, you know, we were at the very earliest stages of our planning process. We didn't have a project. Needless to say we were going to be building – if all those pieces fit together there would be a project built. At that point we're still in the expression of interest, we didn't know if we would be building it, if we would be managing it.

You know, from that perspective, we were doing very early planning, thinking about fundamental – the fundamental view of where the business might go, what might happen with these resources? How would it be managed? There were a lot of unanswered questions at that point in time. We were effectively starting up that thinking.

MR. SMITH: Okay and –

MR. BENNETT: Very early days.

MR. SMITH: So, again, I don't like to sound like Ms. O'Brien. What was the required hydroelectric knowledge in order to do your job in 2005?

MR. BENNETT: There's not a lot specific to hydro at that point in time. These are really fundamental business questions and fundamental business planning –

MR. SMITH: And you had experience in those things in your leadership roles.

MR. BENNETT: I have had previous work with start-ups, building teams and, literally, starting things from the ground up.

MR. SMITH: And at a point in time – or is there a point in time, after being retained by Hydro, that you believe that would be important to have hydroelectric experience in terms of the nature of your job as project lead?

MR. BENNETT: Certainly, as we worked through the process I gained familiarity, but one of the most important things we did in the early stages was we hired Mr. Harrington and started bringing project methodology and experience to the table. And then building beyond that, subject matter in hydro operations design, reliability, what was needed in the team – we built that through our engineering team with qualified and experienced individuals from Hydro.

MR. SMITH: So when do you think that there's a transition between having the general knowledge of a business leader and, if you will, vice-president to organize, if you will, your team to a point in time when you really would benefit from hydroelectric experience?

MR. BENNETT: It's much closer to – much closer as we work through Decision Gate 2, towards sanction, it becomes more important, no question about that, as we do the transition from planning and all the other things that I was involved in through the environmental assessment, Indigenous consultation and all those activities. It's – you can see a transition

over a number of years as we get closer to pulling the pin on the construction project.

MR. SMITH: So at a time, sometime around DG2, how long had you been in place?

MR. BENNETT: At DG2? So that would've been in 2010? I was there five years then.

MR. SMITH: Five years. And did five years provide you with any hydro experience working with the energy corporation and Hydro?

MR. BENNETT: It helped a lot.

MR. SMITH: So, in other words, in answering Mr. Budden's question about the learning curve, you took, I take it, learning the business seriously?

MR. BENNETT: Absolutely.

MR. SMITH: Though, that by the time you go to DG2, 3 and toward sanction, you had a knowledge of the hydro business –

MR. BENNETT: Yes.

MR. SMITH: – at least?

MR. BENNETT: Yes.

MR. SMITH: Okay.

And I take it, from the evidence so far, that people with very specific hydro knowledge, okay, about building large projects, were hired, like SNC-Lavalin?

MR. BENNETT: Right.

MR. SMITH: Okay.

MR. BENNETT: We acquired those skills and put them into the team.

MR. SMITH: And were there other key points in the team, key positions in the team that have – did benefit and had the hydro experience that would be necessary to progress the project?

MR. BENNETT: So some of the early hires were directly from Hydro. So, Mr. Robert Barnes, our engineering manager, was a long-

term engineering manager with Hydro, had decades of experience. I can think of Robert Besaw, who's a senior mechanical engineer, who worked in design and in operations; worked in multiple facilities.

And I can think of Mr. Raj Kaushik, who is our senior electrical engineer, who, again, had significant and decade's worth of experience across the hydro business, and had worked – both of those gentlemen had worked in Churchill Falls, and brought their view of what they thought the utility was going to need in terms of the assets being constructed.

And in various other places, there were other people who came out of the Hydro organization. I can think of Mr. Kyle Tucker, who was responsible for the overhead transmission line design and a number of other who brought that skill set from Hydro into the project team.

MR. SMITH: And so at the time of your being retained, did you feel you were unqualified to perform the tasks that were requested of you?

MR. BENNETT: No, I didn't.

MR. SMITH: And, over time, and as you gained more and more knowledge of the hydroelectric business, would you say you were – you had value added to that position?

MR. BENNETT: I feel comfortable that I was able to add technical insight into the other activities that were going on and certain ones that – where I was heavily involved in so, you know, the environmental assessment work, the commercial work and the other activities that were supporting the development of the project.

MR. SMITH: Now, I'm going to switch topics, okay, and ask you to give us your understanding on what strategic risk is.

MR. BENNETT: So at the highest level, strategic risk is – are risks that are not readily quantifiable by members of the project team or the project estimator, who is trying to count quantities and understand the nuts and bolts of the job, things that are outside of, really, their control or their ability to forecast.

MR. SMITH: And do you agree whether strategic risk can be mitigated?

MR. BENNETT: Absolutely can be mitigated.

MR. SMITH: And in that context how would you mitigate, say, a typical strategic risk that would arise in a project of this size?

MR. BENNETT: So if I thought about the availability of labour, that is an area where there is an opportunity for active mitigation in a scenario where we did mitigate, we took steps to mitigate that risk. So availability of labour, can we identify new entrants into the workforce, can we train people to help take those jobs, can we increase the size of the labour market is one way to get at that.

Another way is to communicate with potential workers and make sure that our project is one that's on their radar and they understand that that opportunity is there and what it looks like. Another way is to increase our competitiveness with other projects so people actively decide to come to work on our project as opposed to going somewhere else.

So those are some basics examples of how you could deal with, I guess, one strategic risk.

MR. SMITH: And do you have an understanding that there are often strategic opportunities in the context of a project of this size?

MR. BENNETT: There are opportunities in the context of the business case as a whole. I think we've had a lot of conversation about the strategic risks associated with the construction, but there are certainly longer term opportunities that we can avail of if we plan our activities appropriately.

MR. SMITH: And how do they interplay? What is the interplay between the strategic opportunity and the strategic risk, for example?

MR. BENNETT: Well, if we look at it, there are a series of risks that happen in construction. Those risks may be offset by a benefit down the road or in the longer term.

MR. SMITH: Now, yesterday there was a – or perhaps not even yesterday, it was Monday, you were questioned significantly by Ms. O'Brien regarding the Emera negotiations. Did you attend those negotiations?

MR. BENNETT: I was in many of those sessions, yes.

MR. SMITH: But I take it that – were you the lead negotiator?

MR. BENNETT: No, I was part of the team.

MR. SMITH: Just part of a team.

MR. BENNETT: Yeah.

MR. SMITH: And who led the negotiations on behalf of Nalcor?

MR. BENNETT: As we get to the conclusion, Mr. Martin was heavily involved in those negotiations.

MR. SMITH: And would you still be attending when Mr. Martin was leading?

MR. BENNETT: Absolutely.

MR. SMITH: Now, I took some notes at the time and I may be not accurate, but I'm going to suggest to you what I heard, at least – or at least I think I heard.

But I understand that you told Ms. O'Brien that Mr. Martin had removed strategic risk during the discussions with Emera in order to obtain that deal with Emera.

MR. BENNETT: You can't remove the risk. You can – and I think if we look at the exhibit that was there, there was a consideration on how we priced. Like, the risk is not going to go away, right?

MR. SMITH: So my question to you is that: At any time, in your recollection of the project up to and including sanction, did Mr. Martin offer the project team an amount in relation to strategic risk for the budget?

MR. BENNETT: Did he offer –

MR. SMITH: (Inaudible.)

MR. BENNETT: Did he offer them a budget?

No, the project team was not given a budget. The direction was mitigate, manage, deal with those issues and should a situation arise, we'll have to come to grips with that.

MR. SMITH: So I take it, then, in trying to paraphrase that, that the – Mr. Martin, as the CEO and Gatekeeper, did not give the project team strategic risk amounts in their budget.

MR. BENNETT: That's right. That strategic risk was not included in their budget.

MR. SMITH: And never, ever has suggested that he would do that.

MR. BENNETT: That's correct.

MR. SMITH: And I think – you know, and I thank Mr. Budden for clarifying that the issue was not the removal of this amount, this, I think it was 6 per cent at the time. It wasn't for the purpose of getting the deal with Emera, nor was it for the purpose of getting the federal loan guarantee and, particularly, the federal loan guarantee. That was more dependent on having the deal with Emera than it was itself getting – removing strategic risk in order to get that federal loan guarantee.

MR. BENNETT: That's a fair way of saying it.

MR. SMITH: Okay.

Now, I'm going to – if I will, if I can rather, move to the issue of what happened at the negotiations, okay? There's been a suggestion that there was a strategic risk removal in order – at Emera negotiations, in order to achieve the Emera deal, but we know from your evidence that strategic risk was never part of the budget given to the PMT.

MR. BENNETT: That's correct.

MR. SMITH: So can we go and look at P-01462.

THE COMMISSIONER: Tab 67.

MR. SMITH: And I appreciate that this information only came to the Commission on November 25, 2018; however, it appeared to be relevant to the Inquiry of the Commissioner. I ask you, if you would, to read paragraph 4.

MR. BENNETT: Okay.

In order to understand that reference – and that reference being to strategic risk allowance, I think – it is important to understand that “Emera and the UaRB do not use the term or terminology ‘Strategic Risk’ in presenting risk associated with project cost estimates for the purposes of project assessment and approval; and

“B. the costs and risks assessed and included in a project cost estimate are a separate matter from the choice of terminology or language used to describe allowances for risks” as “included in project budgets or estimates.”

MR. SMITH: Okay, continue if you would.

MR. BENNETT: “While some project advisors may choose to analyze and reflect project cost risks using ‘strategic risk’ terminology, in Emera’s case, its approach to all projects including the Maritime Link project was, and is, to present a project cost estimate developed on a line by line basis to determine a project budget; including a determination of all risks represented in the base project estimate and the project contingency within the overall project budget. This is how Emera presents project cost estimates to the UaRB for approval, including for the Maritime Link project. Given the commercial arrangements and the 80/20 approach, it was, of course, important for both Nalcor and Emera to use the same terminology when presenting costs associated with project risk to all for an ‘apples to apples’ comparison of the project cost estimates for the Maritime Link and Muskrat Falls Project.

MR. SMITH: Okay.

So here we have an indication that the use of the term strategic risk, which was perhaps put into the negotiations, okay, as a negotiation point, okay, was outside the understanding of Emera as to how they would present their budget to the –

sorry – Nova Scotia UARB. Is that a fair assessment?

MR. BENNETT: I think that's a fair assessment.

MR. SMITH: So they were – you know, Mr. – I honestly can't remember his name at the time.

MR. BENNETT: Mr. Huskilson

MR. SMITH: Huskilson. Mr. Huskilson is saying that the use of strategic risk, 6 per cent or whatever, put forth in the negotiations with Emera was creating a situation of not apples to apples as far their dealings with the Nova Scotia UARB?

MR. BENNETT: That's what I see here, and that was my understanding –

MR. SMITH: Yeah. Sorry –

MR. BENNETT: – of the conversations.

MR. SMITH: So ultimately Nalcor agreed to present the budget in the same type of format that was used by Emera to the Nova Scotia UARB?

MR. BENNETT: That's how that was presented, and I think it's also important, when you're comparing this cost-sharing arrangement, that those estimates be built in a consistent manner.

MR. SMITH: So the consistent manner is not actually removing 6 per cent strategic risk, but rather conforming to what you already knew with regard to your budget?

MR. BENNETT: Right.

MR. SMITH: There was no budget for strategic risk in the Newfoundland –

MR. BENNETT: The –

MR. SMITH: – project team?

MR. BENNETT: That's right. The capital cost estimate that the project team would have would not include an allocation for strategic risk.

MR. SMITH: So effectively, the composition of the budget were effectively aligned by the negotiations?

MR. BENNETT: That's where we were trying to get.

MR. SMITH: And from your understanding at this time, or even at the time, was strategic risk – an exclusion from the budget of strategic risk an accepted practice?

MR. BENNETT: I'm not sure I follow.

MR. SMITH: Well, I'm wondering if the – and I'm talking to Mr. Flyvbjerg's concept of red meat.

MR. BENNETT: Right.

MR. SMITH: In other words, adding strategic risk is effectively adding red meat to the project team's budget?

MR. BENNETT: Yes. In terms of what Professor Flyvbjerg said, my recollection was that you don't give the strategic – you don't give a strategic risk allocation to the project team.

MR. SMITH: Yeah.

MR. BENNETT: You focus them on the job.

MR. SMITH: Okay.

MR. BENNETT: And it's an important concept for the owner or developer, but not one that you would delegate to the project team.

MR. SMITH: And in the evidence you gave this morning to Ms. O'Brien's questions, she pointed out to one of the experts suggesting, very clearly, that, you know, there should be an allocation of – for strategic risk or contingency for strategic risk and also an allocation for scheduled risk. She had mentioned that today on a number of occasions this morning, okay?

MR. BENNETT: Yes.

MR. SMITH: Now, that's what the expert said. Is it a situation where just because the expert said it, it has to be that way?

MR. BENNETT: This is a challenge when you have multiple sets of advice from multiple experts and you have to try to consolidate, aggregate, consider all of that input in order to make a decision.

MR. SMITH: For example, one of the experts – I believe it was Westney – suggested that the fuel costs for the Isolated Island should be assessed at the expected level as opposed to the reference level that was chosen. Is that correct?

MR. BENNETT: I think we – the team asked Westney for advice on –

MR. SMITH: Right.

MR. BENNETT: – which way to go on that.

MR. SMITH: And his recommendation was?

MR. BENNETT: I'm not sure. I don't think he – I actually don't think – I think that was the response. Not that I don't know. I think he came back and said I'm not really in a position to tell you what you should do there.

MR. SMITH: Okay.

MR. BENNETT: That's my recollection, but again, PIRA has different forecasts. They have expected, reference, a high and a low. And you have – someone will have to decide which one is appropriate for that apples-to-apples comparison in the business case.

MR. SMITH: So you're effectively not specifically aware that the Gatekeeper – or – and – chose to use a lower value than that was recommended by the expert. You're not aware of that?

MR. BENNETT: And I guess it's a question of which expert.

MR. SMITH: Yeah.

MR. BENNETT: That – so there's – and there's a judgment.

MR. SMITH: Okay

MR. BENNETT: Right? There's a judgment. Is – I mean, I think, at face value, if you were

going to use a conservative capital cost estimate then, in order to do an evaluation of a complex investment decision, you would probably want to have a conservative oil price forecast that goes along with it so that, if you're applying rigour to one side of the equation, you need to have a comparable level of rigour on the other side so that you're properly comparing the two alternatives.

So if we're not careful there, we could introduce bias into that decision-making.

THE COMMISSIONER: Mr. Smith, might this be a good place to break for lunch?

MR. SMITH: It'd be a perfect place –

THE COMMISSIONER: Okay.

MR. SMITH: – Mr. Commissioner.

THE COMMISSIONER: All right, so –

MR. SMITH: Just about to move on to another topic.

THE COMMISSIONER: Okay. Perfect. So we'll move – come back to that at 2 o'clock this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Mr. Smith.

MR. SMITH: Where we left off, Mr. Bennett, was a discussion about the – Huskison's commentary and how that related to the removal, quote unquote, of strategic risk. I'd just like to bring that back up, if I could, which is I think 01462, P-01462. And we were focusing at the time on number 4. And looking at number 4, Mr. Huskison seems to suggest that – and I'm picking up at the full paragraph after B:

“While some project advisors may choose to analyze and reflect project cost risks using ‘strategic risk’ terminology, in Emera’s case, its approach to all projects including the Maritime Link project was, and is, to present a project cost estimate developed on a line by line basis to determine a project budget; including a determination of all risks represented in the base project estimate”

Now, that leaves it wide open as to whether or not in Emera that the all risks situation includes strategic risk. So I thought it might be useful to look at the UARB decision, which is at P-00245. Okay.

And in P-00245, paragraph 280 please.

CLERK: Do you know the page?

MR. SMITH: That I’m afraid I can’t do. But it’s paragraph 280 [sp page 90]. There we go.

Now, in this paragraph, if we wanted to start off by saying Enerco was an expert retained by counsel to the NSUARB, and I think you’ll find that in the documents. And if we scroll down a little bit further, they talk about scheduling risks here in the decision.

And it says: “... Although tactical and strategic risks were identified, NSPML’s register of 275 risks was not fully quantified. Also, Enerco noted that NSPML attributed an overly optimistic low value to the worst delay risks associated with marine work in a narrow marine weather window.”

And the reason I’ve raised this is that if the risks were not quantified, they couldn’t have been included in the budget of Emera, in relation to its activities before the Nova Scotia UARB. At least, let’s – it appears to be logical that they can’t, or they couldn’t have, okay?

MR. BENNETT: (Inaudible.)

MR. SMITH: Yeah – okay. Okay.

Would you come to the same logical conclusion?

MR. BENNETT: They can’t quantify them, but it just stands that that’s – there’s no number in there for –

MR. SMITH: So there’d be no number in the budget if they can’t quantify it?

MR. BENNETT: If it’s not quantified.

MR. SMITH: So it would be improper to argue that Mr. Huskison’s suggestion of all risks include a strategic risk. In that – particularly with regard to schedule, and I’ll limit it to schedule because that’s all we spoken to here (inaudible) – scheduled risk, right, which wasn’t quantified tactical.

MR. BENNETT: It would appear not to be. They had identified them, but then – remember, that’s the point here, that they weren’t quantified.

MR. SMITH: Now, I’d like you to explain if you can, to the Commissioner, how deliverables for the Gate process – how they progressed within Nalcor to the chief executive – how they progressed? What was the process?

MR. BENNETT: So, I guess, looking at all of the deliverables, be it the, you know, the capital cost estimate, the various components that are in that support package inevitably had, you know, detailed work that was undertaken in support of those. They were taken, compiled, reported and then pulled together to a level of detail and ultimately condensed to a decision support package that was presented to the Gatekeeper.

MR. SMITH: I’m a little more interested in, perhaps, the mechanics of that –

MR. BENNETT: Okay.

MR. SMITH: – and that is, it is my understanding that as each of the deliverables, or group of deliverables were prepared and moved up the chain, they would be signed off by the appropriate manager.

MR. BENNETT: Yes, that’s right.

MR. SMITH: Okay. So in the case of those under the responsibility of Mr. Harrington, he would be expected to sign off; if it was Mr.

Kean, he would've signed off, and then Mr. Harrington, and then the next one after Mr. Harrington, I believe, would be you.

MR. BENNETT: Be me. Right.

MR. SMITH: So, each – in each step of the process up the chain for the Decision Gate packages, it would be signed off by the manager.

MR. BENNETT: Right. And the appropriate signatures would be on each document –

MR. SMITH: Right.

MR. BENNETT: – as we pulled together.

MR. SMITH: And what, in the context of the CEO, would he be able to determine from those signatures? What would he conclude on the fact that the signatures were on the documents?

MR. BENNETT: So he would, first of all, be able to see who prepared the work, who reviewed the work on its way up the chain.

MR. SMITH: Okay. And with the signature recommended – would that suggest approval of the person who signed off?

MR. BENNETT: Yes, if the person who signed off is in accordance with what's coming together. Yes.

MR. SMITH: So Mr. – Mr. Martin would, in that situation, receive a document signed off by the various steps in the project team – other various groups in the project team – and he could rely upon that.

MR. BENNETT: Yes.

MR. SMITH: Okay. Now Mr. Harrington testified and I don't – and I'm not as efficient as Mr. Budden when it comes to doing transcripts, okay? And I know the transcript is not in place as yet, but my understanding of how his testimony was that the schedule – work schedule – was achievable. Do you recall him testifying to that?

MR. BENNETT: Yeah. And I understand that there are – there were two documents that – there was a (inaudible) two documents that were

– that pertained to schedule. The SNC-Lavalin work indicates the schedule is achievable. The Westney analysis indicates some significant risk with aspects of that schedule and we have now two pieces of information.

MR. SMITH: So that's exactly where I want to go and determine if the inputs into those analyses – one by SNC and your project team and the one by Westney – where comparing apples to apples. For example, my understanding that the SNC schedule had approximately 12,000 lines.

MR. BENNETT: It was a lot of detail in the SNC-Lavalin schedule. Yes. Right.

MR. SMITH: And the 12,000 lines was not actually reviewed by Westney.

MR. BENNETT: For their analysis, they used a simplified version of that schedule.

MR. SMITH: Which I – my understanding is was about a hundred lines.

MR. BENNETT: I don't recall the number of lines in the schedule, so –

MR. SMITH: Yeah.

MR. BENNETT: – but we can verify that if –

MR. SMITH: So –

MR. BENNETT: – it was important.

MR. SMITH: So, the purpose of the – truncated schedule – inputs, okay, was what?

MR. BENNETT: Well, it's to stress test that schedule, and, ultimately, to identify important risks in there that need to be addressed and mitigated.

MR. SMITH: Okay. So, then – when one was looking – and one looks at Westney, it's not a test of the entire 12,000 line schedule. Is that correct?

MR. BENNETT: It – that's right. It uses a – so the major steps in that schedule.

MR. SMITH: Right. And in doing so, it's done to isolate those critical path issues in the schedule. Is that correct?

MR. BENNETT: That's ultimately what we're looking for, and to the extent that they could have a significant impact – that's the signal that we're looking for out of that analysis.

MR. SMITH: Okay.

MR. BENNETT: But –

MR. SMITH: Okay. And, so, therefore, the Westney – approach was effectively to identify the key areas, where mitigation needed to be addressed?

MR. BENNETT: It helped identify that. Now, I think, I acknowledged that a number came out of that analysis –

MR. SMITH: Yes.

MR. BENNETT: – and it's presented, and we've seen that.

MR. SMITH: No.

MR. BENNETT: Right? But it also highlighted the key tasks and activities that needed to be looked at very carefully.

MR. SMITH: Yes. But the number that came out of that, using the Monte Carlo, was based upon – not the full schedule, but that truncated schedule?

MR. BENNETT: That's right.

MR. SMITH: And my understanding is that SNC and Mr. Harrington both felt that the schedule – 12,000 lines – the SNC schedule, if you will, was possible.

MR. BENNETT: Yes. That's my understanding as well.

MR. SMITH: Okay. And that's the information that Mr. Martin would have been given regarding the schedule; that SNC and Mr. Harrington who had project experience, both believe that schedule was possible.

MR. BENNETT: Was possible? Now, he had both sets of information, but, as I recall it, there was commentary about the SNC-Lavalin schedule, and – so now we have two sets of information.

MR. SMITH: 'Cause you've mentioned earlier today that your understanding is that MHI reviewed the SNC schedule, i.e. the full schedule, and no one else had done that – up to that point in time.

MR. BENNETT: That's right. The Westney work was built from a simplified schedule, MHI had the full SNC-Lavalin schedule, that's correct.

MR. SMITH: Now if we could turn, if you will, to – P-00130.

UNIDENTIFIED MALE SPEAKER:
(Inaudible) 23? I think that's just a page –

MR. SMITH: And the page I need is 287. This has been referred to many times in the course of the – the matter – before the Commissioner.

Now, in this – this is, if you will – Ms. O'Brien called them three – I'm going to be a little more – pedantic and say, there're four. Or, if you want, three with two subs okay?

“Potential Scheduled Risk, Potential Performance Risk ..., Provincial Skilled Labour – Completion Bonus” and “Potential Skilled Labour – Wage Rate”. These are the identified key areas that require the company, Nalcor, to focus for mitigation on the scheduled issue. Okay? And there was mitigation steps taken, as I understand it, toward each of those –

MR. BENNETT: Yes.

MR. SMITH: – key areas.

MR. BENNETT: Right, toward each of these activities or each of these issues.

MR. SMITH: Okay.

MR. BENNETT: There were mitigations. Right.

MR. SMITH: And the mediation or – mitigation, I should say – the mitigation of these were put back once the mitigations were done or planned, they were put back into Mr. Westney’s company to run a further – assessment. This was one that they came up with a P3.

MR. BENNETT: That’s what I understand, yes, right.

MR. SMITH: So, so with the mitigation efforts on those topics, it still resulted in a quote unquote P3. But again, all of the inputs into the schedule, the 12,000 lines or whatever it was that SNC had developed, was not what he reviewed?

MR. BENNETT: No. As I understand, that was a further review of the original, what I’ll call, simplified Westney schedule.

MR. SMITH: Right. And in the Westney schedule, it’s my understanding that the original plan – within the 12,000 lines and then reduced down to a hundred or some truncated version – had a provision in it for six days of work, in every seven-day period.

MR. BENNETT: I understand that to be the case.

MR. SMITH: Right. And – but there was an opportunity to work the seventh day?

MR. BENNETT: Yes.

MR. SMITH: Okay. So that was a, if you will, a way of mitigating against the low end of the schedule. But Mr. Westney didn’t know that, did he?

MR. BENNETT: I’m not sure if he knew.

MR. SMITH: Okay. Not sure.

And when it came back with P3 and identified the key elements, the key risks again, did you take further steps to mitigate those risks?

MR. BENNETT: In the period up to sanction, there were definitely steps taken. So even before sanction in 2012 – so after environmental assessment release, we started working the field. So that’s how we got to the start of the road

construction. Prior to sanction, we acquired a construction camp for the site, a used camp from Manitoba Hydro, in order to put space on the ground to make sure that we were in a position to house workers for the early works.

We had construction power going to the site in 2012, ahead of sanction, and the mass-excavation program for 2013 was taken out of the civil contract and awarded as a separate package. Those are items that have come to mind as –

MR. SMITH: And –

MR. BENNETT: – specific mitigations here.

MR. SMITH: And if we look at the identified Westney four or three, at A and B, topics, okay, there’s a completion bonus provision for \$82 million. Was there a completion bonus ever agreed to?

MR. BENNETT: Not for trades.

MR. SMITH: Not for trades. Okay.

And with respect to the wage rate, was the wage rate \$70 million over the cost that was projected for those hours?

MR. BENNETT: If I recall, the collective agreement didn’t go above the wages that were in Alberta, but rather, we sort of held our ground on that one and tried to, in our communications to the skilled trades, highlight that workers who were working on the project, A, had a shorter commute to Muskrat Falls than they did to Fort McMurray and, B, you know, had more time at home because of that. So that there was – you know, that there were – we were attempting to communicate that it wasn’t simply just the wage but the amount of free time that they had in doing their job.

So we put communications around that with a strategy to make the project known to the workforce.

MR. SMITH: So, again, looking at it in the broad picture, the P1 and P3 is based upon information which is truncated from the actual 12,000-line schedule?

MR. BENNETT: It is a simplified version of the schedule for their analysis, that's right.

MR. SMITH: And I suggest to you that it may be, for that reason, really not that accurate.

MR. BENNETT: It's very difficult to, I guess, comment on the accuracy. What I was really interested in taking away from it – what are the mitigations that we need to focus on –

MR. SMITH: Right.

That was the focus –

MR. BENNETT: – in order to (inaudible) –

MR. SMITH: – of that approach, was to determine the key areas where mitigation could be applied –

MR. BENNETT: Right.

MR. SMITH: – or should be applied?

MR. BENNETT: And would have the most – would likely have the most value. So, you know, making sure that the cofferdams and excavations are complete so that the work can continue without a seasonal delay. And in the Monte Carlo analysis, a delay of, you know, several months is gonna be a big deal in that simulation.

MR. SMITH: Now, I'd like you to turn your mind to, first and foremost, the nature of the Gull Island project versus the Muskrat Falls Project.

Were the two projects the same?

MR. BENNETT: No. No, they're not the same.

MR. SMITH: Not the same?

MR. BENNETT: They're different on multiple levels.

MR. SMITH: Okay.

And what would you identify as the key differences between the two projects?

MR. BENNETT: At face value, the scope of the project – one is approximately 2½ times the

energy production of the other. It has a substantial civil-works component, with a 1.3-kilometre-long dam, significant rock-fill structure. The overall capital cost is big; the construction interval is longer. The construction interval for Gull, if I recall, is about two years longer than that for Muskrat Falls.

MR. SMITH: Well, what about the purpose for which the power was being – would be developed on those two projects?

MR. BENNETT: Gull Island, absent a significant industrial demand within the province, is an export-driven project. The –

MR. SMITH: It's an export project?

MR. BENNETT: Yes.

MR. SMITH: Okay.

MR. BENNETT: I mean, its average energy production is 12 terawatt hours per year – 11.9 terawatt hours per year – compared to the 4.9 at Muskrat Falls. We have no market for anything close to 12 terawatt hours per year in our own electrical system.

MR. SMITH: So when we look at Muskrat Falls, it's – that project was essentially – what was it being looked at in regards to – with regards to export power or – is it the same kind of export project?

MR. BENNETT: It's a smaller project with less surplus energy than Gull would have had. So to the extent that – you know, in approximate numbers, energy production from Holyrood is about two terawatt hours per year; Muskrat is about five. The gap in that short-term requirement is a lot smaller than it would have been with Gull.

So you still have – there is still a surplus energy component. There is still some export, but the revenue stream that would be derived from the export market in Gull Island is much larger than what you would expect to see in Muskrat Falls.

MR. SMITH: And was Gull Island also intended to supply and replace Holyrood?

MR. BENNETT: It could have, and we've seen iterations of Gull Island in previous development concepts where the link has been in. We've also seen it in concepts where the link wasn't there, and it was strictly an export story.

MR. SMITH: Okay. And what was the – and during your tenure as project leader?

MR. BENNETT: We had looked at – you know, we had looked at the Link, but the vast majority of production from Gull was going to be exported.

MR. SMITH: So that meant the link was a go or not a go?

MR. BENNETT: It would still depend on – I guess, two questions there: if you had the export business case, then you could look at the link, but absent the business case for Gull Island, in totality with that significant export or industrial development, really didn't have much to talk about, because you had no prospect of having a generating source.

MR. SMITH: Okay.

Now, when you looked at Muskrat Falls, just as a matter of interest, would you – in the context of Gull Island – have set up a comparator as to which was the least-cost option, as opposed to Muskrat Falls which you did set up as a least-cost option?

MR. BENNETT: Right.

I think there was a screening analysis of Gull as a potential alternative to Muskrat Falls. But in the absence of that use for that massive amount of surplus energy and the path to market and an opportunity to monetize it. There's really not very far to go. So I think there were some early analyses done, but they didn't show anything that was anything close to a business case.

MR. SMITH: I'm wondering if the differences between the development for Gull Island – the differences and the purpose for which Gull Island was primarily for, which was export power – and Muskrat Falls, okay, whether the considerations or, if you will, the approaches to the two projects would have been different?

MR. BENNETT: There was concern, you know, from the revenue side of the ledger in Gull Island that if you have a large long-term project financing arrangement you need to be certain that you're going to have the cash flow to support that.

MR. SMITH: Okay.

MR. BENNETT: Right. So that's certainly one factor in the reliance on a certain revenue stream to support the capital investment with – would require that you were going to be committing a large block of the production from Muskrat Falls to a certain revenue stream.

MR. SMITH: And what did that translate to on the ground, with respect to the two projects?

MR. BENNETT: With Gull you really need a long-term power purchase agreement with a credit-worthy offtaker to support the financing.

MR. SMITH: And what about the estimates?

MR. BENNETT: You could conclude that you wanted greater certainty that you had the revenue stream to support the capital cost.

MR. SMITH: And P75 would create that type of –

MR. BENNETT: It would create higher certainty –

MR. SMITH: Higher certainty?

MR. BENNETT: Higher confidence than maybe a P50. But certainly at – the higher the confidence in the estimate, the greater the certainty you have you're covering that cost.

MR. SMITH: Was there any plan from your knowledge, where you sat? Was there any plan to sabotage the Isolated Island, as opposed to the Muskrat Falls?

MR. BENNETT: Absolutely not.

MR. SMITH: In relation to the Isolated Island and the Interconnected Island with Muskrat Falls, what – I think you keep calling them puts and takes. What were the puts and takes in order to try and make sure that the two projects would

be operated – and I appreciate that there’s probably thousands of them, but perhaps you could just focus on some of the –

MR. BENNETT: Okay.

MR. SMITH: – big ones.

MR. BENNETT: So the ones that come to mind, you know – the Isolated case you have an oil price forecast, you have a capital expenditure in the capital asset, the Interconnected case for Muskrat and the transmission link. So we used a – I think it was PIRA’s reference case – in the Isolated scenario, and compared that to, ultimately, P50 capital cost estimates in the interconnected case.

There was no allocation for a carbon tax or other forms of carbon in the Isolated case. One could argue that there were signals that some form of carbon cost or regulation might materialize. That wasn’t included as a burden on the Isolated case.

In the context of the Interconnected case, there was no benefit from an export revenue stream, although, with the construction of the Maritime Link and firm transmission rights into New England, there was a path to monetize that surplus energy. It wasn’t included.

So, you know, in that regard, there was – there were other opportunities on the Interconnected case. There were other potential costs on the Isolated case that could be considered, you know, to – in the case, the Interconnected case you could use those to – so, mitigate some of the costs. Not the capital cost, but albeit the longer-term overall value proposition from the development.

MR. SMITH: And were strategic risks applied to either of the two options?

MR. BENNETT: No. I mean the possibility of – but I can’t think of a strategic risk in the Isolated case. You know, if we start looking at oil, we start looking at where the price of oil was going – there were commentators that were making predictions about oil both ways. We could see hyperinflation in the price of oil. We didn’t do that. We said okay, we’re gonna use CPI out beyond forecast period.

There are risks out there with, you know, with respect to environmental considerations, the acceptability of thermal generation in Holyrood. We didn’t include that.

MR. SMITH: What did you use for the probability factor – P-factor – for Isolated?

MR. BENNETT: In terms of the –?

MR. SMITH: The build, the –

MR. BENNETT: Oh, the capital –

MR. SMITH: Yeah, capital, yeah.

MR. BENNETT: – the capital aspects. I understood that it was approximately P50.

MR. SMITH: Right.

MR. BENNETT: I can’t – I need to be – I’m not certain that we actually had the same level of rigour in those estimates. And I just need to – if I just reflect on that for a second. There was no formal – we didn’t see a formal analysis. There were desktop studies. But the contingencies were not large, relatively speaking.

So I would have – you know, we can – we can get to the quality – the class of the estimate; it certainly was nowhere nearly as well advanced as the capital – the comparable capital cost estimates of – for the Interconnected case. But, in fairness, I don’t recall a specific probability analysis of those estimates – but they were certainly nowhere nearly as well-developed as what we had for Muskrat Falls. And I would impart a decent degree of uncertainty in some of those numbers.

MR. SMITH: Okay. And is it accurate to say that the – the higher the degree of engineering and the more you take it out, the greater the likelihood of increased costs?

MR. BENNETT: The greater the uncertainty in the cost. There’s no question about that, and I think – right – the Commissioner may have seen the AECEI cost accuracy curve with the increasing level of accuracy and estimates as you work from class 5 or 4 down toward class 1. So the further you have engineering definition, the less uncertainty you expect in the price.

MR. SMITH: Okay.

Thank you, Sir. That's all the questions I have.

THE COMMISSIONER: Thank you.

Kathy Dunderdale?

MS. E. BEST: Good afternoon, Mr. Bennett. I'm Erin Best, counsel for Kathy Dunderdale.

MR. BENNETT: Good afternoon.

MS. E. BEST: Former premier.

In the time leading up to the sanction of the project, did you feel that you had a competent team working for you at Nalcor?

MR. BENNETT: Absolutely.

MS. E. BEST: And if you saw areas where your team lacked experience or expertise, did you look outside to consultants to fill those gaps?

MR. BENNETT: So, many of the key people in these roles came in as consultants with previous experience. So we were, you know, drawing on our internal resources, we were looking for consultants, and a mix of both in order to fill the needs that we had. And then the project team, you know, had that thinking well-established.

MS. E. BEST: Okay. So you did feel that the gaps were filled?

MR. BENNETT: The gaps were being filled in my view, yes.

MS. E. BEST: Thank you.

At the time of sanction, did – did you have confidence in the accuracy of the CPW?

MR. BENNETT: I felt confident in the work that had been done. I knew that there were uncertainties in any planning exercise, but I also look at the contingencies that the – or the sensitivity analyses, the difference in the two CPWs and the sensitivity analyses that were completed, as well as the opportunities that weren't included in the analysis, as well as some

of the costs that weren't included in the Isolated case.

MS. E. BEST: Okay.

And at the time of sanction did you have confidence in the project cost estimates?

MR. BENNETT: The cost estimates were completed by a competent consultant who has extensive experience. And I felt that they were the appropriate people to do that job. So, therefore, yes, I did have confidence in the estimates.

MS. E. BEST: Thank you.

And at the time of sanction, did you believe that you were successfully mitigating the risks associated with the project?

MR. BENNETT: We were working hard on mitigating those and, yes, I thought we were going to successfully mitigate them.

MS. E. BEST: Thank you.

At the time of sanction, did you feel that Nalcor had provided all the information to government that it needed from Nalcor to make the sanction decision?

MR. BENNETT: I believe that that information was flowing to government, yes, that necessary – absolutely necessary information.

MS. E. BEST: Thank you.

MR. BENNETT: And I think that the – you know, the details in how we execute, while there are detailed information and topics and concepts that were being carefully considered by Nalcor, I felt that government was, you know, receiving information at the appropriate level and understanding the key risks and how the business case fit together.

MS. E. BEST: Thank you.

I want to ask you one question about the PUB reference. So from the evidence that has come out so far, I understand that when Nalcor received the reference question – sorry, when Nalcor received the request for information from

the PUB, that it was an extra workload for Nalcor and that it was – added some extra burden to Nalcor to, I guess, respond to these RFIs and provide the information that was being requested by the PUB, right?

MR. BENNETT: That's right. It was a new demand on us as an organization.

MS. E. BEST: Okay.

So, I guess, you can take from that that it would've been easier for Nalcor and everyone involved if no reference question had ever been put to the PUB, right ... just in terms of workload.

MR. BENNETT: Yeah, fair enough.

MS. E. BEST: Okay.

But the question did get put to the PUB, and government did direct Nalcor to satisfy the information request from the PUB, right?

MR. BENNETT: We did our best to satisfy the requests, albeit not as quickly as the board would've expected or hoped.

MS. E. BEST: Okay.

MR. BENNETT: But we did our best to provide the information requested.

MS. E. BEST: Okay.

So even though it wasn't the most idealistic situation for Nalcor, government insisted on it and Nalcor did it.

MR. BENNETT: It was a challenge and we worked our way through it.

MS. E. BEST: Thank you.

Those are my questions.

THE COMMISSIONER: Thank you.

Former Provincial Government Officials?

MR. T. WILLIAMS: No questions, Mr. Commissioner.

THE COMMISSIONER: Julia Mullaley, Charles Bown?

MR. FITZGERALD: Mr. Bennett – excuse me – my name is Andy Fitzgerald. I represent Charles Bown and Julia Mullaley.

I have just seven or eight questions for you and it's more or less in the line of, I guess, governance and information flow at Nalcor pre-sanction, at least to give us some background and the context of how that may or may not have affected sanction decisions.

You were the – what's your job title at Nalcor now?

MR. BENNETT: Today, I'm the executive vice-president for Power Development with Nalcor.

MR. FITZGERALD: And you've held that position for how long?

MR. BENNETT: For approximately two years.

MR. FITZGERALD: Okay and before that, you were ...?

MR. BENNETT: Vice-president, Lower Churchill Project.

MR. FITZGERALD: Okay.

So, in that context, you would be an employee of the corporation, employee of Nalcor?

MR. BENNETT: That's right.

MR. FITZGERALD: And as a senior executive at Nalcor and an employee of the corporation, I would assume that you would be familiar with Nalcor's Code of Business Conduct and Ethics?

MR. BENNETT: Yes.

MR. FITZGERALD: That would be something that would be important to Nalcor for its corporate culture.

MR. BENNETT: No question.

MR. FITZGERALD: With respect to embedded contractors such as Mr. Harrington

and I believe – was Mr. Kean an embedded contractor as well?

MR. BENNETT: He was a contractor – an individual contractor retained by Nalcor, yes.

MR. FITZGERALD: Would they be subject, as well, to the core values and ethics document that Nalcor has on its website?

MR. BENNETT: Our expectation is that they would, yes. They have, as I understand it, specific provisions in their contract to deal with things like conflict of interest and so on.

MR. FITZGERALD: Okay, so it's your evidence that – it's your expectation that the embedded contractors would – the policy on code of ethics and business conduct would be – would it be applicable to them as well?

MR. BENNETT: Right.

MR. FITZGERALD: Okay.

Two of the important core values of Nalcor, when I look at your policy, are, number one: “Open Communication – Fostering an environment where information moves freely in a timely” fashion. And secondly: “Accountability – Holding ourselves responsible for our actions and performance.” Would you agree with me on that?

MR. BENNETT: They're both – yes.

MR. FITZGERALD: Core value to the company. When the contractors come in to Nalcor, such as Mr. Harrington or Mr. Kean, are they familiarized with this policy and this Code of Conduct?

MR. BENNETT: They were with us while we were developing many of those core values conversations and would be aware of them, yes.

MR. FITZGERALD: Okay. Is there a particular orientation where that would be given to anybody – contractors – so they would know the expectation that Nalcor has upon them?

MR. BENNETT: My recollection is that conversations of the core values and other

presentations for staff are carried out across the project team.

MR. FITZGERALD: Okay, if I could please see Exhibit P-01008? I don't know if that's in your volume or not, Mr. Bennett, and I don't see the tab sheet here.

THE COMMISSIONER: It's not there –

MR. BENNETT: Okay.

THE COMMISSIONER: – so you'll have to look at your screen.

MR. FITZGERALD: I don't intend to spend a whole lot of time on this, but this was a presentation that was given to government – to Government of Canada. This was – Ms. O'Brien had this conversation with you about the quote being incomplete and it coming from a draft report. You recognize that.

MR. BENNETT: Yes.

MR. FITZGERALD: And if we can go to P-00610? This was a Validation Estimating report. And you're aware that there was a comment made in an email by Mr. Kean not to circulate.

MR. BENNETT: Right.

MR. FITZGERALD: Don't circulate. How does that conduct of putting an incomplete quote in a draft report that's going to be relied upon by the Government of Canada and telling the other employees around you not to circulate – how does that reconcile with your Code of Conduct which requires open communication?

MR. BENNETT: I can't reconcile that. I'm disappointed in this outcome.

MR. FITZGERALD: Ms. O'Brien also canvassed the issue of Mr. Harrington not being forthcoming with the schedule reserve and – sorry, management reserve and schedule risk and whatnot. I believe she used the term: Don't ask, don't tell and if it wasn't asked for, Mr. Harrington didn't provide it. Would you agree with me that the failure to provide this information is also not in keeping with Nalcor's core values of open communication?

MR. BENNETT: In terms of that review, I'm not entirely – I guess I'm not entirely certain that if the reviewer wasn't – was looking – was – if it was a question of providing specific information in response to the reviewer's question – there's no difficulty – it – you'd definitely have been provided. In that particular case, I'm not sure if the topic under discussion was, in fact, you know, consistent with the terms of reference for the review.

As a general statement, when we do these reviews, somebody looks at our work, asks for specific deliverables and then does their work based on that.

MR. FITZGERALD: Well, I accept your answer, but if one does make that decision, and one decides to withhold that information and say, well, they didn't ask for it so I'm not going to give it, wouldn't you agree with me that one also has to live with the consequences of that, because according to your core values and accountability, you need to hold ourselves – holding ourselves accountable for our actions and our performance?

MR. BENNETT: I agree with that.

MR. FITZGERALD: So if you make that decision, you need to live by it?

MR. BENNETT: Live with that, I understand.

MR. FITZGERALD: How much emphasis is placed on corporate culture and openness and core values at Nalcor when people are hired?

MR. BENNETT: That's a message that we reinforce on a regular basis within the team and within the organization for that matter.

MR. FITZGERALD: Would all the members of the Lower Churchill Project team, the core members of that team, would they have been familiar with the company's core values?

MR. BENNETT: They should be. They're almost in – to my memory, they're in every meeting room. We talk about those in our various activities. They should be aware of those.

MR. FITZGERALD: How often are your core values revisited?

MR. BENNETT: In terms of revising or –?

MR. FITZGERALD: Or having a revisit of it, looking at it, can it be improved, are we following our core values, how often is that looked upon?

MR. BENNETT: So I haven't – I can't point to a situation where they have been revised in the past number of years. They've been, as I understand it, very similar to as they are. I'm not sure if they have been revised since they were first implemented and rolled out.

MR. FITZGERALD: Thank you, Mr. Bennett.

Those are all my questions.

MR. BENNETT: Okay.

THE COMMISSIONER: Bernard Coffey – or I'm sorry, Robert Thompson. I'm looking at your name here, Mr. Coffey.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: I almost made you a party right off the bat.

MR. COFFEY: Thank you, Commissioner.

As you just heard, Mr. Bennett, my name is Bernard Coffey.

MR. BENNETT: Yeah.

MR. COFFEY: I represent Robert Thompson.

I have some questions that are going to cover a number of areas, but I'd like, of course, initially, to begin at the beginning for you and even before you arrived at Newfoundland and Labrador Hydro.

You've described, I believe, to Ms. O'Brien, you know, your prior work history, before that. Could you describe the largest project in terms of capital cost, or overall cost, that you ever took from beginning to end?

MR. BENNETT: I think in round numbers, from beginning to end, the largest investment, in the order of \$100 million.

MR. COFFEY: From beginning to end?

MR. BENNETT: That's right.

MR. COFFEY: Okay. And did you recruit – and was that a project that you actually had to recruit the team?

MR. BENNETT: I did, yes.

MR. COFFEY: Okay, so – and when was that?

MR. BENNETT: That would have been in the late 1990s.

MR. COFFEY: And over what time period did that project stretch?

MR. BENNETT: That worked over a period of approximately three to four years.

MR. COFFEY: And what type of product was involved?

MR. BENNETT: So it was a telecom network build.

MR. COFFEY: I'm sorry?

MR. BENNETT: It was a telecommunications network build.

MR. COFFEY: Oh, a build, okay.

MR. BENNETT: Yes.

MR. COFFEY: Not building, build.

MR. BENNETT: That's right.

MR. COFFEY: Okay, sure. Now, when you were hired in 2005, and you've described how that came about, you were – you indicated you were approached by Dean MacDonald.

MR. BENNETT: That's right.

MR. COFFEY: And he was then the chair of the board of directors?

MR. BENNETT: Correct.

MR. COFFEY: And in relation to that, what did he explain to you he was asking you to get into?

MR. BENNETT: So at that point in time, the expression of interest process had just kicked off. I don't think it had closed at that point. And, you know, the discussion was around sort of the very – those early planning stages and, you know, whether or how I could, you know, assist with the ongoing evaluation and, potentially, development of the concept.

So these are very early days in that planning process. We talked about the opportunity to, you know, continue that planning process and to add to the resources that were, to take that on.

MR. COFFEY: And in relation to that – planning process and resources in relation to what?

MR. BENNETT: So we had the expression of interest out; the concept of developing Lower Churchill was back on the table after – this was probably the fourth or fifth iteration of the –

MR. COFFEY: Yes.

MR. BENNETT: – development –

MR. COFFEY: Yes, right.

MR. BENNETT: – planning.

MR. COFFEY: Mm-hmm.

MR. BENNETT: And they were – at the time, the proposal was to, I guess, have somebody lead that exercise, continue the planning from where they were with the expression of interest and help plan their way through that.

MR. COFFEY: And now, in relation to that – because the expressions of interest, as I understand them, were – or request for expressions of interest was to ask parties outside of Hydro – Newfoundland and Labrador Hydro –

MR. BENNETT: That's right.

MR. COFFEY: – to provide proposals, right? And – but that would not involve, necessarily, at all, Hydro itself being involved other than as an owner?

MR. BENNETT: That's right. That was a later decision.

MR. COFFEY: So what I'm getting to is this is when you took on the job, did you understand that you – leaving those things aside – that you might be tasked with actually developing the Lower Churchill yourself?

MR. BENNETT: At that point, I didn't have – you know, at that early stage, I didn't have a particular view as to where that process and that planning effort might take us.

MR. COFFEY: Did you understand on the first day you showed up that it might take you there? Where you've ended up?

MR. BENNETT: Hadn't thought heavily about that possibility at that point in time. As time unfolded, developments happened, activities were done. Needless to say, that was a path we went down, but it wasn't front and centre in my mind at that point in time.

MR. COFFEY: I also believe in response to a question Ms. O'Brien asked, and I may have gotten this wrong, but I think you said, when you began, there were three people?

MR. BENNETT: That's right.

MR. COFFEY: Okay. So who were they? There was presumably yourself and whom?

MR. BENNETT: Ms. Joanna Harris was on the – was there. I believe Mr. Charles Cook, and I think we had an administrative assistant. Those were the three people on the team when I joined.

MR. COFFEY: So the three of them were there, and then you showed up?

MR. BENNETT: That's right.

MR. COFFEY: Okay. And you were the leader at that point?

MR. BENNETT: Right.

MR. COFFEY: And Ms. Harris, if I understand your earlier evidence correctly, was the one who had the institutional knowledge –

MR. BENNETT: She had the –

MR. COFFEY: – in relation to the Lower Churchill Project?

MR. BENNETT: Certainly in relation to the work that was ongoing in previous iterations of the development, yes, she understood what had previously happened.

MR. COFFEY: Now, the last iteration of that had occurred when?

MR. BENNETT: That would have been the 2000 to 2002 arrangements with Hydro-Québec for Gull Island.

MR. COFFEY: And that would – I'll refer to those as the Roger Grimes proposal or initiative.

The one before that was which one?

MR. BENNETT: Would have been the 1998, colloquially, Tobin-Bouchard deal.

MR. COFFEY: Tobin-Bouchard deal.

And before that?

MR. BENNETT: Before that there's a bit of a – there's a, I think, a fairly long drought. I think – and I don't know that Joanna had worked on anything prior to the 1998 arrangements.

MR. COFFEY: And then – in relation then, from your perspective, you had access to a resource, Ms. Harris, who had been involved in and had knowledge of the '98 initiative and the 2000 initiative, that's – I got that –

MR. BENNETT: Yes. Yes, that's right.

MR. COFFEY: Did you ever go back and look at what had happened before?

MR. BENNETT: We had looked – I do, at one time or another, recall seeing some of the files from the early '90s. I've seen engineering documents from as early as the mid-'60s, okay, so there was some information in the files, yes.

MR. COFFEY: Did you ever systematically go back and gather up all the information relating to the attempts to develop the Lower Churchill?

MR. BENNETT: I can't recall doing that in a systematic manner, no.

MR. COFFEY: So what research you did, in any kind of systematic way, was to avail of Ms. Harris's knowledge.

MR. BENNETT: That information in terms of what was being talked about, you know, with Quebec's pricing approaches, was useful and contemporary, but no, I hadn't gone back further than that.

MR. COFFEY: And I believe earlier today you referred to, in passing, a 1998 feasibility study, two-volume bound.

MR. BENNETT: Right.

MR. COFFEY: So that related to the Tobin-Bouchard –

MR. BENNETT: That's right.

MR. COFFEY: – initiative.

MR. BENNETT: So there were feasibility studies done for both Gull Island and Muskrat Falls, and I think there was also one for the DC link as part of that exercise.

MR. COFFEY: And just before I leave that, while it's on my mind. As we are here today, is there a comparable document for the Muskrat Falls Project?

MR. BENNETT: Compared to ...?

MR. COFFEY: That two-volume feasibility study.

MR. BENNETT: No.

MR. COFFEY: No.

MR. BENNETT: The details exist –

MR. COFFEY: I appreciate the –

MR. BENNETT: Yeah –

MR. COFFEY: – you know –

MR. BENNETT: – and that's part of the dialogue about the PUB referral. But the information exists certainly in a lot more detail today when you get to the detailed capital cost estimate and the supporting design information, but now it's a large body of electronic information.

MR. COFFEY: And the – but the equivalent of a – that two-volume feasibility, 1998 feasibility report or study was never created for the Muskrat Falls Project.

MR. BENNETT: Well, one of those –

MR. COFFEY: (Inaudible.)

MR. BENNETT: Yeah. So it was never updated and reissued, no.

MR. COFFEY: Yes.

Now Sir, I believe you indicated to Ms. O'Brien that generally you do not keep notes?

MR. BENNETT: That's right.

MR. COFFEY: Is there any reason why not?

MR. BENNETT: Part of my challenge is just the volume of information and volume of material that goes over my desk. What I try to do is deal with that, you know, in an email if I have something that needs to be –

MR. COFFEY: Okay.

MR. BENNETT: – needs to be immortalized.

MR. COFFEY: We can bring up, please, Exhibit P-00877.

THE COMMISSIONER: You'll have to look at that on the screen.

MR. BENNETT: Okay.

MR. COFFEY: Yes, this would not be – thank you, Mr. Commissioner.

Now, these are some handwritten notes of, I believe, Mr. Sturge, and if you look at the top

right-hand side of the page there, you'll see "8/8/12" – which is presumably August 8, 2012. "LCP Capex – very strange process – I (and most of Finance team) have still yet to see the DG3 Capex in any level of detail – appears that Ed/Project Team are keeping them close." Okay?

If we could bring up, please, Exhibit P-00880. Again, as I understand it, these are handwritten notes provided to the Inquiry by Mr. Sturge. Mr. Bennett, if you'll look at the left-hand side, there's a heading there, "LCP Cost Estimate 9/12/13" – which is presumably December 9 – I shouldn't say presumably, I don't know if it's September or – this would be September 12, 2013.

And so it was – and he wrote: "Ed has had multiple meetings with the project team on the" – state or status – "of the capital cost estimate but has not included me in any of these – he clearly does not want me to know where the estimate currently sits.

"As of right now, all I am aware of is the DG3 \$6.2B estimate."

Now, following on, on Mr. Fitzgerald's questions about openness, are – can you tell the Commissioner, from your perspective, how it is possible that the chief financial officer at Nalcor, over a 13-month period, made those two – what I'll refer to as "dear diary entries" – how is it possible that he would not have that information?

MR. BENNETT: I don't know. I know that Ed was thinking carefully, very carefully about the capital cost estimate and to the extent he's involved in these communications. I don't have an explanation other than that. He was giving these numbers very careful consideration and I know that he has had – he had multiple meetings with the project team. I'm not actually sure I was in all of those meetings, because if he felt that he needed to have a conversation with members of the project team, it may or may not include me depending on what was going on at the time and what I had going on.

His approach was if you needed to talk to subject-matter experts on given topics he would have a conversation with them. So I don't have

much more insight into this other than I know he was thinking very carefully about the capital cost estimate and where to go with that during this period of time.

MR. COFFEY: And at that – during the last part of 2012 and then throughout the first eight months or nine months of 2013, where were your offices located in relation to Mr. Sturge's office?

MR. BENNETT: Not far away. I think I'm – my office was two doors away from his.

MR. COFFEY: Now yourself, would you have had or known during that 13-month period – would you have had – if we could go back to, please, P-00877. The top right-hand side.

On August 8, 2012, and in that time period and, you know, in the weeks after that, would you have had – and the weeks presumably before that, would you yourself have had access to or knowledge of a level of detail as to how the 6.2 billion was calculated?

MR. BENNETT: I think back in 2012, as the estimate was being pulled together, yes I would've seen that. I think that at various points along the way that also Derrick would've seen the development of that.

So I'm a little – I'm a little bit surprised that he didn't know the high-level numbers in the estimate and I don't know if he was looking for additional detail or whether his team was looking for more detail. I don't have much to explain in terms of the basis of his note here.

But we've seen the capital cost estimate number in a variety of presentations and decks throughout the course of 2012.

MR. COFFEY: If we could bring up, please, P-00078. And P-00078 is the DG2 package for the Gatekeeper.

Now, Mr. Bennett, I asked Mr. Harrington some questions about this package, the one for the DG2 for the board and then the single DG3 package – and I'll get to that in a couple of minutes.

Scroll down please, Madam Clerk, perhaps – yeah, second page; third page. Keep going. Yes, the table of contents. And we have here – there’s an executive summary and then it goes on from there.

Mr. Bennett, do you know who decided what went into the DG2 package for the Gatekeeper?

MR. BENNETT: In terms of –?

MR. COFFEY: Its content; it’s 60-odd pages long.

MR. BENNETT: Right.

MR. COFFEY: Who decided what would be included in it?

MR. BENNETT: So the package would have been built up by the project team. I think, ultimately, it’ll come over my desk, but the members of the project team would start this draft and start pulling what they thought was the appropriate material for the package. Ultimately, it’s going to have to go to the Gatekeeper. So it’s a CEO document that’s eventually going to land on his desk.

And while I can’t put my finger on minutes or notes from a conversation with him, ultimately, that deck gets built up on its way to the Gatekeeper, to the CEO. And if there’s a gap or a deficiency in that, then I’m expecting that the Gatekeeper is going to say, okay, well, I need more information or I need additional detail in a given area.

But, typically, this document I would have expected to have been built up by the project controls team within the project and Mr. Kean would be the person who’s – I would have thought is the originator of this package.

MR. COFFEY: So, the kind of decider – because Mr. Harrington, if I remember correctly, didn’t know. He didn’t know –

MR. BENNETT: (Inaudible.)

MR. COFFEY: He didn’t know who created it.

MR. BENNETT: And I’m not entirely positive, but the typical role for the – for these

management-style documents, Mr. Kean has done a number of those.

MR. COFFEY: In relation to this – it’s dated November 16, 2010, on the first page. Is it your understanding – how did this end up on Mr. Martin’s desk? Did you bring it? You’re the vice-president responsible for this area of endeavour.

MR. BENNETT: Right.

MR. COFFEY: Did you bring it in and say: Here Mr. Martin or –

MR. BENNETT: (Inaudible.)

MR. COFFEY: – or here Ed –

MR. BENNETT: You know, I can’t remember the process by which this document was delivered to him, whether I brought it in. I can’t imagine that there wouldn’t have been a discussion with him, once it was compiled. But from memory, I can’t tell you exactly how that played out.

MR. COFFEY: Do you – did you take part in actually formulating the document? Like drafts of it, what goes in, what goes out, what the language is?

MR. BENNETT: I’m trying to think now whether I can recall, you know, specific editing in this document. I don’t have a handle on that for you.

MR. COFFEY: See if you look at page 4, please. Thank you, Madam Clerk. And go down a little bit more, please. Thank you. The attachments. The – A.1 is the Decision Gate 2 Key Deliverables, attachment A.2 is Declaration of Readiness, A.3 is IPA Pacesetter Review, A.4 is Gate 2 Independent Project Review – the IPR report, A.5 is the Readiness Acceptance Form and A.6 is the, again, Readiness Approval Form.

What I’m getting around to asking you is this, is that the Westney report, or QRA, existed before this, why wouldn’t that be part of the packages that went to the Gatekeeper?

MR. BENNETT: I think that that work had been – yeah, I actually – I’m not sure whether it

was provided separately or included in this document.

MR. COFFEY: Well, it wasn't here.

MR. BENNETT: It wasn't here, obviously, right?

MR. COFFEY: So, its omission, from your perspective, is either unexplainable or it's explained by it was provided separately.

MR. BENNETT: I don't – I can't put my hands on how that document tracked here today.

MR. COFFEY: Bring up, please, Exhibit P-00093. Commissioner, that's the package for the board at the DG2. Thank you.

And this is the package for the board at DG2. It's dated November 17, 2010. And you can see it there, Mr. Bennett, on the screen. If we could go down, please, go further into the document, just scroll down through. And there – if you could stop there. There's a table of contents, which are – I haven't done a word-for-word comparison to that for the Gatekeeper, but they're similar topics.

Continue on, please.

Okay. Just go back up. I'm sorry. Back up. Okay.

So, the actual substance of the document is not much more than 25 pages. The –

MR. BENNETT: It's a summary document.

MR. COFFEY: – summary (inaudible). But the document itself is 207 pages long. It's a PDF, right? Okay.

So, again, similar questions in relation to this package. Were you involved in the preparation of this, in deciding what went into it for the board?

MR. BENNETT: Today, I'm not entirely certain the role that I played in here.

MR. COFFEY: So to focus on this, then, in the first 2½ weeks of November of 2010, when, presumably, these two packages were being

finalized, or prepared and finalized, as the vice-president responsible for the project, you at least now can't recall whose responsibility it was to fashion and put it together and finalize the packages.

MR. BENNETT: From eight years ago –

MR. COFFEY: Yes.

MR. BENNETT: – the document that was prepared was, you know, provided to the board. I can't here today say I looked at a given portion of this document, and say that I did this versus that.

MR. COFFEY: I appreciate that.

MR. BENNETT: Yeah –

MR. COFFEY: I'll admit that, but I'm thinking about, like, who – see, control of information – whoever controls access or information is king or queen –

MR. BENNETT: So –

MR. COFFEY: – in this world –

MR. BENNETT: Right –

MR. COFFEY: – okay? So I'm getting around to then – this related to what information ended up before the CEO on one day and the board the next?

MR. BENNETT: So the Gatekeeper package is with the CEO.

MR. COFFEY: Yes.

MR. BENNETT: The board package goes through the CEO to get to the board.

MR. COFFEY: Yes. So are you saying, then, that it would be – in terms of what went to the board, anyway, it was Ed Martin's decision?

MR. BENNETT: Ultimately, I can't imagine – there's no scenario where information will go to the board without Mr. Martin seeing it.

MR. COFFEY: If we could bring up, please, Exhibit P-01174?

THE COMMISSIONER: On the screen.

MR. COFFEY: Thank you, Commissioner.

Now, you were shown this earlier today, or yesterday, and asked, I think, by Ms. O'Brien this morning. It's an email – September 27, 2010, from Mr. Kean to Mr. Singh. And this is the one you were asked about and you expressed some disapproval of, in terms of the changes.

MR. BENNETT: That's correct

MR. COFFEY: The recommendations. You recall that?

MR. BENNETT: That's right.

MR. COFFEY: And we've also seen, here – and I believe you've been taken to it – request by Mr. Harrington of Mr. Owen, and then, indirectly, Mr. Westney, to change the August 31, 2012, IPR –

MR. BENNETT: Right.

MR. COFFEY: – report.

Were you aware, Mr. Bennett, that this sort of activity was going on?

MR. BENNETT: I wasn't aware of these particular situations. There are consultants' reports that arrive in the organization from multiple locations. I know that, as a matter of course, for any of our reports, they go through a – what I'll call a review process before they're accepted as final. It's common for us and normal for us to receive –

MR. COFFEY: Sure.

MR. BENNETT: – draft reports, and then we – that the receiver may have comments and input, and those comments are provided back to our consultant, and then the report is finalized. There are a number of reasons why that could happen. There may be situations where there was information that wasn't included –

MR. COFFEY: I understand that.

MR. BENNETT: Okay. So that –

MR. COFFEY: I understand that –

MR. BENNETT: Okay.

MR. COFFEY: – there are legitimate –

MR. BENNETT: Right.

MR. COFFEY: – editing requests but, I believe, you've already advised Ms. O'Brien that – I don't think you used the word illegitimate, but you agreed with her that you didn't approve of this sort of request.

MR. BENNETT: Right. I don't think this was appropriate.

MR. COFFEY: No.

MR. BENNETT: And I guess if it – I'd also – you know, to the extent that there was a concern raised by the individuals involved, I think I also mentioned that it would have been helpful if this was a – if individuals thought this was a problem, then someone like Mr. Owen or Mr. Westney could have raised this issue with me to say, I mean, this is happening and I don't like it.

So – to the extent these communications happened at the working level and they get resolved, you know, it would be – if it were a problem, I'd like someone to tell me.

UNIDENTIFIED MALE SPEAKER: Bern?

MR. COFFEY: Presumably, you would also like your subordinates not to be carrying on that way?

MR. BENNETT: That's fair, too.

MR. COFFEY: Okay.

MR. BENNETT: Yes.

MR. COFFEY: Now, in relation to that, can you tell the Commissioner – and you spent a long time at Nalcor, and you spent a long time on this project – can you tell the Commissioner for what possible purpose those two types of requests were being made? What would the point be?

MR. BENNETT: I don't see any good point. I know that this document talks about a public report, and if somebody had a commercial sensitivity, even if that were in the report, that could have been redacted. There are other ways to deal with that. So I can't come up with a good reason why this is happening, unless it's a – unless there were an error. And it doesn't appear to be an error. This is a difference of opinion.

MR. COFFEY: And in making the requests – the change, you know, the findings, recommendations – isn't the effect – if the person agrees to do so – to in effect create a make-believe world? It's a make-believe observation, a make-believe finding.

MR. BENNETT: Or it's either not a finding at all. As I said, to reiterate, I'm not happy with this.

MR. COFFEY: Because, you know, if this sort of stuff was going on internally, and, you know – and I'm not reflecting upon you but, in effect, under your nose, okay – is there any way of knowing what else might be – might have gone on?

MR. BENNETT: Well, I guess, you know, at this stage, there is a lot of documentation that can be looked at. We have – you know, we have audit processes throughout the organization. To my mind, if this – I would've been – I would have appreciated if the consultant who received these comments and thought that they were inappropriate would come to me and help me be apprised of it.

So I'm not in a position where I can see all of the email traffic back and forth between individuals, but if this were a problem, then it would be helpful if – and useful for me to become aware of it.

MR. COFFEY: If we could bring up, please, Exhibit P-00957?

THE COMMISSIONER: (Inaudible.)

MR. COFFEY: Now, this – I believe you've been shown this; I think you've been shown this. This is Jason Kean's April 9, 2012, email to Mr. Turpin, his subordinate, and he – with a, presumably, a directive: "Do not circulate or

leave lying around." And this is a report that you never saw the draft – it's a draft report. April 9, 2012. You never saw it (inaudible) –?

MR. BENNETT: I didn't see it, no.

MR. COFFEY: And Mr. Harrington has told us he didn't see it either.

Now, in relation to this particular report provided by Mr. Hollmann, in response to, I think, some questions Ms. O'Brien asked you, you did point out that some of your subordinates had the authority – particularly on the project management team – to retain consultants within their sphere of signing authority –

MR. BENNETT: Right.

MR. COFFEY: – to do studies that they felt were needed. And you, in fact, pointed out Mr. Harrington was certainly, within his budget, able to do so, correct?

MR. BENNETT: Right.

MR. COFFEY: So the idea that someone like Mr. Kean might retain John Hollmann to do the study that is described in the draft report wouldn't be a surprise to you?

MR. BENNETT: No, in fact, it's a good practice to have someone take a look at the work and confirm that the path we're on is a good one. I mean there are lots of times where those quality assurance assessments are done as a matter of course. And I think we look at any of our third party work, it's intended to do exactly that.

MR. COFFEY: Now, Mr. Kean at the time reported to Mr. Harrington and Mr. Harrington to you, and neither you nor Mr. Harrington saw the draft report, correct?

MR. BENNETT: Correct.

MR. COFFEY: Now, Mr. Turpin, who I gather is Mr. Kean's subordinate, did see it and was told.

MR. BENNETT: Yes, he would.

MR. COFFEY: Mmm.

MR. BENNETT: Looks like the email is forwarded.

MR. COFFEY: Circulated.

MR. BENNETT: Right.

MR. COFFEY: So might this be a situation or reflect a situation where Mr. Kean had taken the initiative to obtain a consultant's report from a reputable consultant, okay, and got a report that was too much of a hot potato to pass up the line to Mr. Harrington and yourself?

MR. BENNETT: And the only thing I can say in response is: To what end? Like, that's not a good outcome –

MR. COFFEY: Oh –

MR. BENNETT: – if he has feedback, right? So I struggle with the benefit of not taking the action. And I think when I read the executive summary in the report, you know, there was good feedback and there were also some positive comments.

MR. COFFEY: Oh yeah. Okay, yeah.

MR. BENNETT: So I'm not – I don't – I can't see any good reason for someone to say this thing is not perfect, therefore, I'm not going to let it circulate. There's no good reason not to take it – take action, first of all, take the recommendations to heart and then do something with them.

MR. COFFEY: And so in relation to that then, you had no idea that this sort of activity was going on?

MR. BENNETT: I had –

MR. COFFEY: This change in recommendations, kind of deep-sixing a report, a draft report, that kind of thing, you didn't know that was going on?

MR. BENNETT: No.

MR. COFFEY: So ...

MR. BENNETT: So we have a couple – we have a few examples here. There are lots of

other consultants' reports that we have in the organization that I've never heard anything, you know, like this happening. And I don't see any good that comes of it, to be honest.

MR. COFFEY: If we look at, please, Exhibit P-00121.

THE COMMISSIONER: Just wondering, Mr. Coffey, would this be a good spot to break?

MR. COFFEY: Oh, we can break, yes. That'd be great.

THE COMMISSIONER: Okay, thank you.

MR. COFFEY: Sure. Thank you very much.

THE COMMISSIONER: Okay, so let's take our 10-minute break then.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Mr. Coffey?

MR. COFFEY: Thank you, Commissioner.

We were with Exhibit P-00121.

This is – Mr. Bennett, this is the Decision Gate 3 support package, November 2012, for the project.

This one is 525 pages long, and as I understand it, there – the same package, and I stand to be corrected – but as I understand it the same package was used for the Gatekeeper and the board.

Is that your understanding?

MR. BENNETT: Oh, I think that's the case.

MR. COFFEY: And similar questions as to the ones I asked about the other DSPs.

Were – do you know who decided what went into this support package?

MR. BENNETT: I can't put my finger on the various elements and who put which pieces in the package.

MR. COFFEY: Even deciding who – what should go in the package, which is arguably more important.

MR. BENNETT: Yeah, I can't – again, I can't confirm the path by which that – the package was accumulated and the various pieces were put in.

MR. COFFEY: So, who, if you don't know –

MR. BENNETT: Well there –

MR. COFFEY: – and Mr. Harrington has told us he doesn't know, can you direct me to someone who (inaudible) who does or would know (inaudible)?

MR. BENNETT: Well, like – you know, this package – again, this package is drawing together a number of different people in it, different subject areas. The DG3 deliverables were contained in a separate document that guided the development of this package. Any number of people would have been involved in the input, the various functional people who are responsible for the functions that go into this.

The editor, to want – for want of a better term – I can't point you towards who the editor was.

MR. COFFEY: That's a good term, editor. Who did the editing?

MR. BENNETT: Right.

The path of – the path by which this document flowed should be relatively easy to pick out of the email documentation that we have. I'm sure that there are various drafts of this document, as it's compiled by – there was certainly a number of people involved in the compilation of this package.

MR. COFFEY: And a study, then, or analysis of such email traffic and the contents of it, might

lead one to figure out, well, who decided what should go in and/or what should be taken out.

MR. BENNETT: Absolutely.

MR. COFFEY: Okay.

MR. BENNETT: Right.

MR. COFFEY: Thank you.

MR. BENNETT: The end of the process – the package was –

MR. COFFEY: Mr. Martin's responsibility.

MR. BENNETT: Right – this goes to the Gatekeeper.

MR. COFFEY: Now, bring up, please – just gonna – different topics now – P-01319.

THE COMMISSIONER: Tab 16.

MR. COFFEY: Thank you, Commissioner.

Yes. This is the – an email involving notes from our PUB strategy meeting – Ms. O'Brien – it's February 6, 2012 – Ms. O'Brien asked you about this –

MR. BENNETT: Right.

MR. COFFEY: – remember that?

I could, please – I could just scroll down through this a little bit, please? Okay, and – just a second. Okay go back up. All right, there. Thank you.

And – now here – as you'll see on the page here – this is from Dawn Dalley to Tom O'Reilly; D. Fleming at Cox & Palmer; yourself; Charles Bown; Don Burrage; Paul Harrington; Paul Humphries; Ed Martin; Karen O'Neill; and Brian Crawley.

And, bearing in mind that – well, I'm gonna suggest to you – at that point in time – this would be 2012 – were you aware that Don Burrage was the deputy minister of Justice?

MR. BENNETT: Yes, I would have known that; I would have worked with Mr. Burrage on any number of files.

MR. COFFEY: And were you aware that Tom O'Reilly is – I gotta give Tom his due – is one of the most senior counsel in the province

MR. BENNETT: Mr. O'Reilly, and I think it might be – it was Doug Fleming? – were both counsel that were retained by Nalcor for the PUB hearing.

MR. COFFEY: And then in relation to the idea of a – I believe this is about – if you just go down a bit, please, just go down, keep going. Yes, there, and keep going please. Right there.

There's a steering committee which includes Mr. O'Reilly, Mr. Fleming, Dawn Dalley, Mr. Bowen, Ms. O'Neill, Mr. Burrage, and yourself. So the question I have for you in relation to that is, did it ever cross your mind, bearing in mind who else was on this committee, that there would be any impropriety involved in government personnel, including the deputy minister of Justice, being a member of this committee – did it even cross your mind?

MR. BENNETT: Time?

MR. COFFEY: Yes.

MR. BENNETT: No.

MR. COFFEY: That's my – that's the question I have, thank you.

MR. BENNETT: Yeah.

Just so I can clarify it here, Commissioner, for the record, I named Mr. Fleming incorrectly, his name is here. I said it was Doug Fleming. That was incorrect.

MR. COFFEY: Yes, yeah, yeah.

MR. BENNETT: It's Denis Fleming.

MR. COFFEY: Yeah, yeah.

MR. BENNETT: So that's been shown here on this –

MR. COFFEY: Yeah. Members of the legal community –

MR. BENNETT: – on this page.

MR. COFFEY: – would know better, yes.

In another matter again relating to the idea of independence and propriety or impropriety – can you bring up, please, P-00038. Now these are – this is a copy of the text of the terms of reference to the PUB, and reference question.

MR. BENNETT: Yes.

MR. COFFEY: And the second sentence, openly, and I'm going to suggest boldly, states the following: "It has been determined that the least-cost option for the supply of power to the Island interconnected system over the period of 2011-2067 is the development of the Muskrat Falls generation facility and the Labrador-Island Link transmission line, as outlined in Schedule 'A' attached hereto (the 'Projects'), as compared to..." and it goes on from there.

So the government's position, I take it, was openly here being stated. The government had decided, you know, had been determined – it has been determined for the government – I don't know if government had, but – it has been determined, presumably by Nalcor, and the government wasn't taking any issue with it, were they?

MR. BENNETT: Well these are government's terms of reference.

MR. COFFEY: Yes.

MR. BENNETT: And, you know, the only determination that – or the determination, I wouldn't say the only – the determination that I was aware of at that time was the DG2 recommendation.

MR. COFFEY: And the idea that government – which is, you're a corporation shareholder and sole shareholder – supported this development, or proposed development, that was openly known everywhere, wasn't it? I mean everyone knew the government supported it.

MR. BENNETT: For a host of reasons, yes.

MR. COFFEY: Yes, and I appreciate that.

MR. BENNETT: Yeah, yeah.

MR. COFFEY: But what I'm getting at is this, because this is not – this was not a situation where there was a reference to the board of the question and the government had not made known its views beforehand. This was not – this was a situation – this was openly known in our society. Nalcor was in favour of this and government was in favour of it. Correct?

MR. BENNETT: Based on the information –

MR. COFFEY: Yes.

MR. BENNETT: – the analysis that was complete, yes, we were on the same page.

MR. COFFEY: And it was simply a situation where the PUB was being asked for their view, them being a quasi-judicial body? They're being asked to express an opinion.

MR. BENNETT: Yes and I think that's basically the reference question. Report –

MR. COFFEY: Yes.

MR. BENNETT: Review and report back on whether that that assertion up above is, in fact, I guess, accurate.

MR. COFFEY: Now, in relation to your dealings with the government personnel, I understand you chiefly dealt with Mr. Bown, if you had to pick a –

MR. BENNETT: For the most part, yeah.

MR. COFFEY: Most often, yes.

MR. BENNETT: Yeah.

MR. COFFEY: But you would have attended meetings where not only Mr. Bown was, but where other government officials were.

MR. BENNETT: Yes.

MR. COFFEY: You've told Ms. O'Brien – if we could go, please – no, I'm (inaudible) to but it's not. It won't align; I'll bring it up myself.

Bear with me, please, Commissioner.

THE COMMISSIONER: No problem.

MR. COFFEY: You were asked by Ms. O'Brien, of course, about the dealings with Emera in 2010. And I believe generally that's on pages 80 to 82 of the draft transcript of your evidence Monday past.

And she put it to you: And was that decision communicated to government, your decision to take contingency reserve risk amounts out of the estimate for these purposes? Was that communicated to government?

And you responded: I'm not sure how the pricing considerations of these negotiations ultimately were communicated to government, okay? And, then, she said: Okay. And you said: I don't have an answer there.

She went on, as Ms. O'Brien does, to be certain: Okay, so you didn't communicate anything to government? And you responded: I would not be communicating this type of information directly to my contacts at government.

Okay? That was your evidence. Can you tell the Commissioner, please, why? Why not?

MR. BENNETT: The – I guess the information – and I think we actually have talked about the – again, about this topic with Ms. O'Brien, that the various negotiations, pricing considerations, outcome of the negotiations, various activities that are being discussed, there are – you know, in terms of the details that are going on, on a day-to-day basis, I look to Mr. Martin who has a relationship with various individuals in government, be it premier, minister; we also speak directly to Cabinet at appropriate times.

That the aspects of those negotiations as they're unfolding and working towards a conclusion, I didn't see that it was my role to independently engage on those negotiations and that work until it was completed, at which point in time, then there would've been a more fulsome discussion, led by Mr. Martin, to address those issues as things come together.

So there were lots of activities that are happening, you know, throughout the

organization that need to continue and that we have something to brief on. In some areas, representatives of the province were directly engaged; in other areas – so, the federal loan guarantee being an example of that. The later work with Emera – once we get to the commercial agreements, there are representatives from government directly involved. So there's always –

MR. COFFEY: I appreciate that.

MR. BENNETT: The process I'm getting to –

MR. COFFEY: Yeah.

MR. BENNETT: – is that I didn't see a reason to share every detail of every act.

MR. COFFEY: Uh-huh.

Yeah.

MR. BENNETT: And there's lots –

MR. COFFEY: I'm not – yeah, I'm not asking about every detail, okay?

MR. BENNETT: Right.

MR. COFFEY: I'm asking you about a significant detail, such as the half a billion dollars relating to strategic risk, okay, and the P1/P3 estimates.

MR. BENNETT: Right.

MR. COFFEY: The schedule estimates, so ...

MR. BENNETT: So, in my view, the broader conversation about all of those issues – how that risk is addressed, what the overall business case looks like – I would've looked to Mr. Martin to discuss that –

MR. COFFEY: If –

MR. BENNETT: – as an overall –

MR. COFFEY: So if it was going to be – if government was going to be told, Mr. Martin was going to do the telling.

MR. BENNETT: On something significant like the overall business case –

MR. COFFEY: Yeah.

MR. BENNETT: – of the project, yes.

MR. COFFEY: Yeah, and those two particular aspects of the overall business case for the project, because they are significant aspects, aren't they?

MR. BENNETT: There are parts of it, but there are other –

MR. COFFEY: Oh, there are other ones.

MR. BENNETT: There are other maybe more significant factors as well, so that I looked at that and said, okay, well, there's an overall discussion that has to be had about the overall investment decision or not. And I was of the view that that was a conversation that needed to be had by Mr. Martin.

MR. COFFEY: And did you ever – even yourself, as I understand it, never took any steps to ascertain from Mr. Martin, clearly, that conversation had been had.

MR. BENNETT: I didn't.

MR. COFFEY: No, that's not – you did.

MR. BENNETT: No, that's right.

MR. COFFEY: You never went to Mr. Martin and said: Look, I want to be certain, have you told them – in very explicit language.

MR. BENNETT: I can't recall –

MR. COFFEY: You didn't have that –

MR. BENNETT: – the specific –

MR. COFFEY: – kind of relationship with him?

MR. BENNETT: Well, I had a close relationship, but I think the point I'm getting to is that on this overall question, needed to have a briefing on the progress of everything and have all of the issues on the table. And there were,

you know, long discussions, multi-day briefings where you get into the whole perspective on all aspects of the project, as opposed to picking out one item and saying, okay, well, I need to talk about that in – as a specific item.

MR. COFFEY: So – and as an example, in all the time – all the dealings you had with Mr. Bown, you never saw fit to tell Charles? And you know Charles on a first-name basis.

MR. BENNETT: Absolutely.

MR. COFFEY: And you never saw fit to tell him about there's a half a billion dollars sitting out here, you know, like, Mr. Martin, you know, may or may not have told you about and it's not included in the capital cost –

MR. BENNETT: Well –

MR. COFFEY: – estimate.

MR. BENNETT: Right. So the whole question of what was in the capital cost, the sensitivity analyses, the preference in the business case, the other opportunities, so when that conversation is had, it needs to be all had. And the other point on the strategic risk is that it needs to be mitigated and active steps needs to be taken there.

MR. COFFEY: (Inaudible.)

MR. BENNETT: So this is the challenge with this, and I think I've had this conversation a couple of times now, that there's a broader context that needs to be –

MR. COFFEY: Yep, (inaudible.)

MR. BENNETT: – explained around it.

MR. COFFEY: Mr. Bennett, I appreciate that.

MR. BENNETT: Okay.

MR. COFFEY: But, you know, as an example – and he's not my client – but Charles Bown was at various – at one point as a direct subordinate of my client, and, subsequently, again a subordinate as a deputy minister in the chain of command in government. So I want you to address why you would not tell Charles – and

I repeat – I'm using his first name purposefully here. You know him, why you wouldn't tell him that, look, Charles, that the schedule, that's a long, long shot.

MR. BENNETT: One –

MR. COFFEY: Why wouldn't you simply come out and tell him that? Because you knew that his boss – his bosses were communicating that – is in effect, if not a sure thing, certainly something that was reasonably contemplated; the schedule would be kept – there'd be July 2017 first power.

MR. BENNETT: I think our briefing information in October of 2012, when we did sit down with government, actually didn't have that first power – we said the first power was in 2017. So –

MR. COFFEY: Yeah, well, okay. And the MHI report specifically –

MR. BENNETT: (Inaudible.)

MR. COFFEY: – we looked at that today –

MR. BENNETT: Says –

MR. COFFEY: – says July 2017.

MR. BENNETT: –the target that the team was working towards was 2017.

MR. COFFEY: Is July –

MR. BENNETT: July –

MR. COFFEY: – first power July 2017.

MR. BENNETT: Okay.

MR. COFFEY: And wouldn't you acknowledge that, in a briefing, in a deck, to say first power is 2017; well there's nothing – they just left out the July. If you're kind of an analytic mind, unless you're gonna get into cross-examining, you know, Mr. Bennett, about well why isn't it July anymore? Why, you know – what month is it?

MR. BENNETT: It's –

MR. COFFEY: Unless you're getting into that, why wouldn't you just simply tell the man?

MR. BENNETT: Because in order to have that conversation, you need to have the whole conversation about all the considerations and that was one that I felt was appropriately dealt with by Mr. Martin.

MR. COFFEY: So you knew the difference. You –

MR. BENNETT: I had one piece of information with conflicting information from SNC-Lavalin and other aspects of the business case that – and I wouldn't say – I should be careful saying it was conflicting – it was different information. It was different information from SNC-Lavalin that offered a different insight and was by no means a complete and final story.

There were other activities going on with respect to mitigation, and I need to be careful that I'm not repeating many minutes of conversation.

MR. COFFEY: And over the period from the fall of 2010 until December of 2012, I'm gonna suggest to you that you spent many, many, many hours in Mr. Bown's company. You attended a significant – you spent a certain number of hours in the Lower Churchill coordinating committee meetings.

MR. BENNETT: Yes.

MR. COFFEY: Correct? They're – they involve yourself in particular and a bunch of deputy ministers, generally, and other personnel from government. And in all those meetings, nothing about, you know, the problem with the schedule, potential problems with the schedule, like, the real problem. We got a report telling us this is a long shot. Back in 2010 we left out a half billion because of the UARB problem.

It never occurred to you that you should, as, you know, you have a fiduciary duty to your corporation but you have a relationship with these people from government, and you never saw fit to pass on that information.

MR. BENNETT: Saw that the appropriate path for that –

MR. COFFEY: If it was gonna happen it was Ed.

MR. BENNETT: – was through Ed, yes.

MR. COFFEY: Thank you.

You've been asked – and it came up in Ms. O'Brien's questioning – about – and I think someone else – it may have been phrased in terms of point of no return, if not, that's what was meant in terms of the projects development. And do I understand correctly to suggest – or your view, your own view is that – and although Ms. O'Brien, I think, took some issue with it that, yes, sanction was important, but the point of no return was financial close; the November 2013 final signing of all those legal documents?

MR. BENNETT: Yes.

MR. COFFEY: And the exchange of money.

MR. BENNETT: Right.

MR. COFFEY: That's –

MR. BENNETT: And the commitment to the Government of Canada that –

MR. COFFEY: That's – yeah.

MR. BENNETT: – that we're going to finish.

MR. COFFEY: Well, that's the last signing of the agreement, right?

And that's certainly from a legalistic perspective. That's your understanding. You're not a lawyer, but you're – you've been given an understanding, that was the point of – we sign those agreements, we're done.

MR. BENNETT: Yes.

MR. COFFEY: We're on the way.

If we can bring up, please – and this is just the final point – P-00926.

THE COMMISSIONER: There on your screen.

MR. COFFEY: Thank you very much, Commissioner.

This is the DG3 Alignment Session August 3, 2012. We've seen it quite a number of times here. Page 34, please. That's the House of Assembly debate. Page 35, please. House of Assembly debate. Page 36, please. House of Assembly debate, and page 37, please. Thank you. House of Assembly debate.

Now, I believe when you were asked about this, you were asked, I think, about – to express a view as to the propriety or otherwise of Nalcor being involved in some of the comments that are on some of the slides. But would it be your understanding that this would've been a joint effort by Government of Newfoundland and Labrador personnel and Nalcor personnel, the preparation of this slide deck?

MR. BENNETT: I –

MR. COFFEY: Bearing in mind some of the subject matter.

MR. BENNETT: Yes.

MR. COFFEY: Yes, and if one wanted to ascertain if that was the case, the way to do that, would you agree, would be to check the actual email traffic?

MR. BENNETT: Yes.

MR. COFFEY: No questions to how it got created, right?

Okay, thank you.

Thank you, Commissioner.

THE COMMISSIONER: All right, Todd Stanley, Terry Paddon?

MS. VAN DRIEL: Good afternoon, Mr. Bennett. My name is Gerlinde van Driel, I represent Terry Paddon and Todd Stanley.

So just a comment you made in response to a question by my colleague, Erin Best, and that is in response to her question whether the government, at sanction, had all the information that they required.

Your answer was: At sanction, yes. Absolutely necessary information. The absolutely necessary information had gone to government.

So that puzzled me a little bit because it seems to connotation that there is absolutely necessarily information, then there's a whole host of other information necessary, perhaps, that did not go to government. Did I misinterpret what you were saying there?

MR. BENNETT: I think I was – I'm trying to bridge the vast volume of information that we have inside the organization in relation to the execution of the work. The details that are in every report that we have and how that the – matters relating to the ultimate decision or communicate to government. So, I think, my point is – and I think, I talked about it in more detail in response to different questions: that that work has to be interpreted, and information is provided to government; recommendations are made; and supporting documentation and analysis, and commentary is provided. So I looked at that, you know, from my perspective, as that process unfolded – that the information the government needed was ultimately provided to them.

MS. VAN DRIEL: Okay. So, in your view, absolutely necessary information then would not include these strategic risks that we have heard so much about in the last couple of days.

MR. BENNETT: So as I understand it the conversation that happened with government was that there are risks associated with the project. There are opportunities associated with the project. This is – there were sensitivity analyses provided that looked at the consequences under various circumstances and that information has been captured in multiple reviews and, as I understand, has been discussed with government. So there were lots of details in our organization – risks, risk mitigation plans, mitigated, unmitigated and mitigated risks – that there's a lot of work going on, but the conclusions or the summaries associated with that, as I understood it, were provided to government at a level of detail and the reviews were done to inform that decision making.

MS. VAN DRIEL: My understanding is from the evidence so far, is that the government really

had no idea about this concept of strategic risk and that was some notion that it had fairly early on, it was there, but had been removed from the assessment of what this whole project would cost.

MR. BENNETT: So it was not in the capital cost budget that was given to the project team communicated publicly. I agree with that. And –

MS. VAN DRIEL: Right. And because, I think, your evidence is that the strategic risk, such as it is, was actually not removed at all. It was in response to questions of Mr. Smith. It was something that Nalcor knew and it wasn't removed from the budget, when you did your negotiations with Emera, but it was there –

MR. BENNETT: A strategic risk exists.

MS. VAN DRIEL: You can't remove that.

MR. BENNETT: You need to mitigate it. (Inaudible.)

MS. VAN DRIEL: And you need to mitigate it –

MR. BENNETT: – and I talked about that.

MS. VAN DRIEL: – or if you can't mitigate for it, then you need to quantify it. Correct?

MR. BENNETT: That exercise was gone through.

MS. VAN DRIEL: Right.

MR. BENNETT: And, it – but the risks need to be mitigated. There are – I talked about other aspects of the business case, if there is a fulsome conversation about the business case and that conversation with the province was led by Mr. Martin – to have that full conversation.

MS. VAN DRIEL: Right. And I also understand your evidence to be that the project team is not given – a quote unquote – budget on strategic risks. They need to focus on the project, you said, and strategic risk is left for the owner. That is your evidence earlier on.

MR. BENNETT: The residual risk is something that is not – so that risk is not given – the

funding for that risk is not given to the project team, it is not included in their capital cost budget.

MS. VAN DRIEL: Right, because as your evidence is, it's left to the owner and the instruction from Mr. Martin that respect were, and I'm just quoting your evidence, is that we need to mitigate, manage and deal with it when those risks arise.

MR. BENNETT: That's correct.

MS. VAN DRIEL: Right.

MR. BENNETT: The important point being mitigation, to reduce the magnitude of the exposure.

MS. VAN DRIEL: Okay.

So, but it is ultimately then left to the owner to either, well, to deal with it, to finance it, to pay for it when it occurs.

MR. BENNETT: Yes.

MS. VAN DRIEL: If mitigation hasn't really been sufficient to reduce it to virtually zero.

MR. BENNETT: That's accurate.

MS. VAN DRIEL: Right.

So if it is left to the owner, then – and the owner doesn't have the money to pay for that, being Nalcor, where would they go for that money?

MR. BENNETT: So, then needless to say, then that's a question for the province and the point on – I guess the conversation that, I understood, happened with the province was understanding what the province's ability to fund the cost overrun could or would be.

MS. VAN DRIEL: But in order for the province to make that determination they need – I'm putting that to you – they need an idea, a very good idea based on a very good cost estimate what their potential exposure is.

MR. BENNETT: So, the potential exposure could be bigger than the cost estimate. So it's important to go beyond that and actually look at

what the province can afford. And I understand on the financing side of the conversation that that was the conversation that was had. What – how much funding could the province provide, which is, I think, a number that may be quite a bit more than the strategic risk analysis to be able to say, in response to other questions, well, where is a go/no-go point? At what point could the, you know, like what – to what extent can the province fund? That's a really important question, and it's more than the view of what the strategic risk analysis coming out of the project is.

MS. VAN DRIEL: That may be so, but I think that if you were to guarantee somebody else's loan, that before you do that you want to have a really good idea what you're really putting your signature on. You want to have a good idea how much can be covered, how good is the estimate and how much is my exposure going to be, and what for?

MR. BENNETT: I agree with that.

MS. VAN DRIEL: Right.

MR. BENNETT: But that stress test would invariably take us past, in – to my mind, what that strategic risk analysis of the project was.

MS. VAN DRIEL: The evidence we have, so far, is that the province understood that there was an estimate contingency built into the reserve; that there was at some point maybe a contingent equity, and that was then reclassified by somebody in Nalcor to a strategic risk between 300 to \$600 million.

The concept of strategic risk, nobody so far in government had –

MR. BENNETT: Okay.

MS. VAN DRIEL: – heard of.

MR. BENNETT: I think the question, as I understand it, the question of a requirement for contingent equity to deal with an unexpected cost overrun is definitely a conversation that was had with government, and that number, the magnitude of that number, is very important.

MS. VAN DRIEL: Absolutely.

MR. BENNETT: And it's a bigger number than the strategic risk analysis was indicating.

MS. VAN DRIEL: Yeah, and I'm not sure that that was clearly communicated to government.

That's all I can say on that.

MR. BENNETT: So, I guess the nature of that communication is probably gonna be addressed a little bit later in this proceeding. I suspect Mr. Martin will have a lot to say about that and we can go from there.

MS. VAN DRIEL: So far we have no documentation –

MR. BENNETT: I –

MS. VAN DRIEL: – to –

MR. BENNETT: I understand –

MS. VAN DRIEL: – support that.

MR. BENNETT: I understand.

But the question of contingent equity, the need to potentially fund a substantial cost overrun, in terms of what the province might have to do in a no-go or off-ramp situation, is much bigger than this strategic risk question that's been looked at by the project team.

MS. VAN DRIEL: Right, yeah.

I will – we'll wait with bated breath for some more evidence on that.

Thank you.

THE COMMISSIONER: Yup.

Consumer Advocate?

MR. PEDDIGREW: (Inaudible.)

THE COMMISSIONER: Let's start, because I'd like not to have to sit tomorrow morning at 9, but if we need to, we will.

I'm worried that I'm not gonna get the agreement of everybody here, and I don't wanna push my luck. We may have to sit late tomorrow

night, so I think we better use the time that we have this evening.

MR. PEDDIGREW: Good afternoon, Mr. Bennett.

MR. BENNETT: Yeah.

MR. PEDDIGREW: My name is Chris Peddigrew and I represent the Consumer Advocate, so the representative of the ratepayers of the province.

Some of the questions I had for you have been asked, so I'll do my best not to, sort of, go over ground we've already covered.

Just one question on – and I can't remember who asked it to you a little while ago about Gull Island, but there was – I think it might've been Mr. Smith about the feasibility of Gull Island. Would it be fair to say that other than a route through Quebec, Gull Island is not a feasible project?

MR. BENNETT: Gull Island could've been feasible with a large-scale industrial customer in Labrador. So if – I mean, a number of previous iterations of the project had looked at, you know, an aluminum smelter or some other large-scale development in Labrador. So that would've been an alternative that wouldn't have taken us through Quebec. Technically, you could contemplate another Maritime route into a more central location in the Maritime provinces that would not include Quebec. But those alternatives of – are all challenging as well.

But I guess in summary, I wouldn't conclude that the only way to get Gull Island is through Quebec. I would acknowledge that it's likely – given the transmission system, the most likely feasible one.

MR. PEDDIGREW: Most practical probably.

MR. BENNETT: In all fairness.

MR. PEDDIGREW: Okay.

And you said as well, I believe again in response to a question from Mr. Smith, that Gull Island needed a customer, needed a PPA in order for it to be feasible. Somewhere to sell the power

because there was so much excess power, is that –?

MR. BENNETT: That's right. There's on average 11.9 terawatt hours of production annually from Gull Island. That is a – that's a large block. That's almost – (inaudible) numbers, I think that's what the Maritime provinces use –

MR. PEDDIGREW: Right.

MR. BENNETT: – on an annual basis. So it's a big block.

MR. PEDDIGREW: And – but the same could be said for Muskrat Falls. It needed a customer. Needed somebody who's – that was the ratepayer of the province that ended up being, but –

MR. BENNETT: As it turned out here, yes.

MR. PEDDIGREW: Right.

Just some questions about – just moving on to a different topic: Wade Locke was engaged by Nalcor, I think, at certain occasions.

There's a presentation that Mr. Locke gave in early 2012 about the Muskrat Falls Project and it turned out after the presentation – well, it was discovered that certain transmission costs weren't included in the presentation. Are you familiar with that issue?

MR. BENNETT: That's ringing a bell, yes.

MR. PEDDIGREW: Okay.

And do you know – Mr. Locke's, like, the source of his information, would that have been Nalcor?

MR. BENNETT: He could've received information from us. We had, you know, lots of information published at the time. But I do believe that there were inquiries from Mr. Locke to Nalcor in the run-up to that.

MR. PEDDIGREW: And so after the presentation, how – do you know how it was discovered that the – those transmission costs

weren't included in his presentation? Was that discovered by Nalcor or by Mr. Locke?

MR. BENNETT: Oh, I can't remember. I think we observed it, but – I know that the issue did come up. I can't remember at this point who started the ball rolling.

MR. PEDDIGREW: So you don't know if you reached out to him or he reached out to you?

MR. BENNETT: The initial – whether there was an initial phone call – no. I know that there was a discussion about some of the details in that presentation.

MR. PEDDIGREW: And at the time of the presentation, was Mr. Locke – was that the first engagement Mr. Locke had with Nalcor or were there ones prior to that, prior to 2012?

MR. BENNETT: In terms of his engagement –?

MR. PEDDIGREW: Providing reports, advice, analysis to Nalcor?

MR. BENNETT: Oh, we got lots of – like, we got lots of inquiries from a whole host of individuals looking for information. So –

MR. PEDDIGREW: No, I mean in terms of him providing a service to Nalcor.

MR. BENNETT: (Inaudible.)

MR. PEDDIGREW: My understanding is in 2013 he provided some sort of analysis or services to Nalcor for which he was paid. Is that your understanding as well?

MR. BENNETT: If I recall he was a – maybe a partner in a consulting company that provides economic information. And I think he – his – if I recall he's a partner in Strategic Concepts.

MR. PEDDIGREW: Okay.

MR. BENNETT: So, you know –

MR. PEDDIGREW: That could be – I – yeah –

MR. BENNETT: Yeah.

MR. PEDDIGREW: – I'm not sure about that, but –

MR. BENNETT: Okay.

MR. PEDDIGREW: – I guess my question – you may not know. But prior to the presentation in early 2012, had he been engaged and compensated for any work he had done for Nalcor?

MR. BENNETT: For him individually? I can't confirm.

MR. PEDDIGREW: Okay.

MR. BENNETT: That's something we can readily verify.

MR. PEDDIGREW: Okay.

A question about the hiring of Brian Crawley; he was hired as the manager of integration in 2011.

MR. BENNETT: Yes.

MR. PEDDIGREW: What does the manager of integration do?

MR. BENNETT: There are a lot of activities that are coordinated across the project team that are coordinated with other business units; that he played an important role in managing those relationships, gathering information, summarizing reports, pulling teams together to respond to issues.

MR. PEDDIGREW: So what business units would he –?

MR. BENNETT: So the other Nalcor business units that would've been involved in various different aspects of the project, needless to say, there's work going on in their finance team, there's work going on in Hydro. So coordinating those activities; I think he played a role in some labour relations planning and (inaudible) –

MR. PEDDIGREW: Anything to do with the Oil and Gas arm of Nalcor or ...?

MR. BENNETT: I don't know if there was anything directly there.

MR. PEDDIGREW: Okay.

And how did this hiring happen? Was – did he apply for a job ...?

MR. BENNETT: We identified – there was an opportunity identified and I don't think we had posted the job. I think he was identified as a good fit in that role.

MR. PEDDIGREW: Who identified him, do you know? He formally worked in Premier William's office, I'm just wondering the circumstances by which he came to –

MR. BENNETT: I also –

MR. PEDDIGREW: – work with Nalcor.

MR. BENNETT: I also seem to recall that I think he worked with – had previously worked with Mr. Martin as well – in a different life.

MR. PEDDIGREW: At Petro-Canada?

MR. BENNETT: I think so.

MR. PEDDIGREW: And so he was identified you said, do you know by who? Who identified him as a potential good candidate?

MR. BENNETT: I don't have the details on who identified that.

MR. PEDDIGREW: Did you have anything to do with his interview? Or was there an interview, I guess – do you know?

MR. BENNETT: Not off the top of my head.

MR. PEDDIGREW: Okay, so did you have anything to do with the decision to bring him on board?

MR. BENNETT: I accepted that, you know, he could be a fit in this role, and we put him on.

MR. PEDDIGREW: You didn't indicate that you had questions about the qualifications or anything like that, you just accepted that he was a –?

MR. BENNETT: Not in that – because I didn't have any concerns about his qualifications, no.

MR. PEDDIGREW: Okay.

David Clark who dealt with – I don't know what his title is, but I understand he dealt with your labour relations collective agreement negotiations, is that correct?

MR. BENNETT: Yes, that's right.

MR. PEDDIGREW: How did he come to be hired for the Lower Churchill Project?

MR. BENNETT: David has a long history in collective bargaining issues, dealing with previous special project orders, and I'm thinking that his initial retainer was for dealing with the aspects in relation to the special project order. So –

MR. PEDDIGREW: Okay.

MR. BENNETT: – I don't have a lock on how, you know – what that communication looked like. I do know that he has extensive experience in that area.

MR. PEDDIGREW: But do you know how he came to – did he – again, was it an advertised job he applied for or was he approached by somebody within Nalcor?

MR. BENNETT: The initial connection, I'm not entirely sure.

MR. PEDDIGREW: And –

MR. BENNETT: He's a lawyer who practices in that area, and would've been a natural fit.

MR. PEDDIGREW: So it wasn't you who approached him –

MR. BENNETT: I didn't approach him.

MR. PEDDIGREW: – or identified him?

MR. BENNETT: Nope.

MR. PEDDIGREW: Okay. Do you know – was it Mr. Martin?

MR. BENNETT: I'm not sure. I don't think it was to be honest. I think it was within the

organization. But I don't personally remember how that was established.

MR. PEDDIGREW: Okay.

Mr. Bennett, one of the – I guess the questions that I thought of throughout the hearing is the project was sort of always spoken of as a \$6.2-billion project, but when you factor in financing, it's actually – I think at the time of sanction it was 7.4 billion.

Just wondering, was that – referring to a \$6.2-billion project, was that part of the communications strategy of Nalcor? I mean, 7.4 really is the number when you factor in the cost to borrow.

MR. BENNETT: We were always clear that the \$6.2-billion estimate was a direct capital cost associated with the project.

MR. PEDDIGREW: Right. But again, from a public perspective, wouldn't 7.4 be a more realistic figure?

MR. BENNETT: We can bounce back and forth on that; people have differing views. The cost of financing wasn't a direct expenditure, wasn't an amount that was under the control of the project team. So I think – as long as the assumptions are communicated, I think that's appropriate.

MR. PEDDIGREW: And one of the things you've spoken about over the past couple of days is the fact that the federal loan guarantee lowered the cost to ratepayers. So I guess, in that sense, you're factoring in the benefit to the cost of borrowing from the federal loan guarantee. So to me, that's telling the public that you're getting a benefit from the federal loan guarantee, by way of less interest, but not communicating the 1.2 billion on top of the 6.2.

MR. BENNETT: Well, the 1.2 is only – as I recall – is only the interest cost during construction. So that there are interest costs over the life project that need to be recovered as well. So –

MR. PEDDIGREW: It's a cost to the ratepayers.

MR. BENNETT: It is.

MR. PEDDIGREW: Right. And so you're telling the ratepayers that they'll save money by virtue of the federal loan guarantee?

MR. BENNETT: In the long term, that's right.

MR. PEDDIGREW: Right, but not – I mean, I'm not saying it wasn't available information, but you certainly weren't speaking about the extra 1.2 on top of the 6.2 billion. Would that be fair?

MR. BENNETT: I think that the cost to the project is – you know, has been disclosed with appropriate explanation. You could add on operating costs; you could add on financing costs over the life of the project and come up with rates analyses, which were also done to try to project those – that information, so –

MR. PEDDIGREW: For anybody who's willing to do that work.

MR. BENNETT: Well, I think we had done some of those ourselves.

MR. PEDDIGREW: I mean, anybody from the public who might be willing to do that work, to dig in to that level.

MR. BENNETT: I think we had published rate projections –

MR. PEDDIGREW: Okay.

MR. BENNETT: – publicly.

MR. PEDDIGREW: There's some questions about the Labrador-Island Link, the LIL, and the capacity being 900 megawatts and, I guess, the generation capacity at Muskrat Falls being 824 megawatts.

So was there a plan to ever fully use the LIL to bring 900 megawatts down through the LIL?

MR. BENNETT: Oh, the – well, the nominal capacity of LIL is 900 megawatts. The difference between a 900-megawatt convertor and an 824-megawatt convertor is minimal when you look at the electronics and the components inside.

So I don't think that the – I guess, to summarize the engineering specifications, it's not as if there was, you know, a material difference in those two numbers. I mean, even the winter rating on Muskrat Falls is a little better than 824 megawatts. It can actually do, you know, 864 or 844, depending on ice conditions in the river. So, you know, those specifications are not, you know, not really materially different.

There is the ability to move a little bit of recall back and forth, if that made sense.

MR. PEDDIGREW: Okay.

MR. BENNETT: But generally, we try to size that close to the nominal rating of the plant.

MR. PEDDIGREW: Right. You certainly would know a lot more about, I guess, the technical aspects of that than I would.

I guess what I'm wondering is, if there was an ability to acquire more power elsewhere from Hydro-Québec or from Upper Churchill in order to maximize the 900-megawatt capacity of the LIL, was it ever considered what that might cost to purchase that?

MR. BENNETT: Purchase additional energy?

MR. PEDDIGREW: I guess, would it – was it factored into the CPW for the Muskrat Falls Project?

MR. BENNETT: If that energy were required late in the study period in order to meet demand, then that would have been put in a market price.

MR. PEDDIGREW: Do you know if it was?

MR. BENNETT: It depends on the load forecast. So the various iterations of the load forecast – sometimes there was some additional imports that were added late in the study, and I think there are other iterations where it didn't show up.

But there was a – the energy delivery from the plant – when you ran out of – when you – when the load forecast ran out of supply from Muskrat Falls, then I do believe additional energy at market prices was put into the analysis.

MR. PEDDIGREW: And that's part of the CPW –

MR. BENNETT: That's right.

MR. PEDDIGREW: – at Decision Gate 3?

MR. BENNETT: That's right.

MR. PEDDIGREW: Okay.

Mr. Marshall gave a presentation – Stan Marshall – in February 2018. I think it's just a summary or a status update on the Muskrat Falls Project. And in the presentation he referenced Nalcor purchasing coal-fired power from Nova Scotia to displace use of oil at Holyrood.

Do you know anything about that?

MR. BENNETT: I think, in the short term, we're looking for any energy that's a lower cost than Holyrood.

MR. PEDDIGREW: Right.

MR. BENNETT: So to the extent the Maritime Link is in service, we can – if we can find supply in the marketplace, we'll do so.

MR. PEDDIGREW: Has that taken place? You know, is that currently happening?

MR. BENNETT: I'm not in the loop there; I haven't been tracking the availability of the Maritime Link recently. I'm certainly more focused on the Muskrat site, and I haven't been tracking what energy marketing is doing and – nor what the Public Utilities Board is doing in relation to approving imports.

So I'm a little bit out of the loop on that file.

MR. PEDDIGREW: Okay.

So who would be the best person to ask about that?

MR. BENNETT: That should go to Hydro.

MR. PEDDIGREW: Hydro. Okay.

Back to a question about the federal loan guarantees. Without the federal loan guarantee,

did Nalcor have any assurance that lenders – the banks – would finance the project, or was the federal loan guarantee –

MR. BENNETT: No, I think there was a –

MR. PEDDIGREW: – required?

MR. BENNETT: – rating exercise prior to the federal financing that indicated that the project was creditworthy at the time. That would have been prior to sanction.

MR. PEDDIGREW: Creditworthy without the federal loan guarantee?

MR. BENNETT: That's right.

MR. PEDDIGREW: Mr. Bennett, there was a question this morning about the scrubbers at Holyrood. And I wanna take you now to, Madam Clerk, Exhibit P-00049, please?

And again, I'm just going to summarize, Mr. Bennett, your answer this morning, I believe, was along the lines of the – even though the cleaner fuel had been implemented at Holyrood, that that wasn't necessarily as efficient and that the scrubbers were still necessary given the concerns of people in the Holyrood area. Is that a fair summary?

MR. BENNETT: That's right. And the commitment from the province to ensure that they're installed.

MR. PEDDIGREW: Okay. So P-00049. Page 198 please. And towards the bottom of that page.

So Mr. Bennett, this is the Manitoba Hydro International report from January 2012. And so if we look at the bottom of this page, it just says: "It is noteworthy that Nalcor has incorporated a large investment programme in the Isolated Island Option for reducing the environmental footprint of Holyrood. The question arises as to whether or not this is necessary, as switching to 0.7% sulphur fuel ... has accomplished as much as is necessary to meet Provincial environmental targets."

So I just wanted to clarify. The decision to go ahead with the scrubbers was more of a policy

decision; it wasn't required by the legislation, was it?

MR. BENNETT: Well, I think that the province – if it, you know, wanted to have the legislation to enforce a policy, then the legislation would be, you know, would be established.

At the time, the requirement to burn low sulphur fuel was covered in regulations. I would agree that the decision on scrubbers and precipitators was a commitment that was made in the Energy Plan, and we certainly haven't heard anybody say: No, we weren't going to follow through on that policy objective.

MR. PEDDIGREW: Right.

MR. BENNETT: And it's a hot topic among residents in Conception Bay South.

MR. PEDDIGREW: It was a policy decision to go ahead with it, as opposed to a requirement, I guess, is the only point I'm looking to clarify.

MR. BENNETT: Well, there are lots of – I guess, there are lots of legislative requirements that originate from policy.

MR. PEDDIGREW: True, but the requirement to put the scrubbers in – I guess, the objective was met with this cleaner fuel. Is that correct?

MR. BENNETT: No. It's not correct. The commitment that the province made – and I agree, it is a policy decision.

MR. PEDDIGREW: Right.

MR. BENNETT: The commitment the province made is that when we maintain Holyrood, and the Lower Churchill doesn't go ahead, scrubbers and precipitators will be – will need to be installed in the facility.

MR. PEDDIGREW: It's following through on –

MR. BENNETT: Their policy statement.

MR. PEDDIGREW: – commitment in the Energy Policy?

MR. BENNETT: That's right.

MR. PEDDIGREW: Right. Okay.

There were some questions on a – under some previous witness – I think Mr. Keating – when he testified, gave some information about a presentation that he might have given to Nalcor executive, I believe, about the lessons learned from the Hebron Project. I don't think that presentation has surfaced in terms of a document, but do you know – are you familiar with that presentation? Were you –

MR. BENNETT: No, I can't place that one.

MR. PEDDIGREW: You were not involved in a presentation given by Mr. Keating about lessons learned from Hebron?

MR. BENNETT: I can't place it. Did he indicate when that presentation was given?

MR. PEDDIGREW: He probably did. I don't have that information in front of me now, but I guess you don't –

MR. BENNETT: I'm not recalling it.

MR. PEDDIGREW: Okay.

And have you heard anything about that presentation, whether or not you were – you remember being present? Have you heard about that presentation taking place?

MR. BENNETT: No, I never heard Mr. Keating's testimony, so ...

MR. PEDDIGREW: Okay.

There's some questions from Ms. O'Brien in relation to integrated resource planning, so I just wanted to ask you a few questions about that. I believe your evidence was along the lines of that integrated resource planning wouldn't necessarily be a decision that Hydro or Nalcor could take on its own; it required the Public Utilities Board. Is that –?

MR. BENNETT: My understanding of the process and – is that it is a process that would be led by the board.

MR. PEDDIGREW: Okay.

Mr. Humphries, when he testified here a couple of weeks ago, gave evidence that in 2004 the PUB indicated to Hydro that IRP would be useful for Hydro to pursue. Are you familiar with that evidence from Mr. Humphries?

MR. BENNETT: No, I never followed –

MR. PEDDIGREW: Okay.

MR. BENNETT: I never followed what was going on with IRP and Hydro.

MR. PEDDIGREW: And –

MR. BENNETT: He would be a lot closer to that –

MR. PEDDIGREW: Right.

MR. BENNETT: – being in the utility, than I would have been.

MR. PEDDIGREW: Okay.

Mr. Humphries also testified that – and while it was a topic of discussion after that communication from the PUB in 2004, he said that the topic went cold, was the words he used, in about 2007. So do you have any reason – you were at the organization from when? 2005?

MR. BENNETT: From 2005.

MR. PEDDIGREW: Okay. You don't remember any discussion about integrated resource planning –

MR. BENNETT: Not –

MR. PEDDIGREW: – in 2005?

MR. BENNETT: Not from 11 –

MR. PEDDIGREW: 2006?

MR. BENNETT: Not from 11 years ago. I mean, there is a letter from Mr. Young –

MR. PEDDIGREW: Yes.

MR. BENNETT: – I think on the record here and that's –

MR. PEDDIGREW: Yeah.

MR. BENNETT: – about the only thing I remember about IRP.

MR. PEDDIGREW: Okay.

So you don't remember any discussion about whether it should be done or whether it shouldn't be done?

MR. BENNETT: Not at that point, no.

MR. PEDDIGREW: All right.

So, yeah, I would like to take you to that exhibit you just referenced. So that's P-01164, Madam Clerk.

THE COMMISSIONER: Tab 7.

MR. PEDDIGREW: And page 3, please. And third paragraph.

So, Mr. Bennett, as you indicated this is the letter from Mr. Young from Newfoundland and Labrador Hydro and I believe – Madam Clerk, apologies, if we could just scroll back up to the top of the page for a moment – or sorry, top of the first page.

So dated – sorry, dated November 12, 2008, to the Public Utilities Board. Then we'll go back down to page 3 and the third paragraph. And so this is a communication from Mr. Young.

And in the third paragraph he says to the PUB that: "Prudent planning includes the prudent expenditure of funds and effort in the planning process. A thorough consideration of the issues raised by the various aspects of the Isolated Island Case would require a considerable amount of effort which would represent a waste of the ratepayers' money."

So this was in response to, I believe, discussions about integrated resource planning. So was it the position of Newfoundland and Labrador Hydro at the time that integrated resource planning of – I guess, or discussed by the PUB, was that a waste of taxpayers' money?

MR. BENNETT: I'm not going to try to reinterpret what Mr. Young said; I mean he wrote this to the board –

MR. PEDDIGREW: What I'm guess I'm asking –

MR. BENNETT: – expressing his position.

MR. PEDDIGREW: – do you agree with that view?

MR. BENNETT: I don't have a basis for offering a different opinion; I don't have a basis for trying to understand what the potential savings could be or what the business case is. I wasn't close to those utility proceedings at the time.

MR. PEDDIGREW: Okay.

So I mean, I guess when I heard you speak – and I can't remember if you said it yesterday or the day before, but when I heard you speak about the PUB's involvement in integrated resource planning, I was – I had the impression that it was something that the PUB, I guess, wasn't on board with or needed to initiate. But when I read this it seems to me that the PUB is trying to bring Hydro on board to an integrated resource planning, but Hydro is telling the PUB that it – in their view it's a waste.

MR. BENNETT: Well, I guess if the board, you know, to the – you know, to the extent of the last paragraph in that letter says the board wanted to initiate a process, then Hydro would have participated. So –

MR. PEDDIGREW: Despite the fact that they're saying it's a waste of ratepayers' money?

MR. BENNETT: Well, if the board determines to be worthwhile to pursue a formal process, Hydro will engage.

MR. PEDDIGREW: You're saying that it's the PUB's fault this didn't happen?

MR. BENNETT: It's not – I don't think it's anybody's fault.

MR. PEDDIGREW: Okay.

MR. BENNETT: But the proceeding needed to have been launched and then the parties would have been in that proceeding.

MR. PEDDIGREW: So you're saying had the PUB pushed it – or Hydro would have participated.

MR. BENNETT: If the board had ordered the process, then Hydro would have been there. I have no doubt on that.

MR. PEDDIGREW: Okay.

THE COMMISSIONER: Just before you go on, I notice that we are at 4:30. Did you want to stop here and then ...?

MR. PEDDIGREW: I probably have three or four more questions on this point and then I can –

THE COMMISSIONER: Sure.

MR. PEDDIGREW: Would that be okay?

THE COMMISSIONER: Yeah.

MR. PEDDIGREW: Okay. Thanks, Commissioner.

Mr. Bennett, I guess another thing I've sort of thought about in all the days listening to the evidence here is how important, I guess, the issue of load forecasting is to all the decisions that were ultimately made in relation to deciding to proceed with the Muskrat Falls Project; so the forecasted capacity shortfall on 2015, the forecasted power shortfall in 2019.

I mean, to me, I don't know if it's necessarily the most important factor that went into the decision, but certainly one of the most important would be how much power are we going to need. Would you agree with that?

MR. BENNETT: It's an important consideration, absolutely.

MR. PEDDIGREW: It drove the decision to, ultimately, look to: What do we need to do in terms of additional power?

MR. BENNETT: Right.

MR. PEDDIGREW: Okay?

And my understanding of the process of load forecasting that's done with Newfoundland and Labrador Hydro is that there's one individual, Mr. Stratton – and I'm not calling Mr. Stratton's qualifications or abilities into question. He's been in the job a long time. I'm sure he's good at it. But he was asked to do something he'd never been asked to do before. Would you agree with that, in terms of providing a 50-year forecast?

MR. BENNETT: They provided a long-term forecast into –

MR. PEDDIGREW: Twenty years, normally.

MR. BENNETT: Right, and then they extended beyond that.

MR. PEDDIGREW: Right.

MR. BENNETT: That's right. They escalated it, I think at CPI.

MR. PEDDIGREW: Okay.

MR. BENNETT: Actually, no, it was a lower number than CPI. The escalation rate was lower than, I think, some of the early numbers that they had used earlier in the forecast, but they did use – to my recollection they used a conservative view on load growth past the initial 20-year period. And they did a similar thing for CPI when I was thinking about their oil price forecast.

MR. PEDDIGREW: Okay.

And, I mean, that can be debated, I guess. The point is that it was forward looking 50 years, which the longer out you go, the more risk it is that you're going to be wrong. Would you agree with that?

MR. BENNETT: There's greater uncertainty. If we did a present value calculation, those late years have relatively less impact. But I agree with you that you're forecasting out a long time.

MR. PEDDIGREW: Right.

MR. BENNETT: And there's inherent uncertainty in that.

MR. PEDDIGREW: Okay.

And, Mr. Stratton, again, was asked to probably do something he'd never been asked to do before or, I guess, he was asked to do something on a greater scale that he'd never been asked to do before. Would you agree with that?

MR. BENNETT: I think that's fair.

MR. PEDDIGREW: Okay.

I'd like to take you now to Exhibit P-00528. And, Mr. Bennett, this is a report from Guy Holburn, an academic who provided some evidence back in October. Did you hear any of Mr. Holburn's evidence?

MR. BENNETT: I heard a little. I won't say I heard much.

MR. PEDDIGREW: Okay.

Madam Clerk, could I have the bottom of page 15, please?

So the last paragraph here Mr. Holburn is saying: "In the absence of a comprehensive integrated resource planning process that involves relevant stakeholders and that is conducted in a transparent, public manner, there is a greater risk that more efficient approaches to managing electricity supply and demand are missed or overlooked, and ... higher cost options will instead be selected."

So, one of the things that Mr. Holburn talked about was the importance of integrated resource planning, helping with your load forecasting, helping with consumer demand management. So, again, in the context of a 50-year outlook, do you have any comment on the importance of integrated resource planning, as opposed to engaging one person at Hydro to tell what the outcome was going to be of a 50-year forecast?

MR. BENNETT: So I think that there's – you know, Mr. Holburn didn't comment on, sort of, the magnitude of this risk.

I'd also point out that there are aspects of the forecast that weren't considered – or weren't

included, to be more specific. The potential for industrial demand in Labrador wasn't covered in the forecast at all; that there were, again, risks in both directions in terms of the electricity forecast for the province. So if we go back to the time around sanction, Alderon was talking about their project in Labrador; that wasn't in anybody's forecast.

MR. PEDDIGREW: Right.

MR. BENNETT: So there's inherent – there is inherent risk in all of these forecasting approaches, and, you know, that needs to be weighed, and that needs to be considered as part of the business case analysis and as part of the thinking.

MR. PEDDIGREW: Yeah, and I believe Mr. Humphries gave evidence that he did – he met with you and briefed yourself and Mr. Martin about the, I guess, the inherent unreliability of load forecasting. Do you recall Mr. Humphries explaining that to you?

MR. BENNETT: I'm sure we've had multiple conversations with Mr. Humphries.

MR. PEDDIGREW: Right.

And so, again, given the – I guess, what was at stake in terms of how much money was looking at being spent and what was being committed, do you see any problem with relying on the work of one person – and I don't believe Mr. Stratton's work was checked or – by anybody independent, no cold eyes review, anything like that.

MR. BENNETT: Mmm. I –

MR. PEDDIGREW: So much is driven by the load forecasts –

MR. BENNETT: I think it was. I think it was reviewed by MHI.

MR. PEDDIGREW: Okay. But nobody – it was only the MHI report that reviewed Mr. Stratton's forecast?

MR. BENNETT: I think they did it twice.

MR. PEDDIGREW: Okay.

But again, no – you don't think that integrated resource planning, given what was at stake, would have been a valuable –

MR. BENNETT: I – you know, my view –

MR. PEDDIGREW: – exercise?

MR. BENNETT: My view on integrated resource planning is that if the board had – PUB – had thought that that was an important and ongoing process, they would have put it into the regulatory routine.

MR. PEDDIGREW: Back to the PUB?

MR. BENNETT: Well, they're the – they have the oversight of Hydro.

MR. PEDDIGREW: Okay.

MR. BENNETT: So I think that they're the ones who are in the best position to determine whether that's an opportunity that should move forward on a regular basis just as their other administrative activities.

MR. PEDDIGREW: Right.

Okay, well, that's probably good for today.

THE COMMISSIONER: Okay, so we'll break here now, then, and you'll start off tomorrow morning. Now, I just want to get a bit of a lay of the land for tomorrow.

So next we have the Innu Nation. Can you give me a general idea as to how long you think you're going to be? I'm trying to figure out what time we're gonna start tomorrow morning.

MR. LUK: Mr. Commissioner, I don't expect to be long.

THE COMMISSIONER: Okay. Half an hour or so?

MR. LUK: If that much.

THE COMMISSIONER: Okay.

The next one would be NunatuKavut Community Council?

MR. RYAN: Commissioner, perhaps a half-hour.

THE COMMISSIONER: Okay.

The Conseil des Innus de Ekuanitshit?

MR. SCHULZE: (Inaudible.)

THE COMMISSIONER: I'm sorry, I didn't hear you.

MR. SCHULZE: Probably similar. Certainly less than an hour.

THE COMMISSIONER: Thank you.

Grand Riverkeeper?

MS. URQUHART: I expect we'll be probably an hour –

THE COMMISSIONER: Okay.

MS. URQUHART: – or around there.

THE COMMISSIONER: Emera Inc.?

MS. PHILPOTT: Commissioner, I'm not entirely sure, because I don't think it'll be myself here tomorrow. But I wouldn't expect it to be long. No longer than a half-hour either, I wouldn't say.

THE COMMISSIONER: Okay, thank you.

Former Nalcor board?

MS. G. BEST: I would expect that I'll be about 15 minutes.

THE COMMISSIONER: Okay.

Manitoba Hydro?

MS. VAN IDERSTINE: At the moment, Mr. Commissioner, I don't have any questions.

THE COMMISSIONER: Okay.

Newfoundland Power?

MR. KELLY: I don't expect to have any questions, Commissioner.

THE COMMISSIONER: Okay.

And then Nalcor?

MR. SIMMONS: Probably an hour, Commissioner.

THE COMMISSIONER: Oh, okay, so we got – we'll have lots of time. So we'll start at 9:30, then, tomorrow morning, okay?

So we're adjourned until 9:30 tomorrow morning.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.