



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 49

Commissioner: Honourable Justice Richard LeBlanc

Thursday

29 November 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Hon. Justice Richard LeBlanc, presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Right. Mr. Peddigrew.

Sir, you remain under oath at this time.

MR. BENNETT: Understood.

MR. PEDDIGREW: Thank you, Commissioner. Good morning, Mr. Bennett.

MR. BENNETT: Good morning.

MR. PEDDIGREW: First question I have for you this morning is in relation to the PUB reference decision from March 2012. Be fair to say that Nalcor did not agree with the finding or did not – I guess, was not fond of the finding by the PUB, that it was unable to make a decision.

MR. BENNETT: I think that, yeah, we were – we could have expected, or were looking for more than the decision that was reached, yes.

MR. PEDDIGREW: Right. So in Nalcor's view, the Interconnected Option was the least-cost option and the PUB indicated it could not reach that conclusion, you disagreed with that conclusion. Would that be fair?

MR. BENNETT: We reached our own – we reached a conclusion that we had, you know, from Nalcor's perspective, provided the supporting documentation to –

MR. PEDDIGREW: It was different than the PUB's?

MR. BENNETT: Yes, I agree with that.

MR. PEDDIGREW: Okay. You aware who the panel on the PUB was – who made that decision – the four individuals?

MR. BENNETT: Off the top of my head, Mr. Wells was the chair –

MR. PEDDIGREW: Yes.

Dwanda Newman?

MR. BENNETT: Dwanda Newman.

MR. PEDDIGREW: Jim Oxford?

MR. BENNETT: Jim Oxford.

MR. PEDDIGREW: And Darlene Whalen?

MR. BENNETT: And Darlene Whalen, yes.

MR. PEDDIGREW: Okay. And that would be the same panel as for the Water Management Agreement decision, as well. Is that your understanding?

MR. BENNETT: I – it's a long-time back, but it's easy to find out who rendered the decision.

MR. PEDDIGREW: Okay.

MR. BENNETT: I know they all sat on the board.

MR. PEDDIGREW: Okay. Yesterday when I was asking you some questions about the financing and, I guess, the possibility of financing without the federal loan guarantee and I think you indicated that you did have financing arranged –

MR. BENNETT: No.

MR. PEDDIGREW: – if there was no federal loan? Or –

MR. BENNETT: No.

MR. PEDDIGREW: – there was an agreement on financing?

MR. BENNETT: No, I didn't say that.

MR. PEDDIGREW: Okay, if you could you explain then what you did say?

MR. BENNETT: I think I said that we – that the project and the financing terms had been presented to rating agencies.

MR. PEDDIGREW: Had been presented?

MR. BENNETT: Yes.

MR. PEDDIGREW: Okay, but no –

MR. BENNETT: I understand that they – a response had been provided, that the project would be financeable from those same rating agencies.

MR. PEDDIGREW: Right. Financeable?

MR. BENNETT: Yes. I didn't say the financing was arranged.

MR. PEDDIGREW: Okay. Sorry, I didn't mean to suggest that it was arranged. Sorry if that was the word I used. But financeable – what – to who – to what amount? Was that discussed?

MR. BENNETT: I wasn't deep into the details. Mr. Sturge looked after the presentation to the rating agencies and the – my understanding of the situation was that the rating agencies had indicated that the project, in their view, could be financed.

MR. PEDDIGREW: But financed to what degree? I mean, are we talking that they were willing to lend 2 billion, 10 billion?

MR. BENNETT: I don't have the details on the terms and conditions of those ratings. I wasn't directly involved in those.

MR. PEDDIGREW: So financeable depending on how much.

MR. BENNETT: That the project could be financed. That's the level of information that I have.

MR. PEDDIGREW: That it could be financed. But you don't know how much they were willing to finance.

MR. BENNETT: They were – they weren't lenders, right? They're the rating agencies who were looking at the project and trying to, you know, provide their view on the extent to which it could be financed or what those, you know, what the – I guess in general terms – the quality of that financing would look like.

MR. PEDDIGREW: Right. I guess the terms and the amount had not been –

MR. BENNETT: No.

MR. PEDDIGREW: – determined.

MR. BENNETT: No, not at all.

MR. PEDDIGREW: Mr. Bennett, just following up on some questions about the natural gas option and some of Ms. O'Brien's questions for you.

I think you said that the decision to screen out natural gas was a decision that was made by yourself and Mr. Martin. Is that correct?

MR. BENNETT: I don't think that – I think maybe Mr. Keating may have said that at one point in time – but certainly we looked at, you know, we looked at natural gas. It was, you know – the thinking in terms of the merits of natural gas are documented in our PUB submission. I was generally responsible for the work that went to the PUB and, you know – from broad terms, you look at natural gas, if you're thinking of natural gas – domestic natural gas.

MR. PEDDIGREW: Yes.

MR. BENNETT: Yeah, I was – I'd certainly discussed that conclusion, understood what the puts and takes were, and supported not – not taking natural gas beyond that initial screening.

MR. PEDDIGREW: Right. So not taking it to Decision Gate 2 analysis.

MR. BENNETT: Absolutely.

MR. PEDDIGREW: Okay.

Ms. O'Brien asked you some questions and indicated that during Mr. Keating's evidence that Mr. Keating felt – or was of the view that natural gas might be less costly than the Isolated Island Option.

Do you recall those questions?

MR. BENNETT: Those questions to Mr. Keating?

MR. PEDDIGREW: Well, the questions from Ms. O'Brien to you about Mr. Keating saying that the option of natural gas may be less costly than the Isolated Island Option.

MR. BENNETT: If I recall, that was information from the WoodMac study and I guess we're looking more at – just to be clear – liquefied natural gas or LNG –

MR. PEDDIGREW: Yes.

MR. BENNETT: – as opposed to –

MR. PEDDIGREW: LNG, yes.

MR. BENNETT: – right.

MR. PEDDIGREW: Okay.

MR. BENNETT: And the point that was being made there, and as I understood it, was that WoodMac had looked at some cost considerations and made some assumptions as to – about what the cost of gas could be. We didn't have necessarily price information, as I understand it.

MR. PEDDIGREW: Okay. I mean, I believe one of the answers you gave yesterday was that you did not know the price of LNG –

MR. BENNETT: That's right, we –

MR. PEDDIGREW: – right?

MR. BENNETT: – we were of the view that we're not a large-scale LNG customer. The view – and I think that the Ziff study had commentary on this as well – that the price that we would be achieving would be very similar to the Isolated Island case and our supply of distillate fuel; that a seller to us would be looking at gas pricing, you know, priced against our alternative fuel source.

MR. PEDDIGREW: There's some uncertainty in the price of LNG.

MR. BENNETT: I'd agree with that.

MR. PEDDIGREW: Right okay.

I mean, there's uncertainty in the price of what oil is going to be, would you agree with that?

MR. BENNETT: That's why we were using forecasts.

MR. PEDDIGREW: Right.

There would be forecasts available, I'm assuming, for natural gas as well?

MR. BENNETT: It's a little less clear for natural gas.

MR. PEDDIGREW: Right.

There's uncertainty in all –

MR. BENNETT: I –

MR. PEDDIGREW: – oil, price of natural gas – all these things have a degree of uncertainty.

MR. BENNETT: I think the view with oil and refined oil products is that the market is quite liquid – and I don't mean that in terms of the product, I mean in terms of how the market works. That it's easy to look at a given fuel alternative and source it from multiple locations and basically the difference is the difference in shipping. So I would say at a high level, there's less market power involved in a supplier for refined petroleum products than for LNG.

MR. PEDDIGREW: Right.

That's where your – those were your initial assessments. It wasn't done as part of a detailed analysis like it was done with the Isolated Island Option?

MR. BENNETT: That's right; we didn't run it to –

MR. PEDDIGREW: Right.

MR. BENNETT: – we didn't run it to DG2.

MR. PEDDIGREW: If I could take you to Exhibit P-01204, please.

THE COMMISSIONER: On the screen.

MR. PEDDIGREW: And if we could scroll down a little bit there, Madam Clerk?

So I believe this is an exhibit that was put to you by Ms. O'Brien, and if we look at the second and the third columns here we see Isolated Island at 10.8 billion; and then the LNG column has two, a lighter colour blue and a darker colour blue, and the darker blue with the 10.7 is, I guess, LNG at the price of 80 per cent of Brent crude. And I believe you said in your answers to Ms. O'Brien that given it was only a million dollars difference, you didn't see that essentially as a difference. Would that be fair?

MR. BENNETT: I didn't see that as a significant difference.

MR. PEDDIGREW: Okay. If we could go to P-01312, please, Madam Clerk? And if we go down to page 9, please.

So, Mr. Bennett, this is the Wood Mackenzie review of Ziff Energy report's analysis of LNG. If we could scroll down a little bit further towards the bottom of the page, please? Oh, sorry a little bit – here we go. Thank you.

So the paragraph, Mr. Bennett, that begins with "Ziff assumes a firm, long term agreement for LNG needs to be an oil indexed contract," and if we head down towards the bottom of that paragraph, about half way down, the sentence that starts: "This supply." So: "This supply upside is going to substantially increase the options that LNG buyers will have towards the end of this decade, likely resulting in downward pressure on prices and future contract arrangements. Wood Mackenzie believes that a gas-to-oil price arrangement in the range of 70% would be more reflective of these evolving market conditions."

So if we just – the document we were looking at a second ago – P-01204 – talked about 80 per cent resulting in a \$10.7-billion cost. The difference between 80 per cent to 90 per cent is about half a billion dollars there, in this table. So would it be fair to say that if we use a 70 per cent – not exact math, I know but – that would bring the 10.7 down to the low 10s – 10.1, 10.2?

MR. BENNETT: You could get there.

MR. PEDDIGREW: Okay. Then does that make it more interesting to make that comparison then between the 10.8 when it gets down to the low 10s?

MR. BENNETT: I think you still should be comparing to the 8.4.

MR. PEDDIGREW: Yes, you are, but what I'm talking about is – so you have your Interconnected Option, right?

MR. BENNETT: Right.

MR. PEDDIGREW: Okay. And then, in terms of what you're going to compare the Interconnected Option to, we have the Isolated Option, right?

MR. BENNETT: Yes.

MR. PEDDIGREW: Okay. And we could also have the LNG option if we're down in the low 10s, which is lower than the Isolated Island Option, you would agree?

MR. BENNETT: It's somewhat lower. Yes.

MR. PEDDIGREW: Right. But it wasn't considered?

MR. BENNETT: It's still not comparable to the Interconnected case, which is a preferred development alternative.

MR. PEDDIGREW: You're making that conclusion without having done a DG2 analysis?

MR. BENNETT: That's correct.

MR. PEDDIGREW: And it is less – at this point, anyway, the possibility is that LNG is less than the Isolated Island Option?

MR. BENNETT: The possibility is there.

MR. PEDDIGREW: Right.

MR. BENNETT: I'll acknowledge that.

MR. PEDDIGREW: Thank you.

If we could go to Exhibit P-01315, please?

And so there were some questions to you about this document as well, Mr. Bennett. So do you know who was the author – I know it's a Hydro document, but do you know who the author of this document was, who put it together?

MR. BENNETT: Oh my gosh – from 12 years ago. I mean, I would have seen it.

MR. PEDDIGREW: Right.

And I get some of the stuff was a while ago, and a lot of us don't remember things from 10, 12 years ago, but there are certain events or certain, I guess, aspects of our work that are significant. And, to me, this presentation is about something significant. So I'm not necessarily suggesting you gotta remember everything about it.

MR. BENNETT: Right.

MR. PEDDIGREW: But I would think that – you know, you were at Hydro at this time. Is that correct?

MR. BENNETT: Yes, I was.

MR. PEDDIGREW: Okay, so I would think you'd remember some things about it.

MR. BENNETT: We'll see.

MR. PEDDIGREW: We'll try. We'll try.

MR. BENNETT: We'll see.

MR. PEDDIGREW: So do you remember – were you present when this presentation was given?

MR. BENNETT: I expect that I would have been, yes.

MR. PEDDIGREW: Okay.

And do you know who gave the presentation?

MR. BENNETT: No.

MR. PEDDIGREW: And do you know who would have been present – would it have been – would this have been an executive-level presentation?

MR. BENNETT: Can – I mean, if we have a moment – is this –

MR. PEDDIGREW: Sure, if you wanna take a minute –

MR. BENNETT: Like to –

MR. PEDDIGREW: – just to go down through some of the pages.

MR. BENNETT: Sure.

MR. PEDDIGREW: And I don't know if this – if there's a paper copy in one of the binders.

THE COMMISSIONER: 01315. Actually, at tab 2.

MR. PEDDIGREW: Tab 2. Thank you, Commissioner.

MR. BENNETT: Thank you.

So this material gets used – you know, was used quite a bit in early days in our planning. So we have the development of the Gateway Process, various development options that were coming out of the EOI – the expression of interest process.

And I think this was used in multiple discussions. I would have expected, at some point in time, this presentation would have been provided to government.

MR. PEDDIGREW: Okay.

Now –

MR. BENNETT: I also expect it would have been used internally, as well.

MR. PEDDIGREW: Did government have involvement in putting this presentation together?

MR. BENNETT: I don't recall that they did.

MR. PEDDIGREW: If we can go to page 7, please?

And do you need more time to –

MR. BENNETT: No, I think I'm –

MR. PEDDIGREW: – take a look at that?
Okay.

MR. BENNETT: I think I'm okay.

MR. PEDDIGREW: If you do, just – you let me know.

So the top line of page 7 here – PS1 – “Ready to pursue the NLH led option.”

So, I think you said, in response to a question from Ms. O'Brien, that this was around the time that the decision was made to go it alone –

MR. BENNETT: So –

MR. PEDDIGREW: – so for Newfoundland and Labrador Hydro to lead the Lower Churchill Project. Is that –?

MR. BENNETT: So we're coming out of the EOI process. That's discussed a little bit later, but yes, I think this is around that time.

MR. PEDDIGREW: Okay.

And who made that decision? Whose decision was it to not pursue an option with Hydro-Québec, Ontario Hydro, SNC, and instead use an NLH-led option?

MR. BENNETT: So ultimately, there was a review team that looked at the expression of interest responses. This material was reviewed, and ultimately, that recommendation would have went through to Mr. Martin, to the board, and ultimately to the province who was running the – initiated the expression of interest process.

MR. PEDDIGREW: So was the review team comprised just of people from Newfoundland and Labrador Hydro or was it government as well?

MR. BENNETT: I think – oh, gosh, I've lost track of the names, but they weren't just Hydro people, no.

MR. PEDDIGREW: Were there government people on that review –

MR. BENNETT: Was there a government representative?

MR. PEDDIGREW: – panel as well?

MR. BENNETT: The names of the individuals, the EOI review committee, there are other notes on that. I don't have them off the top of my head.

MR. PEDDIGREW: Okay, but to the best of your recollection, it wasn't just Newfoundland and Labrador Hydro people on the review committee?

MR. BENNETT: On the EOI review, no. There were other individuals involved.

MR. PEDDIGREW: Okay. Some from government or do you know?

MR. BENNETT: I don't know. Best to look that up; that will be documented.

MR. PEDDIGREW: And, as I said, do you know whose decision it was – it was the review committee's decision to choose the NLH option?

MR. BENNETT: Final decision –

MR. PEDDIGREW: Or recommendation?

MR. BENNETT: Final decision would have been taken by the province.

MR. PEDDIGREW: By the province?

MR. BENNETT: Yes.

MR. PEDDIGREW: Based on a recommendation from Hydro or –?

MR. BENNETT: That's correct.

MR. PEDDIGREW: If we could go to page 16, please. Sorry, Madam Clerk, if we could go to document P-01316 at this point, sorry about that. And page 16 of this document.

THE COMMISSIONER: Okay. Tab 3.

MR. PEDDIGREW: So again, Mr. Bennett, if you need a moment just to familiarize yourself with what this document is, that's –

MR. BENNETT: It's okay.

MR. PEDDIGREW: So are you familiar with this document?

MR. BENNETT: Yes, I am.

MR. PEDDIGREW: Okay. Could you explain briefly what it is?

MR. BENNETT: So this work was looking at aspects of a corporate planning process back in 2007, looking forward into 2008. So this would have been input into our corporate planning process. And Goal 6 was looking at specifically the development of the Lower Churchill.

MR. PEDDIGREW: Okay. So if we could at this point go to page – oh, we are on page 16, sorry. So item 6.2, on page 16, talks about a sound project business case maintained. So this is in relation to the Lower Churchill Project. Is that correct?

MR. BENNETT: Yes, that's right.

MR. PEDDIGREW: Okay. And I know we do have a hearing tomorrow on water management so I won't ask a lot of questions about it, but even at this point on the fourth bullet: "Water management arrangements in place to secure the long-term viability of the asset." That was a factor being considered, even at this time. Is that correct?

MR. BENNETT: That's correct.

MR. PEDDIGREW: In terms of considering whether to go it alone or whether to engage with SNC, Ontario Hydro, which, I believe, was the leading outside proponent – or project proposal at that time from the EOIs. Is that correct? Ontario Hydro, SNC. Hydro-Québec.

MR. BENNETT: They had a – if you look at that combination, yes.

MR. PEDDIGREW: Okay.

MR. BENNETT: So they're a – that's pretty – that's a reasonably organized or reasonably composed proposal team.

MR. PEDDIGREW: Outside of the go-it-alone option, that was the, I guess, the preferred choice.

MR. BENNETT: That's a – preferred – I won't say preferred. The preferred choice was the one that was ultimately taken.

MR. PEDDIGREW: (Inaudible) aside from the go it alone or –

MR. BENNETT: Our focus was on the preferred choice, which we took, so I'm not in the position to say how one ranked against the other without getting into the details of the EOI evaluation.

MR. PEDDIGREW: Right. But it was one of the options, certainly, being considered by Hydro.

MR. BENNETT: That's correct.

MR. PEDDIGREW: And by government.

So, in relation to – I guess, had you pursued a proposal with Hydro-Québec, Hydro Ontario and SNC, would you agree that that would certainly have diminished the, I guess, concern or that necessity to consider the water management issues, if you're doing a deal with Hydro Québec?

MR. BENNETT: It depends on what the commercial expectations of Hydro-Québec were in relation to water management. So –

MR. PEDDIGREW: Yeah, but that was a – was that a consideration of the committee, the EOI committee?

MR. BENNETT: Back in the EOI days. No, I don't think it was a major consideration. I don't recall that one coming up.

MR. PEDDIGREW: If we go back to 01315, Madam Clerk. Page 35.

Mr. Bennett, if we look at the second bullet: Key facts/assumptions in arriving at this conclusion – talking here about equity contribution from the province. And if we go down about, to the fourth bullet there where it says "Key project risks can be transferred to the EPC contractor and/or

customers and are not assumed by the Province.”

Who was the customers that – or who were the customers being referred to in this bullet, do you know?

MR. BENNETT: Customers at that point there would have been a general statement without any specific understanding of who they were. Was it an export customer? Was it an industrial customer? Was it a domestic customer? I don’t think there was any particular definition of who those customers were, or might be, at that time.

MR. PEDDIGREW: At this point, Gull Island was still the project of choice, am I correct?

MR. BENNETT: Gull Island was part of the thinking.

MR. PEDDIGREW: And Gull Island was an export project?

MR. BENNETT: Gull Island would be either export or, in all likelihood, large-scale industrial development.

MR. PEDDIGREW: Right.

MR. BENNETT: And if that project were to move, you’d have an opportunity for domestic supply, as well.

MR. PEDDIGREW: But they – I guess, my point is that customers used in this context wasn’t meant to be ratepayers of the Province of Newfoundland.

MR. BENNETT: I’m not gonna draw that conclusion. Customers, at that point in time, was a generic term.

MR. PEDDIGREW: Most likely it was PPAs with somebody outside the province, or industrial customers?

MR. BENNETT: I’m not going to speculate.

MR. PEDDIGREW: Pardon me?

MR. BENNETT: I won’t speculate on that.

MR. PEDDIGREW: So Gull Island was primarily an export project.

MR. BENNETT: Muskrat Falls was included as part of the development thinking at the time. (Inaudible) –

MR. PEDDIGREW: So you’re saying here that customers could have meant domestic Newfoundland and Labrador customers.

MR. BENNETT: Customers are – was a generic term. The customers had not been defined in 2006, and could have included export, industrial or domestic customers.

MR. PEDDIGREW: Okay. So at a minimum –

MR. BENNETT: And any combination thereof.

MR. PEDDIGREW: Okay.

At a minimum, some of the – well, Gull Island wasn’t certainly meant just for the domestic customers of Newfoundland.

MR. BENNETT: I agree with that.

MR. PEDDIGREW: Okay. So there was certainly some contemplation that customers would include people other than just the Newfoundland and Labrador ratepayers.

MR. BENNETT: Customers could include others.

MR. PEDDIGREW: It would have to if it was Gull Island at this point, would it not?

MR. BENNETT: Gull – I just said that Muskrat was part of the overall development concept and covered in the EOI.

So, my point is, at this stage, the definition of who customers were wasn’t well-defined.

MR. PEDDIGREW: Either way you were – the thinking at this point was to pass the risk on to the customers.

MR. BENNETT: That could be done.

MR. PEDDIGREW: It was a key fact and a key assumption.

MR. BENNETT: That's what – yes, I agree with that.

MR. PEDDIGREW: If we could move on to page 59, Madam Clerk, please.

And under the Quebec bullet, Mr. Bennett, it says: "We have more on the table than ... Lower Churchill."

What did that mean, or what does that mean? And this is under the, I guess, the heading: Key Messages to Ontario and Quebec.

MR. BENNETT: I think in the context, you know, in early days there were other potential developments that were in the background than just Lower Churchill.

MR. PEDDIGREW: Like what?

MR. BENNETT: There are other hydro developments in Labrador that could have been talked about. If we look at the –

MR. PEDDIGREW: Which ones besides – when you say Lower Churchill, do you mean Gull, or do you mean Muskrat, or do you mean both?

MR. BENNETT: I mean more than Lower Churchill, so –

MR. PEDDIGREW: Right, but I guess –

MR. BENNETT: – more –

MR. PEDDIGREW: – what I'm saying, when you say Lower Churchill –

MR. BENNETT: – more than both.

MR. PEDDIGREW: – what do you mean?

MR. BENNETT: So, I mean, at a similar time and I think looking at the Energy Plan – find the graphic in the Energy Plan that has thousands of megawatts of wind, that has other potential hydro developments. So I think maybe over the years we've all seen that slide of the province's so-called energy warehouse, which had much more than the Lower Churchill as potential energy developments within the province.

MR. PEDDIGREW: But in terms of Quebec, why would you be saying to Quebec we have more on the table than Lower Churchill?

MR. BENNETT: Exactly that point. There is more – there is more to talk about in terms of Newfoundland and Labrador's energy resources than just Lower Churchill.

MR. PEDDIGREW: But developing other aspects of the energy resources with Quebec, you mean?

MR. BENNETT: It says what it says. There is more on the table than just Lower Churchill.

MR. PEDDIGREW: I still don't, I guess, understand what – some more on the table in terms of approaching Quebec and saying, you know, we have more on the table, we should talk about doing more business together? What –

MR. BENNETT: We could do that. This is, you know, this is very early days work. This is – where are we back – we're back in –

MR. PEDDIGREW: 2007, I believe.

MR. BENNETT: Yeah. Late 2006.

And, you know, things are coming together. So this April 2006, if I remember the history here. I was on the job for less than a year. I think Mr. Martin joined us in August of 2005. So this is very early thinking in terms of what we could do with energy and energy development.

MR. PEDDIGREW: And then the second bullet under Quebec says: "If you're interested in power purchases, let's start talking price."

Is that power purchases from Lower Churchill, Gull Island, Muskrat Falls? What was the thinking at this point?

MR. BENNETT: It could be any of the above.

MR. PEDDIGREW: You were open to doing business with Quebec at this point.

MR. BENNETT: That was what we were – was our key message, yes.

MR. PEDDIGREW: It was never really explored though, was it?

MR. BENNETT: There's a long history since then to now 'cause (inaudible) –

MR. PEDDIGREW: Rule it out early by Nalcor. Once you – the option of doing a deal with Quebec whether it was selling power to them or some sort of option of purchasing power in 2041, those sorts of options were ruled out very –

MR. BENNETT: They –

MR. PEDDIGREW: – early in the process.

MR. BENNETT: They didn't materialize.

MR. PEDDIGREW: Just to follow up on some questioning about the 2041 option, which, I believe, Ms. O'Brien asked you about as well.

So, again, whose decision was it to screen out this option before DG2? And so the option I'm talking about is Isolated Island up to 2041 and then purchasing power at market from Churchill Falls Corporation from 2041 –

MR. BENNETT: Right.

MR. PEDDIGREW: – going forwards.

MR. BENNETT: So I think the internal analysis on that was basically, you know, you're deferring the DC link, so you – as you defer the DC link, you go through a period of time with the Isolated Island case and the – economics never supported that deferral.

MR. PEDDIGREW: I guess again –

MR. BENNETT: (Inaudible.)

MR. PEDDIGREW: – Mr. Bennett, what I would say to you: the 2041 option was not analyzed at the DG2 level.

MR. BENNETT: I agree, it wasn't.

MR. PEDDIGREW: Right.

MR. BENNETT: It wasn't analyzed to the same level of rigour that the Interconnected case was.

MR. PEDDIGREW: Despite the recommendation from the Joint Review Panel to analyze it at that level?

MR. BENNETT: The Joint Review Panel made the recommendation, as I said, the strategist model that was being run by the system planning team never showed an economic benefit to deferring the DC link to a later date. As I recall, the system planning runs always consistently – had the link going into service with Muskrat as early as possible. So had that case been economic and had it been economic in the modelling system that the team uses, it would have deferred – it would have deferred the link.

MR. PEDDIGREW: Right. So I guess the same point or the same question I'd have for you that I had about LNG a little while ago, I would make about the Isolated Island at 2041 and then market price from Churchill Falls there after, that was also – it showed at DG – or the –

If we could go to Grant Thornton's paper, P-00014 please.

THE COMMISSIONER: Would be on the screen.

UNIDENTIFIED MALE SPEAKER: Okay.

MR. PEDDIGREW: On page 54, Madam Clerk, please. And just a little bit further down. Okay.

So if we look at – towards the bottom of the page Mr. Bennett, "Holyrood to 2041, then CF at Market Price" and we have a \$7.935 billion figure there, and if we go back up a little bit and then we look at the – base case for Isolated 8.8 – so were talking about a billion dollars in difference, again if there was – if the thinking was it was worth doing an in-depth analysis – a CPW analysis on an \$8.8 billion option – why wasn't it worth doing it on an option that came in a 7.9 billion?

MR. BENNETT: The – I'm not sure I follow. The elements in the plan are exactly the same. The –

MR. PEDDIGREW: Up to 2041.

MR. BENNETT: Yeah.

MR. PEDDIGREW: But they differ after 2041.

MR. BENNETT: Well, basically what you're doing is you're putting the DC link and the market purchases into the economic modelling system into the planning tool and it didn't show a preference for that alternative over the Interconnected case.

MR. PEDDIGREW: Over the Interconnected case. But what my point is that you saw fight to compare the Isolated Island case to the Interconnected case and to ask the PUB to do that, to do that in terms of DG2 and DG3 analysis. But you didn't see fit to do that for the Isolated Island to 2041 and Churchill Falls thereafter.

MR. BENNETT: You mean to run a –

MR. PEDDIGREW: The same analysis that you did for the Isolated Island case.

MR. BENNETT: I'm not sure that they're much different in terms of the components (inaudible).

MR. PEDDIGREW: They're different after 2041.

MR. BENNETT: Well they're basically the DC Link being constructed in 2041 or sometime earlier than that and an assumption that we're buying power at market prices beyond then. So, –

MR. PEDDIGREW: Right.

MR. BENNETT: I mean this is a – this is a – I'm not sure what Mr. Humphries had to say about that but he can explain in detail how the pieces that were in the economic modeling can be brought to bear to – answer that question and, ultimately, they did come up with a CPW.

MR. PEDDIGREW: So, I take your point to that, while it was still lower than the Interconnected Island, anyway, right? Is that your point?

MR. BENNETT: The – see – all that I'm saying is that the Interconnected Island case was still the lowest-cost alternative here.

MR. PEDDIGREW: At this stage.

MR. BENNETT: Yes.

MR. PEDDIGREW: Right. But you still saw fit to do an analysis of the Isolated Island case which was a \$2.158 billion difference, at this point.

MR. BENNETT: That's right.

MR. PEDDIGREW: Right. What I'm saying is the difference between the buying Churchill Falls Power in 2041 was less of a difference. But you didn't study that.

MR. BENNETT: I think my point is all the building blocks are there in that analysis and –

MR. PEDDIGREW: But you didn't study that. That's my question.

MR. BENNETT: We didn't bring it forward as the alternative case to the PUB.

MR. PEDDIGREW: Right. Okay.

MR. BENNETT: I think that's the point.

MR. PEDDIGREW: And that's – Yeah – you didn't bring it forward as the alternative case for the PUB.

MR. BENNETT: We described – we discussed and described it as a sensitivity analysis and showed that it was (inaudible) –

MR. PEDDIGREW: You ruled it out early.

MR. BENNETT: Um – I won't say it was ruled out – it was discussed here and still more expensive than the Interconnected case.

MR. PEDDIGREW: It was ruled out before you moved to the same sort of analysis you did for the two cases that went before the PUB.

MR. BENNETT: We didn't do further analysis on it.

MR. PEDDIGREW: Okay. In responses and questioning with your – in terms of your dealings with the project management team – so Mr. Harrington, Mr. Kean – I think you said they had a fair bit of autonomy and that you were involved in some other things that took your attention, like the negotiations with the Indigenous groups and some other activities. How often, generally, did you meet with Mr. Harrington, Mr. Kean – was it a daily thing – weekly – less frequently than that?

MR. BENNETT: I's say on average on a weekly basis. I mean I'm – if I'm in the office, I'm visible with the team. If I'm away in some of these – some of these other proceedings and then, needless to say, I'm not going to be seeing them on a daily basis.

MR. PEDDIGREW: Were there regularly scheduled meetings – did you have, you know, weekly update or a biweekly update or anything like that –

MR. BENNETT: (Inaudible.)

MR. PEDDIGREW: – or was it just sort of when you were available –

MR. BENNETT: So we –

MR. PEDDIGREW: – and when they were available?

MR. BENNETT: – we'd try to have a – you know – it would be an informal meeting. We didn't have a regular meeting where we took minutes and said okay here's our weekly check-in. Generally, we tried to make sure that – I'm in touch.

MR. PEDDIGREW: So nothing scheduled, per se, as needed?

MR. BENNETT: We would – we would do those things as needed, yes.

MR. PEDDIGREW: Was there ever a – there was – when Mr. Lemay from SNC was – in his interview transcript there was some reference to a cold eyes review that may have been done by SNC of the DG3 cost estimate. Do you know – did that – cold eyes review by SNC ever take place? Mr. Lemay said he didn't do it.

MR. BENNETT: I can't – that's not ringing a bell with me.

MR. PEDDIGREW: Not ringing a bell. Okay.

Ms. O'Brien asked you some questions about a meeting at Guv'nor's Pub shortly before sanction. And you said – I believe you said – there were some ministers there; and she asked you who was present and you said – I believe your answer was I can't say? I just want to clarify – is it that you can't say or you don't remember?

MR. BENNETT: I can't say because I don't remember and I don't want to, you know, unfairly point at somebody who's, you know, who I'm not sure was there.

MR. PEDDIGREW: So when you say you recall that some ministers were there, if you don't recall who it – what's your basis for recalling there were ministers present?

MR. BENNETT: Because I thought there were. But to – for me to identify specific individuals, that's, you know, I think the way to come at that – I wanted clarity on that. There will be a meeting invitation, there will be documentation, and we can get it from there.

MR. PEDDIGREW: Was the premier there?

MR. BENNETT: I don't remember.

MR. PEDDIGREW: So you don't remember if Mr. Kennedy – if Minister Kennedy, Minister Marshall –

MR. BENNETT: I mean, I know that, at one time or another, all those individuals were – they had participated in meetings up to the sanction decision. So for me to identify specifically who was in that meeting from memory is something that I'm having great difficulty doing.

MR. PEDDIGREW: So which ministers were involved in the – I guess the key ministers involved in the sanction decision. Who did you have most of your dealings with?

MR. BENNETT: I didn't have too many direct dealings with ministers. The engagement with

ministers, with Cabinet, would have been through Mr. Martin.

MR. PEDDIGREW: Okay. And do you – do you have any knowledge of who those key ministers would be?

MR. BENNETT: Some of the key ministers I think we'd all understand – minister of Finance, minister of Natural Resources, premier – are all important players in this decision. Ultimately it would have went through Cabinet.

MR. PEDDIGREW: Some questions about, I guess, the contracts between Emera and Nalcor, and Nalcor's various subsidiaries. So Nalcor is an equity investor in the LIL?

MR. BENNETT: Yes, that's right.

MR. PEDDIGREW: Okay. And how much – what is the extent of its equity investment? How much money, do you know, has Emera invested into LIL?

MR. BENNETT: Oh, today? I don't have the number off the top of my head.

MR. PEDDIGREW: Approximate?

MR. BENNETT: I'm not going to speculate on that. That's a number that's, you know, readily available from documentation, so – and I know it's subject to a true up at the end of the project. So today I don't have direct knowledge as to what that number is.

MR. PEDDIGREW: What was – initially, what was it meant to be based on the project cost estimates?

MR. BENNETT: Oh, if I recall, I think their equity number – I'm thinking that the number was in the order of \$600 million. And I recall that the – you know, there was a formula where they had an almost 50 per cent share in the transmission investment.

MR. PEDDIGREW: In the transmission assets?

MR. BENNETT: In the transmission assets, that's right.

MR. PEDDIGREW: So Emera are an owner of almost 50 per cent of the transmission assets?

MR. BENNETT: Owner in what regard?

MR. PEDDIGREW: Sorry, an equity investor.

MR. BENNETT: That's right.

MR. PEDDIGREW: Okay. And so transmission assets would be right from –

MR. BENNETT: All of the –

MR. PEDDIGREW: – Muskrat Falls all the –

MR. BENNETT: All of –

MR. PEDDIGREW: – way down to Soldiers Pond.

MR. BENNETT: All of the transmission assets, that's right –

MR. PEDDIGREW: Okay.

MR. BENNETT: – they were given an opportunity to earn a return on a portion of the transmission assets.

MR. PEDDIGREW: And what do they get in return for that equity investment?

MR. BENNETT: They earn a return on it.

MR. PEDDIGREW: Okay. And so some of what the Newfoundland and Labrador ratepayers pay will ultimately go to Emera in return for their equity investment?

MR. BENNETT: That's right.

MR. PEDDIGREW: Okay. And is that – their share of that return, is that the same now as what it was – would have been, based on their initial equity investment? Or has it increased?

MR. BENNETT: The amount is, I suspect, increased. The formula has not changed, as I understand it.

MR. PEDDIGREW: But the amount that they will get –

MR. BENNETT: Because the transmission cost has increased.

MR. PEDDIGREW: Because the transmission costs have increased, Emera will get more?

MR. BENNETT: They will – that's right. They've made a greater equity investment.

MR. PEDDIGREW: Now, Mr. Bennett, this will be the first time there's a private corporation with an ownership in our transmission assets, isn't it?

MR. BENNETT: Newfoundland Power does own some.

MR. PEDDIGREW: Some of the transmission assets?

MR. BENNETT: Some of their own transmission assets.

MR. PEDDIGREW: Right. So this is the first time an outside province – I guess, my point is Nova Scotia's – this is the first time we had an out-of-province entity with an equity interest in some of our transmission assets?

MR. BENNETT: I think that's the case. We could debate Newfoundland Power's role, but I don't think it's productive.

MR. PEDDIGREW: Okay.

Some of the questions relating to what Mr. Westney said about, I guess, the importance – or the fact that this was a Crown corporation doing the Muskrat Falls Project and, I guess, the additional consideration that should be given to risk appetite based on the fact that it was a Crown corporation. And, I guess, based on the fact – we know that it's ratepayers who are ultimately gonna pay the cost of Muskrat Falls.

And I've asked this to all the witnesses so far, but I guess my question to you is: To what extent, if any, was that discussed at the executive level of Nalcor? The fact that, you know, look, it's the ratepayers who are gonna have to pay for this. How does that factor into our appetite for risk?

MR. BENNETT: I think it's a – you know, it's an important consideration, but I've also – I think I've also pointed out that there were other considerations, or broader considerations –

MR. PEDDIGREW: I get that. But I guess my question is: First of all, was it discussed? The fact that this is a project that's gonna be paid for by the ratepayers. And I'm talking now not in terms of the federal loan guarantee or anything – I'm talking now about risk.

MR. BENNETT: I think that in the context of risk. I continue to recall that the other considerations – the broader opportunities, the source of revenue, the potential cost in the Interconnected case – were all also considerations. And it was understood from early on that there were opportunities to mitigate the impact on rates.

MR. PEDDIGREW: So your evidence is that the fact that ratepayers were going to pay for this project was something that was considered by the executive of Nalcor.

MR. BENNETT: There's no doubt that it was known and understood that in the current – right – in the current context that the costs associated with the PPA were borne by ratepayers. But it was also understood that there were other potential sources of revenue that could be used for rate mitigation.

MR. PEDDIGREW: Right.

But in terms of making decisions about going with P50 instead of a P75, in terms of proceeding based on a P1 schedule – I'm wondering did the fact that the ratepayers are gonna pay for this project, was that considered when those decisions were made?

MR. BENNETT: I think that the commercial construct and – you know, it was certainly understood that, you know, ratepayers were – in the modelling and in the financial arrangements, pending any other decision, were shouldering all the costs. So that – was that known and understood? Yes. Was it also understood that there were other mitigations available? That was understood as well.

MR. PEDDIGREW: Understood, yet the decisions – well, I mean, we’ve gone through it over the last few days so I won’t go through it again.

Was there any consideration or discussion at the level – the Nalcor executive level about elasticity – price elasticity and what elevated rates may mean to consumers potentially dropping out of the electricity market?

MR. BENNETT: It was certainly a consideration in the planning work, and as I recall for our residential customers the impact of elasticity was covered in the system planning work and the rates analysis and the demand forecast. As I recall, they did iterate their forecast based on rate impact.

MR. PEDDIGREW: There was no elasticity study done it was – I believe Mr. Stratton’s evidence was it was something he considered but there was no separate elasticity study done.

MR. BENNETT: That’s – I don’t – and that decision and the approach that was used here was – would be with the System Planning department. All I can – my – I guess, my understanding is that they iterated their demand forecast and their rate model based on potential impact of rates on heating choice sources and – which is a primary input into the residential forecast.

MR. PEDDIGREW: So considered within System Planning, but I guess as between yourself and other Nalcor executive, was it a point of discussion? What would happen if this project went way over budget and if rates went way up, what might it mean to people dropping off?

MR. BENNETT: Yeah, I think the – there was more conversation about the other mitigation opportunities as opposed to that consideration at that point in time.

MR. PEDDIGREW: So it wasn’t really a consideration of the Nalcor executive?

MR. BENNETT: I won’t say we – it was – it wasn’t our primary consideration.

MR. PEDDIGREW: Okay.

MR. BENNETT: Our primary consideration was looking at the other mitigation opportunities that were available.

MR. PEDDIGREW: It might not have been your primary consideration but – I mean, I guess what I’m getting – and you can tell me if I’m, I guess, misunderstanding – is that it certainly wasn’t something that was discussed extensively by yourself and the other Nalcor executive.

MR. BENNETT: I think that’s okay and I’m fair with that.

MR. PEDDIGREW: Mr. Bennett, are you aware – what is the last hydro project before Muskrat Falls that Newfoundland and Labrador Hydro constructed? Do you know which one it would be?

MR. BENNETT: I think that would be Granite Canal.

MR. PEDDIGREW: Okay. And around was that – when was that?

MR. BENNETT: It was approximately 2000.

MR. PEDDIGREW: Okay. And how many megawatts was Granite Canal?

MR. BENNETT: Granite Canal is about 40 megawatts.

MR. PEDDIGREW: About 40 megawatts. And would you agree – I’ve been told that Granite Canal was on time and on budget. Are you aware that that’s true?

MR. BENNETT: I would think that that’s the case. I don’t have any information to contradict that.

MR. PEDDIGREW: Okay.

And is that – would it be fair to suggest that maybe a smaller project – a 40-megawatt project – is that one of the reasons, probably, it came in on time and on budget? Much less risk than an 824-megawatt project.

MR. BENNETT: You could conclude that, yes.

MR. PEDDIGREW: Okay.

All right, those are all of my questions.

Thank you.

MS. O'BRIEN: Hi, Commissioner, I neglected to enter the exhibits for today before Mr. Peddigrew began. Seeking to enter Exhibits P-01489 to P-01494 and P-1500, please.

THE COMMISSIONER: All right, good.

All right, Innu Nation?

MR. LUK: Good morning, Mr. Commissioner.

Good morning, Mr. Bennett.

I just have a very brief – hopefully brief – and minor point to take up with the witness by way of correcting the record from – evidence from the direct examinations that Mr. Bennett gave on Tuesday when questioned by Ms. O'Brien. I don't know if the transcript from Tuesday – I guess the draft transcript, is that available for display on the screen?

THE COMMISSIONER: No.

MR. LUK: No. Okay, so maybe I can – I'll hand over a copy of it to you, Mr. Bennett.

MR. BENNETT: No problem. Thank you.

MR. LUK: And I'd just like to draw your attention, Mr. Bennett, to the first question on this page where Ms. O'Brien asks you: "Okay, so are you saying that there was never any point of disagreement between Nalcor and government and Newfoundland and Labrador as to the level of consultation with these groups."

Mr. Bennett, would you mind reading your answer to that question?

MS. O'BRIEN: Could you identify the date?

MR. LUK: I'm so sorry. This is November 27, page 10.

MR. BENNETT: Okay, my response was: "The level of consultation? No, there was no debate from my perspective. I think, again, the conversation might come back to what accommodation might be required and whether

life could be easier in the environmental assessment if somebody had, you know, accepted a land claim for negotiation for NunatuKavut.

But from my perspective – "... that from my perspective is a significant decision on the part of the Crown and one that would have to be taken very carefully. Ultimately, today both the Government of Canada and" both "Newfoundland and Labrador have opened up that conversation –"

MR. LUK: Yeah. And Ms. O'Brien says: Okay.

MR. BENNETT: Okay.

MR. LUK: And you say ...

MR. BENNETT: With NunatuKavut.

MR. LUK: Thank you, Mr. Bennett.

So in this part of the examination, when you refer to open up the conversation, is it true that you are referring to the July 12, 2018, announcement by Canada that it is opening talks towards recognizing NunatuKavut rights?

MR. BENNETT: Right, so the Government of Canada has been very clear on that.

MR. LUK: Yes.

MR. BENNETT: They have issued an announcement. And I think I may have jumped to a conclusion in relation to the Government of Newfoundland and Labrador. I've not seen a news release from them but, ultimately, they will be into the conversation. I may have jumped ahead of myself in indicating that the province was in that conversation.

MR. LUK: So at present you're not aware of the Government of Newfoundland and Labrador being part of those talks.

MR. BENNETT: That's right.

MR. LUK: Thank you.

MR. BENNETT: I'm aware that the province has said – the province and representatives of the province have said a few things about what

they would like – you know, what they think about that claim, but there – as I – I can't confirm that they're in the negotiations with NunatuKavut.

MR. LUK: Okay. Thank you.

And if I could just pull up Exhibit P-00271, once again, page 10.

THE COMMISSIONER: Tab 31.

MR. LUK: Mr. Bennett, this is – I believe this is Nalcor's report with respect to Indigenous consultation. Did you have some role in preparing this document?

MR. BENNETT: I saw this report before it was filed. One of our consultation leads, who participated in the environmental assessment, was a direct author, but I'm generally aware of the contents and I know where most of the material came from. That the source material underneath this report would have come from the consultation assessment reports and information collected during the environmental assessment.

MR. LUK: Thank you.

And on page 10 here, under the heading 3.3.3, NunatuKavut Community Council, at the end of that paragraph it does refer to July 12, 2018, the announcement by the Government of Canada. Could you just read out that last sentence in that paragraph, please?

MR. BENNETT: Sure.

"On July 12, 2018, the Government of Canada and the NunatuKavut Community Council announced that they would be working together to advance reconciliation and renew their relationship based on recognition of rights, respect, co-operation and partnership."

MR. LUK: And when you referred, on Tuesday, to opening up the conversation with NCC, this is the conversation you were referring to.

MR. BENNETT: That's what I was thinking of, yes.

MR. LUK: Okay. That's all my questions.

Thank you, Mr. Bennett.

Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you.

NunatuKavut Community Council.

MR. RYAN: Good morning, Mr. Bennett. My name is Victor Ryan. I'm counsel for NunatuKavut Community Council.

MR. BENNETT: Good morning.

MR. RYAN: Mr. Bennett, please describe to the Commissioner your experience working with Indigenous peoples prior to the Lower Churchill Project.

MR. BENNETT: Prior to the project I had not been involved in Indigenous consultation.

MR. RYAN: So, no experience.

MR. BENNETT: That's right.

MR. RYAN: Please describe to the Commissioner your experience working in Labrador prior to the Lower Churchill Project.

MR. BENNETT: My work in Labrador was limited. Early in my career, when I worked with NewTel Communications, I had, at least, some customers in Labrador. I had been on the ground, but not – maybe (inaudible) directly involved at the community level, but rather with specific customers or organizations based in Labrador. So I did not have a lot of experience in Labrador. I had been there.

MR. RYAN: And in the telecommunications sector, I'm assuming that when you say customers you mean businesses, commercial customers, industrial –

MR. BENNETT: Absolutely.

MR. RYAN: – customers.

And so, from those few questions, Mr. Bennett, I can surmise that you have little to no experience working with Indigenous peoples in Labrador. Is that correct?

MR. BENNETT: So, at the time of my joining the project, that's correct.

MR. RYAN: Would you agree that leading consultation and accommodation efforts with Indigenous groups is a pretty complex job that requires a high level of expertise?

MR. BENNETT: It is, and for that reason we quickly recruited people who did have expertise and experience in that area to the team, so, you know, people who were engaged in this work. We recruited people from the province who had been involved in previous consultation activities. We've had a number of people from the province and the Department of Labrador and Aboriginal Affairs who have been either hired or seconded to the team in order to participate in those roles, so that I wasn't the individual architect of all of those consultation activities.

We also worked closely with the Government of Newfoundland and Labrador and developed our approach in relation to consultation in concert with their guidance.

MR. RYAN: So, if I'm understanding your evidence correctly, given that it is a complex job and it does require a high level of expertise, Nalcor reached out to the Government of Newfoundland and Labrador for help.

MR. BENNETT: We certainly engaged people from the province; we engaged counsel and advisors to both the environmental assessment and consultation teams who had previous experience in dealing with these important matters.

MR. RYAN: Mr. Bennett, my understanding of your evidence from this week – either from this week or in your interview with Commission counsel is that you yourself were the person who decided to put yourself in a leadership position with respect to Indigenous consultation. Is that correct?

MR. BENNETT: I wouldn't say that, you know, I just simply put myself there; I think that, you know, it was an approach that evolved. We saw linkages between the environmental assessment and consultation, and those were the areas that I focused on along with the other members of the team. So to the extent that I

needed to be involved in there, the project – the remaining members of the project team weren't necessarily focused on consultation. That was an area that evolved and that I watched very carefully.

So to that extent, given the level of autonomy I have in terms of priorities, that was an area that I paid close attention to through the course of the environmental assessment. So, yes, I was ultimately playing a important part in that role.

MR. RYAN: Okay.

MR. BENNETT: And the reason – I'm just not saying that I came in one morning and said, okay, I'm going to look after Aboriginal consultation or Indigenous consultation.

It's a role that evolved as we worked through the environmental assessment and planning processes, and one that had close linkages to the province, was closely coordinated with the Government of Newfoundland and Labrador, and I found myself playing an active role in that area and had – also, as the project and our planning evolved, I also played the lead – an important role in addressing some of the negotiations with Innu Nation in particular.

MR. RYAN: But certainly –

MR. BENNETT: So there's some broader context around the specific question of how that – what my role was and how it evolved.

MR. RYAN: There may be broader context, but the answer to the question is you decided that you would be the main person within senior leadership at Nalcor with accountabilities for Indigenous consultations. Is that correct?

MR. BENNETT: So to the extent that consultation was part of the project, yes. I think I was the point person so far as the project was concerned.

MR. RYAN: Yes.

I would suggest to you that it would have been better to have hired someone with subject-matter expertise in Indigenous consultation to lead Nalcor's efforts. Would you agree with that?

MR. BENNETT: So at the level where we're directly engaging with groups, we did have people engaged on the team, and I explained some of the people and where they came from.

MR. RYAN: Great.

Can you tell me what senior leadership members of the Lower Churchill Project were Indigenous people?

MR. BENNETT: Were actually Indigenous people? Today, we have members of Innu Nation on the project team who are engaging with individual workers on site. So I can think of two or three members on our team who have a direct engagement role.

MR. RYAN: Anyone on the board?

MR. BENNETT: I'm running through the list in my mind. I don't think there are.

MR. RYAN: Any vice-presidents?

MR. BENNETT: No.

MR. RYAN: Anyone from Labrador on the board? Anyone from Labrador a vice-president of Nalcor?

MR. BENNETT: There is nobody from Labrador, that I can recall, who's a vice president; there are – there have been representatives from Labrador on the board in the past and, I think, presently as well.

MR. RYAN: Would you agree that Nalcor, as the project proponent, was assisting the Crown in fulfilling its constitutional duty to consult?

MR. BENNETT: I would agree that we were carrying out roles that, yes, assisted the province in carrying out that duty.

MR. RYAN: And in fact, the Government of Newfoundland and Labrador made clear that, for the purposes of this project, they would rely on the proponent to discharge the duty of consult. Is that correct?

MR. BENNETT: I – it's difficult for me to speculate on the extent to which they relied. There's no question that we carried out

significant activities during the environmental assessment and provided that information to the province. So I don't think I can say that the province totally relied on our work to discharge their duty to consult.

But we did play an important role in terms of gathering information, assessing and trying to get – first of all, providing information, gathering concerns and reporting them back to the province or to the Joint Review Panel as appropriate to the environmental assessment process. We're also carrying out procedural aspects of – you know, during the permitting process.

But I don't think I've ever heard anybody say that it's – we've – the province has simply delegated all that responsibility to us.

MR. RYAN: Great.

How did Nalcor identify which Indigenous groups required consultation? Was that in – through conversations with the Government of Newfoundland and Labrador?

MR. BENNETT: The early documentation of the groups that we were to consult with was identified in the environmental impact – or the environmental assessment guidelines for the project, and there's an inclusive group there.

MR. RYAN: How did Nalcor identify the requisite level of consultation for each group identified?

MR. BENNETT: That level of consultation was – I guess we started at, you know, an initial assessment of the impacts of the project on Aboriginal rights and those – and concerns that were being raised.

And ultimately, the level of consultation and engagement became very clear through the evolution of the environmental assessment, the Aboriginal consultation that happened in relation to the terms of reference and guidelines, and that informed the province's thinking, and Canada's thinking, in terms of the extent to which consultation would be required.

MR. RYAN: Would you agree that Nalcor, for the purposes of consultation, treated the different

Indigenous groups in Labrador differently? And, by that, I mean afforded a different level of consultation to the different groups and, I suppose, the Indigenous groups in Quebec as well.

MR. BENNETT: I would acknowledge that the level of consultation and effort that went into discussions with the Labrador Innu were the – I think the highest level of consultation that one could contemplate.

And on the spectrum from there to other groups who were remote from the project who had, I guess, less overlap and less interaction with the project – and I can think of some of the Quebec groups where that level of interaction was very low. And I guess through the engagement process that continued to be reinforced, that, yes, there was a spectrum of consultation.

MR. RYAN: Would you agree that, at least in part, one of the reasons for that differential treatment – what you just said was a spectrum – rested in part on the fact that some Indigenous groups' land claims had been accepted for negotiation by the federal and provincial governments and some groups' land claims had not?

MR. BENNETT: Well, you're right that some had been concluded in the form of a comprehensive treaty, some were under active negotiation; some were not under negotiation. That's – yes, I think that's fair.

MR. RYAN: And so you would agree that that played a role in the differing levels of consultation?

MR. BENNETT: It helps to, I guess, frame things in the sense that the acceptance of a claim for negotiation is at least one indication of, you know, the potential impacts, but also – it's also information that's gathered through the environmental assessment process and our information gathering and engagement. And then we start to see, now, what are the issues, what are the considerations and if it was necessary to deal with some of those issues on a deeper level and that you could get to a point where accommodation, for example, was warranted. Some of that information actually comes from the engagement process.

So I don't think it's simply you start at the beginning and say: Okay, well, you know, this is what we're going to do. You need to learn from the engagement that's happening as well.

MR. RYAN: Right. It is a factor. It's not the only factor, but it is a factor.

MR. BENNETT: Yes.

MR. RYAN: Madam Clerk, can we please look at P-00271? And this is the Indigenous Consultation Report that Nalcor provided. Page 11, please, Madam Clerk.

THE COMMISSIONER: Tab 31.

MR. BENNETT: Okay. Thank you.

MR. RYAN: If we could just scroll down – this is perfect.

So under the heading 4.2.1, this is a summary of consultation for Innu Nation, and the first sentence says: "Consultation and negotiation between Nalcor and Innu Nation has been ongoing since 1998."

Is this correct?

MR. BENNETT: That there were consultation activities that go back at least that far? Yes.

MR. RYAN: Okay.

Would you agree that talks with an Indigenous group, like the Innu, so early in the project's life is an encouraging sign (inaudible) – to start so early in the project's lifespan, reaching out to Indigenous groups that may be affected?

MR. BENNETT: Well, I think in 1998 there was an effort to advance a version of Lower Churchill Project. In addition to that, there was another effort in 2000 – we can pick the date here – 2000, 2002 there was an effort to advance Gull Island. There were consultation activities going on then as well. Two varying degrees of intensity, but there certainly was planning going on for the project in both of those periods and, you know, once the environmental assessment process kicked in, then that was going to continue.

MR. RYAN: So the beginning here in 1998 reflects the amount of work that had been done in the lead-up to what we would consider the real, sort of, prelude to the project – the environmental assessment, the JRP work had been obviously ongoing for many years before that.

MR. BENNETT: Well, there were active plans to develop the project back then as well.

MR. RYAN: Right.

MR. BENNETT: And I certainly remember hearing of an event at Churchill Falls where the Labrador Innu had a very strong perspective on the project as it was contemplated back then. And engagement continued, at least, from then into the proposal to develop Gull Island in the early part of 2000, 2002. And then, when the environmental assessment process started, those talks re-engaged.

MR. RYAN: Can we – Madam Clerk, could we go to page 14 of this document? And just scroll down – oh, actually, sorry, this is perfect right here.

So the heading for this is on the other page, but this is a continuation of the summary. And this is the part of this document that discusses consultation efforts with NCC. And it says here – the first sentence: “During spring 2007, discussions were initiated with the executive of the Labrador Metis Nation ... NCC’s name at the time.”

Is this correct?

MR. BENNETT: I believe it was.

MR. RYAN: Can you describe for the Commissioner what accounts for the nine-year discrepancy in the beginning of consultations?

MR. BENNETT: Between ...?

MR. RYAN: In 1998, Nalcor is consulting with Indigenous groups it feels may be impacted by the development of the Lower Churchill Project. And in 2007 – if I’m reading this page correctly – discussions were initiated with the executive of the – what was then LMN. So why nine years after?

MR. BENNETT: I guess the – or why – maybe the other – another way to think about that is why were the Innu – why were discussions with Innu happening significantly earlier? I think it was –

MR. RYAN: Sure. What accounts for –

MR. BENNETT: Right –

MR. RYAN: – the nine-year discrepancy?

MR. BENNETT: So it was generally understood by members of the project team, who ultimately preceded me at that time and representatives of government, that if anything was going to happen with the Lower Churchill there needed to be engagement with the Labrador Innu.

There is a – so there is a – that was clearly understood. And as we get into the environmental assessment process, our approach is to now reach out and – with the other – all of the other Indigenous groups to carry out consultation activities in accordance with the EIS Guidelines, which we’re now – ‘cause we’re now into that process.

MR. RYAN: Right.

So in the late ’90s, is it your evidence that the executives at Nalcor assumed that the Lower Churchill Project could proceed without bringing onside the other Indigenous groups, beyond Innu Nation?

MR. BENNETT: I – to the extent that – first of all, I wasn’t there, because I hadn’t joined Nalcor until 2005. But I do understand that discussions with Innu Nation were ongoing as – at least as early as then, but I can’t put my finger on anything about consultation with other groups. That’s not an area that I had researched.

MR. RYAN: Okay.

So you obviously were not at Nalcor at that time, and if I’m understanding you correctly, you can’t – you don’t know what accounts for the discrepancy in the beginnings of consultations –

MR. BENNETT: Right.

MR. RYAN: – for different Indigenous groups.

MR. BENNETT: Right. What I do know is that there was engagement at the time with the Innu of Labrador through Innu Nation.

MR. RYAN: Okay.

Mr. Bennett, are you familiar with the Supreme Court of Canada decisions in Haida Nation and Taku River? These are two pretty high-level Supreme Court of Canada decisions regarding the duty to consult.

MR. BENNETT: I have seen references to them. I may have read them a long time ago, but I'm not a lawyer.

MR. RYAN: Yes.

MR. BENNETT: But generally, you know, I'm familiar with some of the principles that are there.

MR. RYAN: Well, I don't intend to take you through the decisions –

MR. BENNETT: Yeah.

MR. RYAN: – with a fine-tooth comb. But I would suggest to you that one of the main aspects of those two decisions is that the duty to consult is triggered, not just on the basis of an accepted land claim but on the basis of an asserted land claim. Is that your understanding of the decisions or are you unable to say?

MR. BENNETT: I think before it comes to me on that one, so we recognize that the duty to consult ultimately lies with the Crown; we would in many regards follow their lead in terms of the consultation approach. And I agree that it's not necessarily simply that that duty is triggered only when a claim is accepted. It's triggered before that – it could be triggered before that.

MR. RYAN: Yes.

I find it interesting to hear your evidence that Nalcor took the lead from the provincial government, because I would suggest to you that the documents that we've seen so far and the evidence we've seen would indicated that

there's a bit of the snake biting its own tail there. I think the provincial government often took its lead from Nalcor and if you're saying that Nalcor often took its lead from government, is that an example of just two entities working closely together or is that an example of no body knowing who's in charge of Indigenous consultation?

MR. BENNETT: The duty lies with the Crown.

MR. RYAN: And Nalcor was fulfilling that duty?

MR. BENNETT: We were – we understood what we were expected to do in terms of the environmental assessment and the guidelines and what our role was. So in terms of other – in terms of the agreements with the Innu, there was a high degree of alignment. So, you know, if you look at the Tshash Petapen Agreement, the – which was – which included the three major agreements. The treaty, we don't – we're not going to be leading on the treaty negotiations. In terms of the IPA, we are. It's our – it's a proponent document.

We also have an important role in dealing with the Upper Churchill redress. But my point is, we don't drive Indigenous consultation. The province has that role and we're supporting that role but the decision-making and the duty lies with the Crown.

MR. RYAN: Mr. Bennett, the negotiation of a treaty is not an aspect of the duty to consult. The duty to consult is not a catchall term for any negotiations –

MR. BENNETT: I understand –

MR. RYAN: – with Indigenous groups –

MR. BENNETT: I understand that.

MR. RYAN: – so I don't see how the province – or I don't see how Nalcor not having a role in treaty negotiations as relevant to the question of – if Nalcor considers the Government of Newfoundland and Labrador leading Indigenous consultation and if the Government of Newfoundland and Labrador considers Nalcor to be leading Indigenous consultation, who's actually leading?

MR. BENNETT: There's no question that we were asked to do a variety of things through the environmental assessment process. That guidance came from the EIS Guidelines, which are issued by Canada and the province.

MR. RYAN: Speaking of the close relationship between the province and Nalcor on this issue, is it accurate to say that Nalcor desired a cautious approach to dealing with NunatuKavut, because Nalcor did not want to appear to be affording NCC a level of consultation higher than what was constitutionally required?

MR. BENNETT: Our – as I said, our engagement, our efforts were in conformance with the Guidelines from Canada and the province. It would be important for us to, first of all, work within that framework and if we were going to go outside that framework, then we would need to have, you know, a pretty good reason for doing so.

MR. RYAN: Why is that?

MR. BENNETT: I think most fundamentally, the question of consultation leading to the extent to which Aboriginal rights are acknowledged, accepted, dealt, is an important consideration for the province. And we would be working in alignment with their thinking. It's no different than us – you know, the province getting to a conclusion that the conditions with Innu Nation need to be addressed and accommodated in the form that they were. So it'd be very important for us, as a subsidiary of the province, a Crown corporation, to be sure that we're working in alignment with their policy.

MR. RYAN: I take your point that Nalcor is different than, perhaps, other proponents in other projects, but would you agree that there is no constitutional downside from what I would call over-consulting; that is, you cannot run afoul of the Crown's duty to consult by negotiating with Indigenous groups at a level higher than that, which is required?

MR. BENNETT: In terms of consultation, I'd agree. If the conversation turns to accommodation, that may be a different question.

MR. RYAN: Yeah.

So, just to make sure we have it clear, the consequences to you, the proponent, and ultimately the Crown – because the Crown bears the constitutional duty to consult – the consequences of under-consulting are that the honour of the Crown is sullied and that the project may not go ahead, is that correct?

MR. BENNETT: That is certainly one possible consequence, if insufficient consultation is determined to have taken place.

MR. RYAN: And the consequences of over-consultation, I would put to you, are a better working relationship with Indigenous groups, is that correct?

MR. BENNETT: That's probably fair.

MR. RYAN: And would you agree that Nalcor's approach to consultation with NunatuKavut on the Lower Churchill Project was to strive to do the absolute bare minimum possible required under the Constitution; that is, to not run afoul of the constitutional duty to require – duty to consult, but to do no more than was absolutely necessary?

MR. BENNETT: I think there was, you know, effort on our part putting in – put into trying to gather land use information to try to understand project effects, and I don't think that that effort was minimized.

Okay, so, I think that the – generally speaking, the EIS Guidelines require, and the Joint Review Panel required that considerable information be gathered; and that discussions and efforts to achieve a common understanding were undertaken; and that work, those concerns, are documented here. So I don't think that, I would say, we did the bare minimum.

MR. RYAN: Okay.

In your testimony on Tuesday, I believe, November 27, you were asked about the different level of consultation afforded to each Indigenous group, and you said: The body of information supporting their land use, meaning NunatuKavut, was actually developed during the environmental assessment process, and more information became available but we didn't have

a clear indication of the extent of their deep land use in the project area.

Is that an accurate reflection of –

MR. BENNETT: That – That information became available to us during the EA. I can remember at one hearing session, you know, there were maps presented and there was information presented that was, you know, new to us, and we assimilated that, you know, through the environmental assessment process. But the level of detail, the body of information, the concerns that are documented in this report and the appendices, came available to us through the course of the environmental assessment process.

MR. RYAN: Right, your – Nalcor's level of information about NCC's land use increased through the environmental assessment process.

MR. BENNETT: Yes.

MR. RYAN: But would you agree that it was still incomplete by the conclusion of the environmental assessment process?

MR. BENNETT: I think there's always more detail that can be gathered.

MR. RYAN: Would you agree then that the Joint Review Panel process proceeded without the benefit of the complete picture of NunatuKuvut's presence in the land use area?

MR. BENNETT: I can only say that the Joint Review Panel would've concluded that they had enough information in order to render their decision.

MR. RYAN: Okay.

Madam Clerk, can we go to the Joint Review Panel report; it's P-00041?

And maybe we'll start at page 23. And I'm specifically thinking the bottom of this page and the top of page 24.

So, here is the Joint Review Panel's report and they write: "The NunatuKavut Community Council indicated that it was only able to provide limited information about current land

and resource use activities for traditional purposes by Inuit-Metis because of its injunction application and the lack of time and financial resources to provide detailed hearing submissions."

And then skipping to the top of page 24 here: "The Panel concluded that, based on information identified through the environmental assessment process, there were uncertainties regarding the extent and locations of current land and resource use by the Inuit-Metis in the Project area. The Panel recognized that additional information could be forthcoming during government consultations."

I don't know that necessarily, Mr. Bennett, that we have to go through the whole document, but I will put it to you that on a number of occasions the JRP comments that – with respect to information about the extent and location of NCC's current land use in the project area, there are uncertainties. Would you agree with that?

MR. BENNETT: I agree with that, yes.

MR. RYAN: Perhaps if maybe just one more, Madam Clerk, page 202?

And so my read of the Joint Panel report is that they sort of put very important and interesting information in these boxes here. And so, again, here at page 202 of the report, in speaking about NCC they say: "Based on the information on current land and resource use identified through the environmental assessment process, there are uncertainties regarding the extent and locations of current land and resource use by the Inuit-Metis in the Project area."

So, Mr. Bennett, I believe you just said that the JRP would have to write in their report that they were satisfied with the information that they had respecting NCC's land use. But we can see that in this report, multiple times the Joint Review Panel indicated that there are uncertainties regarding the extent and locations of current land and resource use in the project area.

So I would put it to you that the JRP did, in fact, write the level of certainty they had with respect to the information they had and that they were uncertain. Is that not accurate?

MR. BENNETT: So I think there were two points.

If the panel felt they had insufficient information in order to draw their conclusions, then they could take steps to request further information and – but to the extent that there were uncertainties, I think in a planning process there were always going to be uncertainties.

So I think there were – there are two points to be made. And there was certainly conversation through the panel process about the level of information and whether the efforts that were undertaken to try to gather that information were reasonable. But having expended those efforts, then the panel has to ultimately decide whether they're going to wait and say: We don't have enough information to move forward, or we're going to move forward and recognize that there was a certain level of uncertainty in the recommendations that were made.

MR. RYAN: Mm-hmm.

MR. BENNETT: That's a – I mean that's a judgment call for them, in my view.

MR. RYAN: Of course, but Nalcor is the proponent and there – I would put it to you that there is a difference between achieving the conditions necessary to proceed and satisfying yourself that you're in a good position to proceed.

Would you agree with that? You can have all of the prerequisites, all of the regulatory approvals, but the mere existence of those preconditions don't necessarily indicate that the project should proceed. Is that correct?

MR. BENNETT: I'm not sure that that individual uncertainty would lead someone to conclude that the project should not proceed, or whether it should proceed. There's a – in any planning activity, if you look at the environmental assessment, there are uncertainties and it's the reality of the process, given that this work is being done in the early stage – relatively early stage of project planning and you don't have complete certainty on a lot of topics.

And this one is not unique; there were other areas where uncertainty exists as well. And that ultimate determination as to whether a project should proceed, you know, that will come with the response to the environmental assessment, and the response to the Joint Review Panel and then, finally, whether or not decisions are required by the two governments. But uncertainty is not – uncertainty, in relation to information, is not an uncommon situation.

MR. RYAN: My question is there are a number of regulatory hurdles that the project had to clear before the decision could be made as to whether to proceed. Are the existence of those approvals enough on their own, in your mind, to justify proceeding with a project?

So if we have a JRP process, an environmental assessment that ultimately clears the project for construction with conditions, but indicates several times that there are uncertainties about extent and location of current land use and says additional information could be forthcoming, is the mere fact that the release has been obtained enough for Nalcor? Or does Nalcor look at the uncertainties and the lack of information and the need for additional information in this report and think, we have to do more.

MR. BENNETT: There's – and there will be – I guess, inevitably, there will be more conversation, there will be more consultation and it shows up later in the process. You know, the obvious example was during the permitting process, but –

MR. RYAN: Right, but Mr. Bennett, I'm not asking about what happened.

MR. BENNETT: Okay.

MR. RYAN: I'm asking about your perception of at what point is it appropriate to proceed with the project? So rather than say, you know, X, Y and Z happened, I'm trying to get a sense of if you think that upon obtaining the regulatory approvals, that that is sufficient to justify the project going ahead. Or does Nalcor, as an organization as the proponent, need to look beyond the mere yes or no and really consider the contents of these reports.

MR. BENNETT: I think that to the extent that the process was rigorous, was extensive, provided a great deal of information for the two governments who ultimately will decide whether the project will proceed. From our perspective, I didn't see a scenario where additional information in relation to this issue would've been required before we move forward.

MR. RYAN: Okay, Mr. Bennett, I don't think that's an answer to my question, but I'll move on.

MR. BENNETT: Well, I thought I did in the sense that did I believe that the regulatory and environmental assessment process was sufficient in order for us to move forward, and I believe it is.

MR. RYAN: So not specifically in this case but just in general, if Nalcor receives all of the regulatory approvals it needs to proceed with the project, it should proceed with the project?

MR. BENNETT: Well, it can proceed with the project, yes, but there are other tests that are going to be applied, you know, in terms of the ultimate decision to proceed, and that's a sanction decision which is going to happen later.

MR. RYAN: And what kind of tests are those?

MR. BENNETT: Well, there were other considerations at that point in time, certainly in terms of the project here. You'll have much more detailed engineering information, detailed cost information, detailed information about the project footprint. And then, you know, if there are opportunities for evaluation of some of those issues that might arise, even during the permitting process where we're making decisions about when and where the work is getting done.

MR. RYAN: Okay.

So I take that evidence to be agreeing with my point that there – the work doesn't stop when the actual yes, no pre-hurdle decisions are made, and that Nalcor would do additional information – collect additional information, do additional work leading up to that actual decision. Was there any additional work done by you and your team on the uncertainties regarding the extents

and locations of current land and resource use by NCC in the project area after this report came out?

MR. BENNETT: So beyond the Joint Review Panel for the generation project, there was additional information gathered during the environmental assessment for the transmission project.

MR. RYAN: For the –

MR. BENNETT: The Labrador-Island Link.

MR. RYAN: Yeah. But not – would you say that was responsive to the uncertainties outlined in the JRP report?

MR. BENNETT: It's – yeah, I would have a hard time speculating because they didn't document in great detail what those uncertainties were.

I mean, the land use in the immediate project footprint – you know, ultimately we get to the point where, you know, we have aerial photography of the reservoir, we have a pretty good handle on what's going on in the immediate project area.

But there was certainly additional information gathered during the transmission EA, in terms of – if I think about it for a second – indicated land use, travel routes and important areas on the South Coast of Labrador.

MR. RYAN: Mm-hmm. So – but if I'm understanding you correctly, Nalcor was uncertain about these uncertainties because they weren't certain what these uncertainties meant?

MR. BENNETT: Well, there's – my point is there are – there was additional information gathered during the detailed work. I think there was still ongoing conversation with NunatuKavut through, not only this environmental assessment, but onward into the transmission environmental assessment, and there was specific information provided to, ultimately, the 10 Indigenous groups through both this process and the subsequent permitting process.

So the opportunity for additional information or additional feedback through the permitting process was also made available by the province. And the province shared, as I recall, every permit application with every supporting document that went with that permit application to all 10 Indigenous groups in both Labrador and Quebec. So those uncertainties, in terms of what the project is doing, are beginning to be – are being buttoned down as we see more specific information about the project through that process.

MR. RYAN: Are being buttoned down now?

MR. BENNETT: Would have been through the – through that permitting process. The number of permits left on the project now is very small.

MR. RYAN: And so what time frame are we talking about in terms of –

MR. BENNETT: From 2012, when first permits were granted, all the way through to 2014, 2015. And we may – we'll find – if we go looking for – I think there are 1,400 permits associated with the project and, you know, they continue until they're all done.

MR. RYAN: Okay.

Madam Clerk, can we go back to Exhibit 00271? Page 56.

THE COMMISSIONER: Thirty-one.

MR. RYAN: If we can just scroll down, sort of slowly – here is fine.

So, Mr. Bennett, I don't plan to take you through this in its entirety, but suffice to say this is a table outlining Nalcor's response to each individual concern identified by NCC.

And I just want to show you one example of a line that, by my count, is included 10 separate times in this table. And that's – where you see on the left it says: "Other." And then going to the right it says: "Cultural importance of lands and waters in traditional territory." Are you following me?

MR. BENNETT: Yup.

MR. RYAN: Yeah.

So the right-most column here, it says: "Consultation has been undertaken by Nalcor in compliance with the Guidelines and at a level commensurate with Nalcor's understanding of NunatuKavut's interest in the Project area."

Now, I put it to you that that line is included in here approximately 10 times. I don't propose to take you to each individual time, but I will if you would like.

But would you agree that this line accurately reflects Nalcor's response to many of NunatuKavut's concerns, that consultation was undertaken commensurate with Nalcor's understanding of NunatuKavut's interests?

MR. BENNETT: I think the guidelines have more detail on what's required for us – what information is required for us to gather, what level of understanding is required. And I'm also aware that all 10 Indigenous groups who were consulted with by us had the opportunity to present their own information directly to the Joint Review Panel, both in advance of the hearing and during the hearing. Funding was provided by the Joint Review Panel to Indigenous groups, and they had that opportunity to, again, participate in the process.

From our perspective, we were attempting to gather information to be in conformance with the guidelines, because achieving that and participating in the process at that level, of course, is critically important. And I appreciate your point that somebody could have said, yes, there's more we can do, but the things that are expected to have been done were laid out fairly well, in detail, in the EA guidelines.

MR. RYAN: And so you saw your role as simply following the letter of the environmental assessment guidelines; you do what is asked of you and no more?

MR. BENNETT: There's certainly a requirement that we do that.

MR. RYAN: Right.

But what I'm trying to get at, Mr. Bennett, is it seems as though Nalcor's perspective on a lot of

Indigenous consultation is we will do the absolute minimum required so that we don't run afoul –

MR. BENNETT: Well –

MR. RYAN: – of the EIS Guidelines –

MR. BENNETT: Yeah.

MR. RYAN: – but we will be very careful to go not one step further than the absolute minimum because why would we, because this is all the guidelines require of us.

MR. BENNETT: Yeah –

MR. RYAN: Is that an accurate reflection –

MR. BENNETT: No –

MR. RYAN: – of the culture of Nalcor?

MR. BENNETT: I – no, I don't see it that way.

I think the guidelines, you know, had relatively clear direction to understand interests, to understand traditional and contemporary land use and to present its understanding to the Joint Review Panel.

So efforts were undertaken, and I'm comfortable that we demonstrated that understanding to the Joint Review Panel during the EA process.

MR. RYAN: Maybe I'll put it to you this way: Do you feel that Nalcor exceeded what was required by the environmental assessment guidelines?

MR. BENNETT: I would say that it took a lot of work to get to where we are. So I never – I will acknowledge that we didn't do a detailed analysis to see how far beyond the guidelines we had gone –

MR. RYAN: Right.

MR. BENNETT: – okay? But we were definitely clear that we absolutely had to have conformance with the guidelines.

And in our view, that hurdle wasn't a low one. We had to demonstrate through multiple efforts

with multiple groups – comprehensive set of documentation – what our understanding was.

MR. RYAN: So I'll ask again: Do you feel that Nalcor exceeded the level of work required by the environmental assessment guidelines, or do you feel that Nalcor breached that level, which you said is high – that's fine, you can –

MR. BENNETT: Right.

MR. RYAN: – think it's high.

Did you hit it, or did you exceed it?

MR. BENNETT: I can feel comfortable that I hit it; we never looked at how far beyond we had gone.

MR. RYAN: Okay.

I'd just like to go to one more document, Madam Clerk. It's Exhibit P-00097.

THE COMMISSIONER: (Inaudible.)

MR. RYAN: Page 65, please, Madam Clerk.

So this is the Decision Gate 2 strategic risk report.

THE COMMISSIONER: Okay, so that's just one page in your binder so you'll have to look at the screen.

MR. BENNETT: Okay.

MR. RYAN: And so there are many strategic risks, they are all numbered, they are all set out – you're familiar with this document I assume, Mr. Bennett?

MR. BENNETT: Generally, yes.

MR. RYAN: So I'd just like to discuss risk R14, which was "Securing generation project release from Environmental Assessment." Are you familiar with this particular strategic risk?

MR. BENNETT: I think we've looked at this one, yes.

MR. RYAN: Okay. And I'd just like to note that on the next page you are in fact listed as

“Accountable” for this strategic risk, is that accurate?

Oh, yup.

MR. BENNETT: Yes, that’s right.

MR. RYAN: Okay, so if we go up again to page 65 and specifically I’d like to look at “Specifics and Root Causes.” So the risk description here is that “As a result of a lack of information in the Generation EIS, a legal challenge to the EA by Hydro Quebec, or Aboriginals claiming insufficient consultation, could result in a schedule slippage for achieving EA release and hence a delay in Project Sanction.”

And then whoever authored this particular strategic risk – I’m not sure if it’s Todd Burlingame or someone else – listed four principle causes of that risk. And I would ask, Mr. Bennett, if you could just read the fourth principle cause.

MR. BENNETT: Okay.

“Inaction, indecision and political interference as a result of conflicts between Nalcor and Province’s mandates.”

MR. RYAN: And then the next sentence.

MR. BENNETT: “We are encumbered.”

MR. RYAN: Okay. What is meant here by the conflict in mandates between Nalcor and the Government of Newfoundland and Labrador?

MR. BENNETT: I didn’t see there being a conflict. I think Mr. Burlingame might have been involved in drafting here, but our approach – my approach was to make sure that we were aligned, that we were taking appropriate efforts to get the necessary information; and I know that in the context of the environmental assessment, the EIS did have information that was missing in it.

There were some groups who were either unable or unwilling to provide that information and that conversation went on for some time with the Joint Review Panel. But during the environmental assessment process, the consultation assessment report – which contains

much of the material that we see here – was developed through the information requests from the panel.

So my view on this and the – is that the – while the statements are correct, that we look at the EA process being outside of our direct control – that is true. It is outside our control, and our effort was really put on making sure that we’re gathering the information necessary to provide a basis for decision-making.

MR. RYAN: Right. And I take your point that your evidence – at least by my read – has been fairly consistent that you are not aware of a conflict in mandate between Nalcor and the province. But clearly one existed, or at least people within Nalcor deemed one to exist.

Are you unable to give any information about what could have created that appearance of conflict?

MR. BENNETT: I would acknowledge that there are individuals on the project team who simply want to get things done. Let’s just get past this and get on to the next problem. And this is an issue that, for the reasons I’ve talked about earlier, requires that we be aligned with the province in terms of its duty to consult, and that that process needs to work effectively and it needs to unfold. And the effort needs to be put into trying to facilitate the process as efficiently as we can in order to get through.

MR. RYAN: And when you say that there are members of Nalcor that just want to get things done, what are the things that those individuals wanted to get done?

MR. BENNETT: So somebody might say well, let’s just solve this problem immediately.

MR. RYAN: What problem?

MR. BENNETT: The possibility that – you know, somebody might say: okay well, how can I prevent some other way to avoid a claim on consultation; and one obvious approach is simply jump to accommodation and find a way to make it happen.

MR. RYAN: So in your view, this fourth principle cause is relating to the lack of – the perceived lack of consultation?

MR. BENNETT: I wouldn't say the perceived lack of consultation, but the risk that there would be insufficient consultation and it might – you might want to have some agreement or some form of accommodation behind that consultation.

MR. RYAN: Right –

MR. BENNETT: That would mean that –

MR. RYAN: – but clearly it's not about a legal challenge to the environmental assessment by Hydro-Québec. Are you comfortable with saying that?

MR. BENNETT: Well, I mean –

MR. RYAN: If your view is that this principle cause is about certain members of Nalcor wanting to do more and do it quickly, and the government saying no, we have to be more cautious, we have to take a slower route to these outcomes. It certainly can't be about the parts of the risk description that are outside of government's control. I would put it to you, it has to be about Indigenous groups claiming insufficient consultation. Is that correct?

MR. BENNETT: No, I think there are other – there are some other possible EA challenges that might not have simply been launched by an Indigenous group. So, you know, a claim on project splitting, for example, could have been launched by somebody else other than the Aboriginal group. And, you know, it is possible that some other means of challenging the EA and stopping the train could have originated from other sources,

MR. RYAN: But nothing – but those possible sources of delay couldn't have been fixed by someone from Nalcor saying – well, that's just throwing money at it – let's just do it quickly.

MR. BENNETT: No. I agree with that. I think –

MR. RYAN: We are talking about the possibility that Indigenous groups would claim insufficient consultation. Would you agree?

MR. BENNETT: That was the one I was focused on there. Yes.

MR. RYAN: So, "Inaction, indecision and political interference as a result of conflicts between Nalcor and Province's mandates." and not conflicts you and I have fleshed out, is Nalcor wanting to – or certain people at Nalcor, not necessarily Nalcor itself – wanting to move straight ahead to accommodation to – what I would call, meet in good faith with Indigenous groups and determine what their needs are and get them onside.

And the way that I read this is that you are encumbered from doing that because of inaction, indecision and political interference on behalf of the province. Is that accurate?

MR. BENNETT: So that's what it says and I've explained that I didn't sense that interference. I was feeling aligned with where the province's policy was on this and that we were moving in accordance with that policy guidance. So, I didn't feel to be encumbered or in conflict.

MR. RYAN: Is it possible that you – that the political interference existed and you weren't aware of it.

MR. BENNETT: It's not likely that political interference, as somebody framed here, would go, you know, around the Department of Labrador and Aboriginal Affairs – the deputy minister in that department and myself – and show up in the project team.

MR. RYAN: Right. So, would you say that this root cause is wrong?

MR. BENNETT: I don't – I can – I have no difficulty at somebody expressing a perspective, which is done here. I don't fully agree with the statement that there was interference – if there was a desire to simply get past the consultation process that had been laid out. I appreciate that that's somebody's perspective and I appreciate it's documented here. I don't share that view.

MR. RYAN: Did you find that that view was shared by a number of your colleagues at Nalcor?

MR. BENNETT: I didn't feel that it was, particularly the people who were involved in the consultation process, directly on the ground. Now, Mr. Burlingame was responsible for the EA and he wanted to get through the EA in an expeditious matter. There's no question that there was a lot of information being requested by the Joint Review Panel through this process.

The notion of a challenge to the other points that are up there in relation to the risk, you know, the potential for legal challenge from Hydro-Québec in relation to a claim on project splitting: those are a big deal and they need to be considered carefully as well. And we developed – you know, we completed a legal review of the question and the risk of splitting and concluded that we were in a good place. So there's more to this risk than simply Aboriginal or Indigenous consultation.

MR. RYAN: All right, so are you confident that Todd Burlingame authored this strategic risk, this particular R14 report?

MR. BENNETT: I'm not – I can't guarantee that, but he's the lead that's been identified on this risk here.

MR. RYAN: Does – do these strategic risks get reviewed before they're included in the DG2 project risk analysis?

MR. BENNETT: They do get looked at.

MR. RYAN: Okay.

I guess my point is it's a pretty shocking accusation that political interference between Nalcor and the provincial government, as a result of a conflict of mandates, is encumbering Nalcor and potentially delaying this secure of project release from environmental assessment; it's in the DG2 project risk analysis. I take your point that you didn't feel this way, but I would put to you that this is more than just the notes of one particular employee and one particular employee's perspective; this is included in the DG2 project risk analysis.

I would suggest to you that this is more than one employee's opinion about how things were going. Would you agree with me?

MR. BENNETT: It's – I'm not going to be surprised if there were other project teams who were looking at this to say I need to get past this risk as quickly as possible. I think I already said that.

MR. RYAN: Right. So this document – I mean, it's – it reflects Nalcor's understanding of the root causes of this risk. It may not reflect your personal understanding, but if there's a conflict between your personal feeling about the lack of conflict and this document from Nalcor included in the DG2 project risk analysis, should the Commissioner accept your feelings about the issue or should the Commissioner accept this document?

MR. BENNETT: I'll defer to the Commissioner. My – I've given my perspective on this and I think that the province has explained its position in terms of Indigenous consultation. Now, I can only tell you what – the way that I see it. And that, you know, my message to the team is we need to work with the process, deliver the information as best we can, try to find a way to get through the process in accordance with the province's policy objectives.

MR. RYAN: Obviously, this is in reference to something, and I feel as though neither the province nor Nalcor has offered up an explanation of this conflict of mandate. So I'll just ask again: If this line exists in a Nalcor document and you personally don't think it's accurate, who should we believe?

MR. BENNETT: Again, I can tell you what I know and understand.

MR. RYAN: All right.

Those are my questions. Thank you.

THE COMMISSIONER: Thank you, Mr. Ryan.

All right, we'll take our break now this morning and then next will be the Ekuanitshit.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

UNIDENTIFIED MALE SPEAKER: All right.

THE COMMISSIONER: Ms. O'Brien, first –

MS. O'BRIEN: Sorry, Commissioner, before the next counsel begins his cross-examination, I'd ask to enter further exhibits: P-01401, P-01487 and P-01488.

THE COMMISSIONER: All right. Those are entered.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: All right, Mr. Janzen.

MR. JANZEN: Good morning, Commissioner.

Good morning, Mr. Bennett.

My name is David Janzen and I'm here on behalf of the Conseil des Innus de Ekuanitshit, an Innu community with a reserve in Quebec.

If we could, Madam Clerk, please go to P-00271. Again, it's the *Indigenous Consultation Report* submitted to this Commission in August by Nalcor. And page 9, please.

And this is the overview of the different groups and communities consulted. And it describes the status of land claims, for example, for the Labrador Innu, Labrador Inuit and for NCC. And then, when it comes to the Quebec Innu, it says – if we could just scroll down, please, it might be at the top of the next page, the first paragraph: "There are 11 Innu communities and one Naskapi community in Québec. The land claim areas of several of these First Nations extend into Labrador, although these have not been accepted for negotiation by the Government of Newfoundland and Labrador."

It doesn't mention what the status of the land claims are with the federal government. Are you aware, Mr. Bennett, that the land claims in Labrador of the Innu of Ekuanitshit and other Quebec communities were accepted for negotiation by the federal government?

MR. BENNETT: No, I wasn't aware.

MR. JANZEN: So, for example, in the federal Court of Appeal proceedings that Ekuanitshit and Nalcor were involved with at paragraph 89.

MR. BENNETT: Okay.

MR. JANZEN: I'll just quote from the decision: "In this case, the federal government agreed in 1979 to negotiate land claims with the Innu of Ekuanitshit for the purpose of concluding a treaty on the basis of the traditional occupation of the lands. Although the land claims of the Innu of Ekuanitshit remain unresolved, the traditional occupation of the lands in question has been accepted as a background by the federal government and by Nalcor, even though Nalcor at first denied this traditional occupation, but later reversed its position."

So you weren't aware that the –

MR. BENNETT: You're – yeah, you're correct. This is – so this is from the Court of Appeal decision.

MR. JANZEN: Well, yes, but you were not aware that the Innu of Ekuanitshit have a land claim that was accepted for negotiation by the federal government in 1979?

MR. BENNETT: I hadn't – it slipped my mind. Needless to say, if it was a court decision which I participated in, then I had to be aware at that point in time.

MR. JANZEN: So do you know why this information wasn't included in the *Indigenous Consultation Report*? Is that because – I guess because you weren't aware?

MR. BENNETT: I don't think that in the context of this report, I think what is there is factually correct. I don't – we didn't – as I recall, the team didn't go through and look at

everybody else's land claim in the extent of that area. What we were primarily interested in is traditional and contemporary land use and that information was gathered extensively.

And the status of the land claim, the ultimate settlement of that land claim, you know, is an issue that takes us beyond the project. And, you know, our primary goal in conformance with the EIS Guidelines was to – you know, was to look at land use and the effects of the project.

MR. JANZEN: Okay, but here this morning you weren't aware that such a land claim had been accepted for negotiating –

MR. BENNETT: I wouldn't –

MR. JANZEN: – by the federal government (inaudible).

MR. BENNETT: I need to acknowledge that I participated in those proceedings five years ago; I would have seen that material. And needless to say, if it's written in the court's decision, then I have to acknowledge that I did know it at the time. It slipped my mind this morning.

MR. JANZEN: And you would agree that that would have been relevant information to include in the consultation report?

MR. BENNETT: I'm not sure that it is. Our purpose here, from the proponent's perspective, was to identify, you know, our efforts to consult with Indigenous groups and make sure that we have provided an appropriate understanding to both the federal and provincial government in relation to those interests, to those issues, a relation to the projects that were going through the environmental assessment process.

The settlement of comprehensive land claims and treaties wasn't our primary interest in terms of the efforts we were undertaking.

MR. JANZEN: But it was relevant information to include for the other Indigenous communities.

MR. BENNETT: To the extent that the Indigenous communities in Labrador have a very clear definition of their treaty areas in relation to the project footprint, yeah, we did see that to be relevant.

MR. JANZEN: How – I'll move on to the EIS Guidelines that have been referred to earlier. Madam Clerk. It's P-01323, page 8 to start.

Do you recall, Mr. Bennett, that the guidelines say that Aboriginal traditional knowledge is to be an integral part of the environmental impact statement?

MR. BENNETT: Yes, no question.

MR. JANZEN: And at the top of page 9 of the guidelines it explains why Aboriginal traditional knowledge is to be so important: "... development of adequate baseline information, identification of key issues, prediction of effects, and assessment of their significance" Helps to understand ecosystem function, resource abundance, distribution and quality, use of land and resources, helps the development and so on.

So I just wanted to, for the moment, highlight that – the importance of Aboriginal traditional knowledge in the EIS Guidelines. Do you agree with that?

MR. BENNETT: Yes, I agree with that.

MR. JANZEN: Okay, if we could go to page 40, please, Madam Clerk, of the same document. And I think it's – 4.8 is the heading, it's: Consultation with Aboriginal Groups and Communities.

And it lists the Aboriginal communities with whom the proponent is – should consult and says: "The EIS shall demonstrate the Proponent's understanding of the interests, values, concerns, contemporary and historic activities, Aboriginal traditional knowledge and important issues facing Aboriginal groups"

And then it lists the Aboriginal groups with which the proponent is supposed to consult below. And in the second paragraph, "To assist in ensuring that the EIS provides the necessary information to address issues of potential concern to these groups, the Proponent shall consult with each group for the purpose of" familiarizing with potential environmental effects; identifying issues of concern, and what actions to address each issue – I paraphrase.

MR. BENNETT: Yes.

MR. JANZEN: Do the guidelines make any distinction between the level of consultation to be afforded to different Aboriginal communities, under this heading 4.8?

MR. BENNETT: Oh, it requires that we undertake consultation to gather this information.

MR. JANZEN: And you – so you would agree that it doesn't make any – they don't make any distinction between the level of consultation that would be required in the guidelines?

MR. BENNETT: No, the guidelines don't necessarily distinguish.

MR. JANZEN: And – you would – we could go to the document but if you – would you agree that the same criteria are essentially found in the transmission link guidelines from May 2011?

MR. BENNETT: I would expect that they're generally the same.

MR. JANZEN: I agree. The – document is P-01352, and it's at page 43, but I think that we can – we can skip that for now.

So you mentioned earlier that you did not have any experience working with Indigenous peoples directly before coming to Nalcor? And I guess that would mean that you also did not have experience in collecting and interpreting Indigenous traditional knowledge?

MR. BENNETT: Not me directly, no.

MR. JANZEN: Or negotiating agreements with Indigenous communities –

MR. BENNETT: I –

MR. JANZEN: – that would relate to the collection and interpretation of traditional knowledge?

MR. BENNETT: Prior to my time at Nalcor, no.

MR. JANZEN: Or negotiating agreements to study historic and contemporary land use prior to coming to Nalcor?

If we can next please, just go to P-01355, Madam Clerk? This is part of the environmental impact statement filed for the Lower Churchill and prepared by Nalcor, February 2009 – at page 267. And at section 9.0, page 267, it says that, "Aboriginal traditional and community knowledge was considered in the preparation of the EIS in accordance with the EIS Guidelines."

And you would – would you agree with me that the Aboriginal traditional knowledge considered in the preparation of the EIS did not include traditional knowledge from the community of Ekuanitshit?

MR. BENNETT: It'd be helpful to look at this section of the EIS that refers to that. But I would acknowledge that considerable additional information was gathered during the environmental assessment process and the – I guess, the outcome of the increased level of detail that the Joint Review Panel was looking for is documented in at least the response to information request, JRP 151. Consultation assessment –

MR. JANZEN: Okay we'll look at that in a second –

MR. BENNETT: Okay.

MR. JANZEN: – but I think if we go down to the knowledge base, 9.1, lower down on the page. I think it says that they're – okay I'll quote – that the: "... two important sources of information have been relied upon: local community and Aboriginal Traditional Knowledge" – in parentheses – "(the latter as communicated through Innu Nation)."

So the Aboriginal traditional knowledge considered in the EIS was communicated through the Innu with reserves in Labrador, not Innu with reserves in Quebec?

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

MR. JANZEN: Okay, so let's go to the P-01333, which is the JRP 151 information response that you just referred to, Mr. Bennett. And page 143 please, Madam Clerk.

At the bottom of page 143 it outlines the consultations with the Labrador – with Innu

Nation, the Innu reserves in Labrador, which was canvassed earlier this morning. But it describes it there since 2000 there were a number of process agreements between the promoter and Innu Nation designed to provide the Innu with project related information to identify issues and concerns of Innu Nation to develop an understanding of Innu land use. Social, cultural, economic activities to develop an understanding of Innu traditional knowledge. I'm paraphrasing again.

Do you know how many of those process agreements there were during that time?

MR. BENNETT: I'm aware there was more than one but I don't have the count of them at hand.

MR. JANZEN: And so if there were more than one, I gather that the – these objectives were not completely achieved at the end of the first agreement, it took some time to achieve or to work toward achieving the objectives outlined above?

MR. BENNETT: They ran for – I know they ran for a period of time, and during the – once one agreement expired, then another one was put in place. But I'm not able to tell you what work was done to what extent during which process agreement.

If we go back and pull the individual reports from the team that was doing that engagement with Innu Nation, we'd have that record. That's not something that I'm personally aware of here this morning.

MR. JANZEN: And it says that the process agreements provided for a framework for IBA negotiations and mitigation of impacts on the rights of Labrador Innu regularized community consultation process throughout this period, fully funded by Nalcor, task force participation with Innu participation and representatives from the project.

Were you familiar with the work of the Task Force at all?

MR. BENNETT: I'm aware that it existed and I'm aware that it did what it states here in this document. I don't recall being deeply involved

in the operation of the task force, but I'm aware that it did happen and carried out these objectives.

MR. JANZEN: And that the – so the task force supervised the collection and review of Innu traditional knowledge and land resource use?

MR. BENNETT: Yes it did.

MR. JANZEN: And I understand that there was an environmental monitor at this time with Innu Nation, funded by Nalcor.

Would that be correct?

MR. BENNETT: There was an – there were environmental monitors funded during construction. I don't recall there being an environmental monitor during the planning phase.

MR. JANZEN: Okay.

There was a traditional knowledge committee that was struck, is that correct?

MR. BENNETT: That's ringing a bell, yup.

MR. JANZEN: And the committee would have provided information to Nalcor –

MR. BENNETT: Yes.

MR. JANZEN: – on the result of its studies, and that information – would Nalcor have considered that information then in designing, planning, carrying out the project?

MR. BENNETT: Collection of traditional knowledge is incorporated in the EIS, yes.

MR. JANZEN: I think there was an environmental knowledge study filed with the EIS based on a report by Peter Armitage does that –

MR. BENNETT: Peter Armitage has authored at least one report (inaudible).

MR. JANZEN: Prior to the EIS.

And it refers to regularized community consultations. What is the community consultation process?

MR. BENNETT: So at various times, we would have visited the community, the communities, rather, as we have to Sheshatshiu and Natuashish, and we would – members of our team would present information in relation to the project directly in the community, as opposed to simply with representatives from Innu Nation.

MR. JANZEN: So you distinguish the community consultations from meetings of a political nature with –

MR. BENNETT: Meetings –

MR. JANZEN: – Innu Nation leadership?

MR. BENNETT: Well, meetings with leadership or representatives or experts retained by Innu Nation.

MR. JANZEN: And why was the community consultation process important?

MR. BENNETT: Well, it's important for a couple of reasons.

It's important to be in a position where we can provide information, first-hand, to residents of the community. Our community engagement process for communities around the project wasn't limited to the Indigenous communities. We had community events in multiple locations throughout Labrador during the planning phases for the project, and I'm aware that there were efforts –

THE COMMISSIONER: So let's –

MR. BENNETT: – in –

THE COMMISSIONER: Let's just try to stick to what we're dealing with right at the moment –

MR. BENNETT: I'm sorry.

THE COMMISSIONER: – the Aboriginal ones, and let's try to answer the question.

So go ahead and answer the question, please.

MR. BENNETT: Okay, so –

THE COMMISSIONER: Why is it important?

MR. BENNETT: Why is it important that we have community –

THE COMMISSIONER: (Inaudible.)

MR. BENNETT: – events? Because it gives an opportunity for members of the community to directly learn first-hand and to raise their, you know, raise their concerns directly.

MR. JANZEN: So you – you'd agree, then – just reviewing the information here – that, by the – by 2010 or so, there had been at least a decade of agreements and consultation work done with the Innu whose reserves are in Labrador?

MR. BENNETT: There would be – over that period of time, there would've been engagement to varying degrees based on the planning activities for the project that were under way, but yes, they did span at least a decade at that point in time.

MR. JANZEN: And do you know how much funding was provided by the promoter to fund those consultations?

MR. BENNETT: To Innu Nation or directly in relation to those communities, I don't have that number at my fingertips.

MR. JANZEN: I've seen the figure 9 million, 12 million reported in the press or in – before the courts or – would that be a ballpark-accurate figure –

MR. BENNETT: It –

MR. JANZEN: – from –?

MR. BENNETT: It doesn't sound to be unreasonable, but if we need that information, we can look at our expenditures for Indigenous affairs and break that out.

MR. JANZEN: Ballpark or in that range?

MR. BENNETT: It doesn't sound unreasonable to me.

MR. JANZEN: If we could please go to P-01334, Madam Clerk? Which is just some – it's a Consultation Assessment Report submitted by Nalcor to the Joint Review Panel in September 2010.

And we spoke about his work just a few moments ago. But there are a number of references in this Consultation Assessment Report done by Nalcor to works by Peter Armitage – a couple of maps cited – I counted something like 20 times.

I guess this is somebody whose opinion of Nalcor respects on these matters?

MR. BENNETT: Peter Armitage was an advisor or consultant that Innu Nation used fairly extensively in terms of their work.

MR. JANZEN: And Nalcor relied on that work in its submissions to the Joint Review Panel?

MR. BENNETT: We incorporated that work as we collected it from Innu Nation.

MR. JANZEN: Okay, so moving on, please, P-01335, Madam Clerk. So if we –

THE COMMISSIONER: Tab 15. One page.

MR. JANZEN: So I – this is a letter from you to the Chief of Ekuanitshit from May 2009. If we scroll to the first page – sorry, to the second page, please. It's a – we have a draft Community Consultation Agreement. On the covering page, you'd said please review and return two signed copies.

So in May 2009 – I guess just to take a step back, would you agree that the first time that Nalcor contacted Ekuanitshit in relation to the project was sometime in mid-2008?

MR. BENNETT: I can't confirm the date, but if we have the records, it's pretty straightforward to confirm.

MR. JANZEN: But it was certainly a couple years after the registration of the project?

MR. BENNETT: I'd acknowledge that, yeah.

MR. JANZEN: So you sent this draft consultation – Community Consultation Agreement to the Chief of Ekuanitshit and asked him to return two signed copies. I understand that the same agreement was sent to all the Innu communities with reserves in Quebec that – the communities listed in the EIS Guidelines. Is that right?

MR. BENNETT: I haven't looked at the others. But I know that we were trying to reach out. So it's not gonna surprise me that this document, or a draft along these lines, would have been shared with the other communities.

MR. JANZEN: If we could go to paragraph 8.8 of the agreement?

So that – it's just – it says that "The parties agree that compliance by Nalcor with the provisions of this Consultation Agreement completely fulfills the requirements of the *Environmental Impact Statement Guidelines* and discharges the obligations of Nalcor with respect to consultation with Ekuanitshit in respect of the *Environmental Impact Statement Guidelines*."

If we could continue scrolling, please, Madam Clerk, to APPENDIX "A"?

MR. BENNETT: APPENDIX "A" ...

MR. JANZEN: It's a work plan, and you'd agree with me, Mr. Bennett, that the work plan is blank?

MR. BENNETT: That was a – as I recall that was a topic for discussion, and I also seem to recall that this draft agreement was a first effort and not simply us saying this is it; take it or leave it.

You know, we both had – both parties had representation. I would have expected that there would have been further dialogue to reach something that was mutually acceptable given that we have an obligation to collect data.

So I think at the time we had individuals in our consultation team; we also had counsel, you know, drafting various agreements. And this was a – I guess an effort. And I don't believe that I just sent this fax out of the blue – that there

would have been conversations leading up to this.

MR. JANZEN: Although, it does say “please return two signed copies” if the agreement is acceptable.

MR. BENNETT: Right.

MR. JANZEN: And if we go to APPENDIX “B,” there’s also eligible expenditures for the Consultation Agreement. And you’d agree that this is also blank?

MR. BENNETT: Right. It is, yeah.

MR. JANZEN: And Nalcor sent an – only the English copy of this agreement to Ekuanitshit, is that right?

MR. BENNETT: I don’t believe this one was translated.

MR. JANZEN: And you’re aware that the first language of the Innu of Ekuanitshit is Innu and the second language is French?

MR. BENNETT: Yes.

And I’m aware that the community has advisors and support resources, and if that were an issue, this could’ve been addressed.

MR. JANZEN: P-01333 again, please, Madam Clerk.

And, Mr. Bennett, there’s in P – in this P-01333, which is again – includes the JRP.151 that we discussed earlier. There’s a second Community Engagement Agreement that I understand was also submitted to all of the Quebec Innu communities in spring 2010.

Do you recall that?

MR. BENNETT: I think there was another effort, yes.

MR. JANZEN: Okay, maybe if we could go to page 143, please, Madam Clerk?

And under the heading Consultation/Capacity Agreements, it says that: “In response to concerns expressed by other communities, a

modified agreement, the Community Engagement Agreement was offered in late winter, 2010 to the other communities (Attachment 2). On April 29 ... an agreement was concluded with Pakua Shipi.” Which is one of the Quebec Innu communities.

So I believe that Community Engagement Agreement is on page 167 of the document, Madam Clerk.

So it says, “Community Engagement Agreement Template” – this would’ve been the template to which Pakuashipi agreed.

MR. BENNETT: Okay.

MR. JANZEN: You’re not aware?

MR. BENNETT: The template, I didn’t – I haven’t compared the template to the executed agreement with Pakuashipi, so it’s difficult for me to confirm that the template is the agreement.

MR. JANZEN: You don’t know whether – I mean, it says that this was offered to the communities; it refers to the Community Engagement Agreement –

MR. BENNETT: Yeah.

MR. JANZEN: – Attachment 2 –

MR. BENNETT: I’m not disputing –

MR. JANZEN: – and –

MR. BENNETT: Yeah, I’m not disputing any of that. But, you know, it’s whether there was, you know, any minor amendment from the template to the agreement, you know, we should have the agreement if there’s a concern about that. That’s the point I’m getting to.

MR. JANZEN: Okay.

For now, are you aware that there were any amendments to that agreement?

MR. BENNETT: I’m – I have not looked at the agreement compared to the template and refreshed myself with the progress of negotiations on this one community consultation

agreement in preparation for the hearing today – a document that was executed eight years ago.

MR. JANZEN: Okay.

At section 3.2 it says that the agreement was for a term of 120 days. Do you know whether the term was the same in the agreement with Pakuashipi?

MR. BENNETT: I don't have the details on the difference between the template and the executed agreement. If we need the executed agreement, I'm sure we can produce it if that's helpful.

MR. JANZEN: Okay.

Well, when this agreement was offered to Ekuanitshit it came with a confirmation that it was Nalcor's view that the activities described in the draft agreement can be implemented over a four-month period with a budget of approximately \$87,500.

Does that sound right to you?

MR. BENNETT: I know there was a big difference between our initial proposal and what – in terms of the negotiations – what Ekuanitshit was looking for in terms of funding for its work. There was a big gap.

MR. JANZEN: Okay.

So if we could, please, go to P-01342, Madam Clerk? And if –

THE COMMISSIONER: Tab –

MR. JANZEN: – we scroll down to page 3.

THE COMMISSIONER: Tab 22.

MR. JANZEN: This is – it's a letter from David Schulze, counsel for Ekuanitshit, to Mary Hatherly.

MR. BENNETT: Yes.

MR. JANZEN: Ms. Hatherly is in-house counsel at Nalcor, is that right?

MR. BENNETT: Yeah. And she was the point person on some of these consultation efforts, yes.

MR. JANZEN: So Mr. Schulze quotes from an email received from Ms. Hatherly. The last sentence of the quote is: "I can confirm that it is Nalcor's view that the activities described in the ... agreement can be implemented over a four month period and with a budget of ..." – \$87,000.

You don't have any reason to dispute that?

MR. BENNETT: I have no reason to dispute Ms. – if this was a direct quote from that email, I have no reason to dispute that.

MR. JANZEN: And I think we can agree that Ekuanitshit's view was that this time frame and budget was inadequate to do the kind of study that they thought was necessary, yeah?

MR. BENNETT: There was a difference of opinion on that, yes.

MR. JANZEN: If we could please return to P-01334, the Consultation Assessment Report from September 2010. And at page 337 there's the Land and Resource [sp Use] Interviews Report from August 2010 with Pakuashipi. I understand that this is the fruit of the agreement between Nalcor and Pakuashipi, is that right? The Community Engagement Agreement –

MR. BENNETT: That sounds like –

MR. JANZEN: – that we just looked at –

MR. BENNETT: That sounds like a reasonable conclusion that this is the report back.

MR. JANZEN: Which Nalcor filed with the Joint Review Panel.

MR. BENNETT: Yes. This is JRP.151, so this was filed, yes.

MR. JANZEN: And just to be clear, the community consultation agreements that we've been looking at, these would've related to the generating station only, not to the transmission lines, is that right?

MR. BENNETT: At this stage we're looking at the generation, there is a – as I recall – a subsequent report that deals with consultation issues and considerations on land and resource use for the transmission EA.

MR. JANZEN: And with respect to the transmission lines, Nalcor decided not to propose any formal – formalized community consultation arrangements with Ekuanitshit, would that be right? I can refer you to another email from Ms. Hatherly if you would like? But –

MR. BENNETT: That's okay.

MR. JANZEN: So you would accept that Nalcor has offered no formalized consultation arrangements with Ekuanitshit with respect to the transmission lines?

MR. BENNETT: With respect to the line.

MR. JANZEN: Could we go to P-01343, please, Madam Clerk? Scroll down please. Just if we stop there for a moment, it's the Background.

It says that this is an interim – it says: “An interim draft of the Historic Resources Component Study for the ... Transmission Link ...” – EA – “was reviewed by Innu Nation in March 2009. At that time, comments were provided to the Proponent concerning the interim draft. A response to Innu Nation's comments was provided by Nalcor in May 2009.”

And, “The review was undertaken by Mr. Peter Armitage”

Is this a document that you're familiar with, Mr. Bennett? If we could scroll back up to the heading – have you seen this document before?

MR. BENNETT: I can't say that I've read the Historic Resources Component Study in detail. I'm aware that one needed to be filed and I'm aware that we have obligations with Innu Nation for the review of documentation. So I haven't read this report in detail, I would be generally aware that these kinds of activities would be undertaken as part of the review process.

MR. JANZEN: If we could scroll down to page – the bottom of page 8, please, Madam Clerk. Yes, if we stop there under the heading 2.6.1, Data concerning Quebec Innu LUO. LUO I would understand to mean land use and occupancy?

MR. BENNETT: That sounds correct.

MR. JANZEN: And the last sentence at the bottom of the page says that: “While they were not able to conduct research in La Romaine, Natashquan, Mingan” – which is Ekuanitshit – “Sept-Iles/Maliotenam and Schefferville, a ‘Community Engagement Agreement’ was reached with the First Nations government of ‘Pakua Shipi’ ... with respect to research in the community”

So that would be the report that we just looked at in the previous document.

MR. BENNETT: Right.

MR. JANZEN: And if we scroll down to the comments – if we just maybe go back up again, please, Madam Clerk: “It is beyond the scope of this review to undertake a systematic evaluation of the ‘Pakua Shipi’ report. However, the report suffers from a number of serious deficiencies which have a direct bearing on the conduct of historic resource assessment in the LITL study area. In brief, these include,” and there's a description of the inadequacies of the report.

It says that it “suffers from a number of serious deficiencies which have a direct bearing on the conduct of” the historic resource assessment, as we just said. And these include: “... methods and reporting do not in any way conform to the best practices ... Data quality standards have not been met in terms of objectivity, reliability, validity, precision, accuracy, integrity, auditability and representativeness” The data in the report are not credible.

And I think if we scroll down a little further – and it might be on the next page: “... external reviewers cannot evaluate the quality of the sampling method in terms of potential bias and representativeness ... no description of data gaps and research limitations” Other quotes are not auditable and not credible social science.

Have you seen these comments before?

MR. BENNETT: I can't say that I have. Needless to say that when you look at the transmission line and that right away the effort in 2009, looking at the potential routing corridor to do detailed mapping and detailed investigation over a swath of transmission line that's 400 kilometres long and two kilometres wide, which represented the corridor at the time – that doing large-scale detailed mapping of every potential location where activities happened is a monumental process at the beginning of that effort.

And there's no doubt that there are opportunities to gather historic activities throughout the course of construction that happened a little bit further. But identifying potential camp locations and portages in 800 square kilometres of territory in the early stages of planning for that transmission line is a monumental effort and would be much better informed at the detail level when you get closer to doing investigations on the ground. And –

MR. JANZEN: Yes, but this was also a report that was filed with the – in the JRP process for the generating station. We had just looked at it a few moments ago; it was filed in September 2010. And according to – I believe they're the comments of Mr. Armitage, whose opinion –

MR. BENNETT: Right.

MR. JANZEN: – Nalcor relies on throughout its submissions to the Joint Review Panel, this is not credible work.

MR. BENNETT: So that was his perspective in relation to the Pakua Shipi work that was done here.

MR. JANZEN: And neither you nor I have the credentials to –

MR. BENNETT: Right.

MR. JANZEN: – dispute Mr. Armitage's assessment.

MR. BENNETT: Well, what I can say is that in relation to the generation project, efforts to evaluate historic resources on the ground in a

detailed level has been the purpose of a – or the objective, rather, of a historic resources program and data collection program that actually looked at locations throughout the generation project footprint at a very detailed level. And there's been recovery of artifacts and historical resources based on an assessment of the likelihood that we would find those items and that –

MR. JANZEN: This is not just about historic resources; this is also about contemporary use and occupancy.

MR. BENNETT: That's correct. And I –

MR. JANZEN: And this is a study that was produced of the same budget and the same time frame that was offered to Ekuanitshit and which they – based on their experience – judged to be inadequate in order to produce a credible report. Would you not say that these comments confirm that Ekuanitshit was right about its concerns?

MR. BENNETT: In terms of finding this detailed information, it's a challenge, and what we were – you know, during the planning phases of the project, some of this work we needed to happen at a higher level. I also – I think we would acknowledge that the generation project in particular is that the – first of all, that land and resource use happens over a very broad area and the generation project was at the edge of the contemporary land use for multiple groups in Quebec. And the nature of that land use is over a broad area that encompasses a variety of activities and I think that we were able to demonstrate that understanding –

MR. JANZEN: I don't disagree with you –

MR. BENNETT: But I think the point I'm getting to is that, you know, identifying where a camp location would be somewhere in relation to the Muskrat Falls reservoir – is it in the reservoir, is it outside the reservoir – at that point in time, would've been an enormous undertaking and I don't believe would have been consistent with demonstrating our understanding of the land use as required by the environmental assessment guidelines.

MR. JANZEN: I don't dispute that doing this kind of work is a challenge, that's exactly why

the budget and time frame that was proposed by Nalcor was judged to be inadequate.

MR. BENNETT: And we questioned whether it was necessary.

MR. JANZEN: And how do you know whether it's necessary if you don't do the work?

MR. BENNETT: Ultimately, that – the decision about the need for that level of detail was considered by – ultimately, was looked at by the Joint Review Panel because they had access to all this information. And, ultimately, a determination was made by the two governments that released the project from EA.

MR. JANZEN: Yeah, but all along Ekuanitshit is saying: You don't have enough information. We – you need to consider our traditional knowledge, you need to consider our land use and occupancy. In order to do so, we need a credible study.

MR. BENNETT: And the debate about the level of information that was necessary – was actually necessary – we weren't able to close that. And if I recall, that was a topic in one of the judicial reviews. That Ekuanitshit had set the bar very high in terms of its expectations of what it was looking for. And there was a big gap between – between that number, that effort, and what Nalcor thought was necessary.

And eventually, that difference, if it can't be negotiated, has to be reconciled and somebody has to make a decision, and the decision-maker is either the provincial government or the federal government, depending on who's the responsible agency for the question at hand.

MR. JANZEN: Maybe we could go to P-01341 please, Madam Clerk.

We don't need to spend a lot of time on it. It's a letter submitted to the Joint Review Panel from council for Ekuanitshit at the time. If we scroll down, I don't have the page number, I apologize. Please keep continue scrolling, Madam Clerk. No, please continue. I – sorry, I don't have the exact page number, but I – the – I can find it perhaps at the break.

But I believe in this letter, Ekuanitshit proposes that the – it would be appropriate to mandate an expert paid by Nalcor, supervised by Nalcor, Ekuanitshit joint committee, and supported by community liaison officers. Sorry, I'll find maybe the page number at the break and we can move on for now.

THE COMMISSIONER: But we're probably gonna try to finish you before we take a break.

MR. JANZEN: Before the break, yeah. Yeah, I don't anticipate that it'll go past lunch, Commissioner.

If we could please go to JRP, the JRP report, P-00041, Madam Clerk?

CLERK: Pardon me? What exhibit?

MR. JANZEN: P-00041, and page 144.

Under the heading: Caribou, where it says, "The Red Wine Mountain caribou herd is considered threatened under the provincial *Endangered Species Act* and the Canadian *Species at Risk Act*. The George River caribou herd is in decline but not considered threatened ... The Lac Joseph caribou ... was also known ... in the Project area"

If we could go to page one forty – it's at the bottom of this page, actually, at the last paragraph: "To carry out the habitat modelling for the Red Wine Mountain caribou herd, Nalcor used Forest Management District 19 as its study area. This area represents approximately 30 percent of the recent range of the Red Wine Mountain caribou herd. Nalcor explained its choice of study area noting that detailed habitat data were not available for the rest of the herd's range"

So, data were only available for 30 per cent of the range of the Red Wine Mountain caribou herd and this is a species threatened under the *Endangered Species Act* and the Canadian *Species at Risk Act*. And I understand, again, that no traditional knowledge contributed by Ekuanitshit was considered in making these assessments.

MR. BENNETT: In relation to the Red Wine herd?

MR. JANZEN: Yeah.

MR. BENNETT: I'm not sure that there was, no. Although whatever comments were available through the EA process, you know, would have, ultimately, informed the commentary here, and we can look at the participants.

MR. JANZEN: On the – at page 147, “Nalcor stated that the overall fate of the Red Wine Mountain caribou herd was likely one of continued decline even without the Project.”

So, I understand that Nalcor's view was that the herd was likely to disappear with or without the project.

MR. BENNETT: The advice of our consultants with expertise in caribou was that there were certainly other factors affecting the fate of the Red Wine herd, other than simply habitat questions.

MR. JANZEN: Mm-hmm.

So if we recall that the EIS Guidelines emphasized the importance of traditional knowledge for the development and baseline information, prediction of effects and assessment of their significance on things like ecosystem function, resource abundance, distribution and quality.

I mean, here we're dealing with a situation where there's missing data, a highly endangered species and caribou which are of great cultural and other significance to the Innu of Ekuanitshit. You'd agree that it would have been really quite valuable to have the contribution of their traditional knowledge.

MR. BENNETT: It would have been – it would have – had additional information been made available, it would have further – it could have further informed the decisions that were being made here.

MR. JANZEN: If Nalcor and Ekuanitshit had been able to come to an agreement on a traditional land – a traditional- knowledge study, for example?

MR. BENNETT: So there may have – useful information may have arisen from that.

MR. JANZEN: And we don't – at this point, we don't know because that study was never done?

MR. BENNETT: At this point we don't know. And we don't – and I guess I'm not aware of any situation where additional information was provided to the Joint Review Panel as part of any submission by Ekuanitshit either. So – but there were multiple opportunities for individuals and stakeholders to provide their perspective and provide information to inform the environmental assessment, and you know, if information is available, then obviously it's – it should be used.

But at some point, someone will have to look at – again, as many of these factors where you have some level of uncertainty, you have to look – the decision-makers have to look at the available data and consider the utility of that data in making a decision, particularly in relation to, you know, valued – these various –

MR. JANZEN: And you would –

MR. BENNETT: – threatened species or, you know, in general.

MR. JANZEN: And communities need resources in order to –

MR. BENNETT: Again –

MR. JANZEN: – collect that data.

MR. BENNETT: – there needs to be some consensus on the extent of effort, what type of information is gathered and what level of detail is required to help inform this decision, or these various decisions.

MR. JANZEN: Okay. If we could please go to page 24, Madam Clerk, of the – this document?

And you looked at – scroll down, please, under the heading “Quebec Aboriginal Groups”? And you looked at a similar section of the document this morning – earlier this morning, regarding NCC. But you would agree that the Joint Review Panel also concluded that, for Quebec Aboriginal groups, there was – remained uncertainties regarding the extent of land and resource use?

MR. BENNETT: Yes.

MS. O'BRIEN: (Inaudible.)

MR. JANZEN: And since I – I understand, for this phase, we're working with just up until sanction. You would agree with me that, from the time of the JRP report to sanction, Nalcor did nothing to address those uncertainties with respect to the Innu of Ekuanitshit?

MR. BENNETT: Yeah, I don't think there was any further planning information gathered after the JRP report.

MR. JANZEN: So you would agree with me that Nalcor didn't do anything to address those uncertainties from the time of the JRP report to the time of project sanction?

MR. BENNETT: I'm pretty sure that's the case.

MR. JANZEN: Okay.

Finally, you were asked some questions earlier this morning about the varying levels of consultation and accommodation that were afforded to the different Indigenous communities affected by the project, and you referred often to the guidelines – Nalcor was just following the guidelines. We also just saw earlier that the guidelines don't make any distinction between the Indigenous groups affected as to the level of consultation required. So –

MR. BENNETT: They – oh, I'm sorry.

MR. JANZEN: So I was – why such varying levels of consultation when it comes to a project like this? Does Nalcor get its instructions from the provincial government?

MR. BENNETT: In terms of the efforts that are undertaken, no.

I think that you – part of the – part of – our obligation is to develop an understanding of the issues, you understand the type of activities that are going on and the extent to which the Labrador Innu have used this land close in – in close proximity to their community today. So from a contemporary perspective, we could talk about historic – you know, very early history in

terms of the Innu across the region, but in terms of contemporary land use, the Innu of Labrador clearly had extensive use of this area –

MR. JANZEN: Sheshatshiu is right next to the project.

MR. BENNETT: That's correct.

MR. JANZEN: Natuashish is quite far from the –

MR. BENNETT: That's right, but –

MR. JANZEN: – project. I don't know –

MR. BENNETT: But if we focus on Sheshatshiu for a second, they're in very close proximity to the project.

MR. JANZEN: I don't –

MR. BENNETT: The other –

MR. JANZEN: Now, in terms of number of kilometres, I don't know whether Natuashish is –

MR. SIMMONS: Commissioner, I think Mr. Bennett should be allowed to finish the answer to his question before being interrupted.

THE COMMISSIONER: Okay.

MR. BENNETT: And the other – the point for the other – some of the other communities, and there is mapping in the Consultation Assessment Report that looks at this, but the types of land use, and the extent to which that land use happens, is a little bit different when you're looking at communities that are hundreds of kilometres away from the project footprint.

And that reality informed our understanding of the types of activities that would be going on in the region, and also began to inform our understanding of the effect of the project, looking at totality of area that various groups were using, and helped us gain an understanding of what we thought the effects would be and gave us an opportunity to communicate that.

And those types of activities, from our understanding, based on the information

collected, was different for different groups. And we provided that information to the Joint Review Panel in this assessment report that's in JRP.151 and, ultimately, that information went to the federal and provincial governments.

So that's how, in our view, we complied with the guidelines. And it's how we presented our understanding of the situation to the Joint Review Panel, as well as to the federal and provincial governments.

MR. JANZEN: So that analysis would have been done internally at Nalcor?

MR. BENNETT: That analysis would've been looked at by Nalcor, various consultants and was presented in a response to the panel.

MR. JANZEN: And when – just to be clear, when you're saying that it's communities hundreds of kilometres from the project, you're talking about where the reserves are located.

MR. BENNETT: That's correct.

MR. JANZEN: The reserves are hundreds of kilometres – not necessarily.

MR. BENNETT: That's correct.

MR. JANZEN: Okay.

MR. BENNETT: Right.

MR. JANZEN: So maybe just to kind of drill down a little bit, those Community Consultation Agreements that we looked at earlier, they would have been developed at Nalcor. Would they have been run by the province before they were sent to ...?

MR. BENNETT: I don't recall them going to the province. We had counsel internally. I don't recall them going over to the province.

MR. JANZEN: Looking at the time, I think I'll end there.

Thank you, Mr. Bennett.

Thank you, Commissioner.

THE COMMISSIONER: Now, did you need a bit of time to look for the other document that you –

MR. JANZEN: Thank you.

Yes, Ms. O'Brien provided it to me. It was the top of – it was the document that we were looking at, P-01341. The paragraph was at the top of page 4, I believe. I actually haven't looked at the document or the ...

THE COMMISSIONER: P-01341.

MR. JANZEN: 01341 and at the top of page 4.

THE COMMISSIONER: Okay.

MR. JANZEN: Yeah.

THE COMMISSIONER: So that's the point related to the issue of an agreement to – or the proposal made by the Ekuanitshit to have a study being done by an expert with a steering committee and whatever – yes okay, I see that there.

Thank you.

MR. JANZEN: The kind of consult – the kind of study and framework that Ekuanitshit had suggested at that point.

THE COMMISSIONER: Okay.

So did you want to comment on that now that you see it, Mr. Bennett?

MR. BENNETT: Other than to note that we had, you know, difficulty reaching, you know, that conclusion.

THE COMMISSIONER: Well, no, you mean Nalcor didn't agree.

MR. BENNETT: So –

THE COMMISSIONER: You couldn't reach an agreement on this.

MR. BENNETT: We couldn't ultimately reach an agreement. I think the biggest issue was the extent to which funding was going to be required in order to undertake this type of

activity. There was a large gap in the funding expectations for the exercise.

THE COMMISSIONER: All right, anything as a result of that then, Mr. Janzen?

MR. JANZEN: Well, I mean I could say some things, but I think that it might be best to let that be said via a witness from Ekuanitshit, what its funding requirements were and why that's maybe something to be addressed in that – through another witness.

THE COMMISSIONER: Right. Or, alternatively, by way of documentation or alternatively submissions as well, right?

MR. JANZEN: Yes.

THE COMMISSIONER: Okay, any other questions for Mr. Bennett?

MR. JANZEN: No, that was all.

THE COMMISSIONER: Okay. Thank you very much.

MR. BENNETT: Thank you, Commissioner.

MR. JANZEN: Thank you, Commissioner.

Thank you, Mr. Bennett.

THE COMMISSIONER: All right, we'll take our noon break here. Next will be the Grand Riverkeeper Labrador/Labrador Land Protectors. And we'll come back at 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now open.

Please be seated.

THE COMMISSIONER: All right.

Ms. O'Brien?

MS. O'BRIEN: Good afternoon, Commissioner.

I have one exhibit to seek to enter. This would be the signed Pakuashipi agreement that was referred to in evidence this morning. We've located the agreement. It's being – I'm seeking to have it entered as P-01513, please.

THE COMMISSIONER: 01513.

All right.

Grand Riverkeepers, Labrador Land Protectors, Ms. Urquhart.

MS. URQUHART: Thank you, Commissioner.

So Mr. Bennett, good afternoon. My name is Caitlin Urquhart and I'm representing the Grand Riverkeeper and Labrador Land Protectors. And

–

MR. BENNETT: Okay. Good Afternoon.

MS. URQUHART: – and you're familiar with these groups, obviously you've had – you were the lead on the environmental assessment process and have had many meetings with them and as you may know they're a group of Indigenous and non-Indigenous folks – Labradorians – who are, you know, wanting to maintain the ecological integrity of Mista-shipu or the Grand River which is the, sort of, traditional or historic name of the Churchill River.

So I'm first going to ask you some – just if we can go, Madam Clerk, to P-00130? Everyone's favourite exhibit.

THE COMMISSIONER: Tab 23.

MS. URQUHART: At page 161, the bottom of the page there, please. And I'm just going to ask some questions around the North Spur here. So this is risk R23, geotechnical risks and – sorry, my note's here – so if you go to – if you scroll down a little further please. Oh, there we go.

So the third from last point in the Current Status list here indicates the "Largest risk exposure remains in North Spur - geotechnical program planned for spring 2013 - exposure covered under Tactical Risk."

So can you elaborate a little bit on what risks we're discussing here?

MR. BENNETT: So if we can maybe just go back up to the top for a second so I can just have a look at the top half.

MS. URQUHART: Sure.

MR. BENNETT: So this risk deals with geotechnical risk in general. Certainly, there was a focus on Muskrat Falls here; and really, we're looking at the conditions around the powerhouse, around the facility and, of course, we also make reference to the North Spur. So geotechnical conditions are important across the entire site. So in the foundation on to the powerhouse the rock quality would be important to understand and also when we get a little further down in this explanation, the conditions on the North Spur are important as well.

MS. URQUHART: And so, I mean, it's saying here the largest risk exposure remains in the North Spur. I guess I'm just wondering what specifically is the risk with North Spur?

MR. BENNETT: So it is a, you know, it is a soil area. It has complex geotechnical conditions compared to the foundation under the powerhouse, which was generally understood to be competent rock, and previous investigations had been done there. Of course, that still has to be looked at and considered through detailed design into construction.

MS. URQUHART: And so would one of the risks be the failure of that area?

MR. BENNETT: Well it's more – I think it's more about making sure that there's a mitigation strategy and a design that encompasses the geotechnical conditions that are going to be found. The objective is to ensure that we design a structure – or that our consultant designs a structure – that, you know, has a minimal risk of failure.

MS. URQUHART: So – but the risk of failure would be encompassed within the risk. So you're mitigating the risk of failure.

MR. BENNETT: Right. But the risk that was in question here was: What are the geotechnical

conditions that the design engineering team has to deal with?

MS. URQUHART: In order to mitigate the risk of failure.

MR. BENNETT: That's right.

MS. URQUHART: Yeah, okay.

And so if we can go to page 242 please? And so here, we see the LCP Base Estimate Tactical Risk Exposure. And there's some risk ranging done in here. And I just note that the first point on here is North Spur stabilization. So, again, this is – this would be works that are mitigating against the risk of failure.

MR. BENNETT: That's right.

MS. URQUHART: And there's obviously some ranges and some further notes in there. I'm not going to get into too much detail on it. But I'm just – so clearly the stabilization work is in there.

What – where is the actual risk of failure and the cost associated with – if a failure were to happen? Where would that be reflected? Like would that be reflected in these –?

MR. BENNETT: It wouldn't be here. This is all about the investigation, design and construction, and the cost associated with that. As opposed to the consequences of an unplanned event in the future.

MS. URQUHART: Okay. So – and if we can go to page 151, which – under Risk 9 there, which is the "Good HSE record is critical for project success." And it indicates there, "As a result of lack of a safety culture, HSE performance is poor, which could lead to reputation and financial implications for Nalcor."

And I'm just going to note – and I have my note here – on the fourth column, the second point there indicates, so: "Mitigate impact of catastrophic event with insurance (environment)."

So I would put to you that a – the failure of the North Spur would be a catastrophic event. And

I'm wondering if it was the intention of Nalcor to address the risk of a catastrophic event through insurance?

MR. BENNETT: So that catastrophic event there would relate to an event that happened during construction.

MS. URQUHART: Mm-hmm.

So just – but generally, the – any sort of catastrophic event would be mitigated with or addressed through insurance. Is that the –?

MR. BENNETT: Well, that's the final step. The steps leading up to that – work plans or various activities, environmental protection plans, strategies to minimize the potential of that event happening, but at the end of the day, we do have – for the project construction – insurance to deal with a variety of events.

So – but it would be an event associated with the construction activities, as opposed to an event after construction is complete.

MS. URQUHART: Okay, so –

MR. BENNETT: Now, we also do carry insurance there, as well, but the intent of this activity here was to make sure that we were properly mitigating something that happened during construction.

MS. URQUHART: Okay.

So I guess – this is just the only place where I found any sort of accounting for or consideration of any sort of catastrophic event, including catastrophic failure, so that – I was putting it to you as that – that that may be how it's being incorporated, but what you're saying is, when we look through this document, as far as you're aware, the risk of failure would not be considered or contemplated in this document, other than to mitigate through stabilization?

MR. BENNETT: Exactly.

MS. URQUHART: Okay.

MR. BENNETT: Exactly. This deals with construction. So for example, you know, if I looked at an event where, for example – this is

hypothetical; the details of the insurance policy matter – but if we were shipping submarine cable from Japan to site, and the ship that was carrying that cable sank, and there was an oil spill –

MS. URQUHART: Mm-hmm.

MR. BENNETT: – that's the kind of event we would be looking to make sure that there was insurance behind.

MS. URQUHART: Yeah, I guess my point is just that, obviously, the catastrophic failure of the North Spur would be – would have a significant economic impact on Nalcor and, obviously, on the people of Labrador, so I understand you to say that that event, or that type of event, is not addressed in your risk management frameworks.

MR. BENNETT: In the construction risk management framework, no. When you get further towards operations, there were other places where it does show up: the dam safety plan, the monitoring that's undertaken on the site, the engagement of geotechnical engineers to review conditions on the site during construction and after construction and then, finally, that we do carry insurance as well –

MS. URQUHART: Okay.

MR. BENNETT: – for our assets and operations.

MS. URQUHART: So – and I think if we can go to P-00051, which is the Government of Newfoundland and Labrador response to the JRP, page 29 on this document, Recommendation 14.2, the panel had recommended – sorry, I'll let you get to it – that, if approved, Nalcor would be required to “assume liability on a ‘no fault’ basis for any loss of life and financial losses incurred because of the destruction of property and belongings and disruption of activities caused by flooding as a result of one or more” of the “dams failing on the lower Churchill River.”

And if you scroll down a little bit please, Madam Clerk. We can – a little bit further – you can see that the response of the Government of Newfoundland and Labrador was to require

insurance for losses in the event of possible dam failure as per industry standards, which essentially would require – like, it would be flowing from negligence.

So is that – like, I’m asking sincerely. I’m trying to understand whether there’s anywhere else that this – that that risk of a failure of the North Spur is included in these – you know, is it in the CPW? Is it – would that be part of that calculation?

MR. BENNETT: No, we would not put the cost of a failure in the CPW calculation. We’d be taking significant steps in operations and monitoring to avoid that situation.

MS. URQUHART: But that risk itself isn’t accounted for essentially?

MR. BENNETT: Not in that math, no.

MS. URQUHART: Okay, and so to my knowledge, and based on my review of the documents, the only place that – or the only way in which it’s accounted for is through insurance?

MR. BENNETT: That’s right.

MS. URQUHART: Okay.

So while we’re on this – the response to the JRP recommendations. So as we’ve discussed the Joint Review Panel was the panel comprised of experts from both – that were appointed by both federal and provincial governments to perform an environmental assessment of just the generation project.

MR. BENNETT: So just to pause for a second. I’m not necessarily considering that they’re experts in a given area. They were appointed; their backgrounds are well known; they have a differing – they have differing backgrounds, and they’ve participated in hearings before. But I wouldn’t necessarily accept that they were experts in a particular area associated with the project.

MS. URQUHART: In any event, they were the panel that was appointed to perform the work of the environmental assessment, so obviously both the provincial and federal governments were

satisfied that they were – would be capable and competent to do that work?

MR. BENNETT: Oh, absolutely, of conducting the environmental assessment, I’d agree with that.

MS. URQUHART: So when you received their report, can you just sort of walk me through what happened at Nalcor?

MR. BENNETT: So internally, we received the report; we did some internal looking at the recommendations that came forward. We – I think we looked at, sort of, what we had done in relation to those recommendations, compiled some notes, and I think, in my previous testimony, I indicated I had one or two informal conversations with Mr. Charles Bown, who is – at the time, was senior individual with the Department of Natural Resources representing our shareholder.

Other than that, we were, I guess, keenly awaiting the response from the two governments.

MS. URQUHART: So in terms of your internal processes, can you just describe for me what happened there?

MR. BENNETT: We had, as I recall, collected our understanding of what things had been done in relation to the recommendations. We had pulled together – I think there’s an exhibit filed with the Commission that looks at some of our thinking internally, but what we were really interested in is understanding where the province was going and where the Government of Canada was going.

MS. URQUHART: And so, I understand that you retained SNC-Lavalin as well as Transfert Environnement, two consultants, to provide strategic advice around – or strategic review of the recommendations as well?

MR. BENNETT: Well, SNC-Lavalin was our EPCM contractor. They’re the engineering consultant, the contractor, who’s responsible ultimately for taking the work that comes out of the environmental assessment and incorporating it into the project. Transfert, as I recall, we also had retained them in our environmental team.

MS. URQUHART: And so – to look at the – to do a review of those recommendations.

MR. BENNETT: They looked at – yes, and I think, in reviewing the SNC-Lavalin work, their primary interest was understanding what it means to the design and construction of the project –

MS. URQUHART: Okay.

MR. BENNETT: – given that they were building the capital cost estimate for the facilities.

MS. URQUHART: And so – and you did – obviously, you said an internal review document, which I think also was filed, which has – goes through each of the recommendations and indicates, essentially, Nalcor's position on each one.

MR. BENNETT: Where do we sit, vis-à-vis these, yes.

MS. URQUHART: Okay.

And so, as you mentioned, you had said, in respect of the government's response, yesterday – or on Tuesday, sorry, when you were speaking to Kate – no – when she asked whether or not Nalcor was involved in that response, you said: No, this is the province's; this is province's response. We didn't participate in the development of their response.

And so I just wonder if you can clarify – and then you obviously went on to say that you had some informal discussions with Mr. Bown, so I'm wondering if you can clarify how that evolved and what sort of inputs you might have had into the ...

MR. BENNETT: There were I think one or two occasions where they asked us for commentary, and there's one email where I sent some thoughts or – some thoughts, I think that was the title of the email – to Mr. Bown, but we didn't engage in the interdepartmental process within government in order to develop their response.

If we were asked a question, we would respond in due course –

MS. URQUHART: Mm-hmm.

MR. BENNETT: – and in that area, certainly in relation to any purpose and rationale, I had provided Mr. Bown with some thoughts, but it didn't go much further than that.

MS. URQUHART: And so do you think – I mean, that's – this is sort of post-the report, but I guess there were obviously meetings and interactions between the government and Nalcor on a number of issues prior. So do you think any of those things would have informed the response at all?

MR. BENNETT: I have – I don't have much insight into how the province coordinated and pulled together the overall response to the Joint Review Panel report.

MS. URQUHART: Okay.

I'm wondering, Madam Clerk, if you can you please pull up P-00205, and this is a presentation that was put together by Nalcor and sent from yourself to Mr. Bown here. And it's entitled reservation – or, sorry – Reservoir Preparation; Cost – Benefit Analysis.

And if we can go to page 12, please. I just note that this – excuse me – this slide is entitled Schedule Costs, and – thank you. It's a bit big. So "Also a concern that a requirement for full clearing will delay Project completion." And "Lost revenue and IDC would be" inevitable – or would "inevitably" – there's two be's in there, anyhow – "be incurred if full clearing results in a schedule delay.

So obviously one of the messages that's communicated to government here is full clearing would result in a schedule delay?

MR. BENNETT: Have the potential. And I think was in 2010, so this was entirely consistent with our thinking during the hearing.

MS. URQUHART: Yeah.

So, I mean, full clearing will delay the project. That's what it says here.

MR. BENNETT: That's our concern.

MS. URQUHART: Yeah.

And if you continue down, please, to page 17.

So this is the conclusion. So – and essentially saying full clearing extracts additional timber, additional cost, added value. “No material operating benefit. No clear environmental benefit.”

And if you continue down please, Madam Clerk? And – oh, sorry, go back up a little bit.

So essentially “additional investment in reservoir clearing not warranted at this time” is basically the – the conclusion is partial clearing is the preferred option?

MR. BENNETT: That was our position. I think it’s entirely consistent with the position we took during the hearing.

MS. URQUHART: Well, that’s – I guess, that’s exactly it.

So if we go to, please, P-01490, and this is meeting notes from – sorry, Madam Clerk – it’s a – yeah, there we go – so you’ll see here – so it’s from February 17, 2010, and this is a meeting to discuss Nalcor’s proposed reservoir preparation plan and provincial government regulations. Attendees to – attendees from Department of Natural Resources and a number of attendees from the Lower Churchill Project.

And if you just scroll down a touch, please, we see here – just pause there, thank you – so, Todd says, and these are obviously the notes, so it’s not a quote, but: “Discussed working with ... Department of Forestry to try” to “avoid any differences at hearings.” And I take it that this would be JRP hearings that you’re ...?

MR. BENNETT: That would’ve been at the JRP, yes.

MS. URQUHART: And it goes on, on page 2 here, Marion notes: “From our perspective we concluded” – and Marion, sorry, is with Nalcor, and Todd as well, who was the last cited person, was also from Nalcor – “that 2/3 of the reservoir can not be cleared safely.” So that was sort of known at the time.

And if we can go down to the fourth page as well, we have a note from Keith, who’s from Department of Natural Resources, indicating, if you continue down – so there – 26 per cent of the wood will be rotten.

So all this information, presumably, was available and was provided to the Joint Review Panel?

MR. BENNETT: Yes.

MS. URQUHART: And Nalcor would’ve made submissions with their position as that partial clearing was preferable –

MR. BENNETT: Yup.

MS. URQUHART: – to the panel?

MR. BENNETT: That was our position.

MS. URQUHART: And they came out and said full clearing was the – was their recommendation?

MR. BENNETT: That’s right. They did.

MS. URQUHART: And so, I guess, I wonder – you know, you have this group of – this panel that’s appointed by the federal and provincial government, that’s reviewed all these documents, that’s heard your arguments, that’s heard from stakeholders, that’s heard from experts, and they recommended full clearing, and the government comes back and says we’re gonna release on partial clearing.

To me it seems, you know, their – these conversations would’ve founded their determination that that would’ve been the appropriate course of action.

MR. BENNETT: So whether it was this conversation or whether it was the information presented in detail at the hearing, whether it was information that they had available from their own resources and their own experts, what their plans were for the development of the industry, I’m sure they would’ve all been important considerations.

I know, from my perspective, when I read the response from the Joint Review Panel on this

particular topic, in my view, they actually – well, it's not that they actually. I think we can look at it in the Joint Review Panel report – that, this particular recommendation, they concluded that it would be feasible, technically and economically, to harvest the wood, and that was entirely inconsistent with the information that we had. And as it stands today, there are large quantities of wood around the Muskrat Falls reservoir that have not been used.

So eventually somebody reached a conclusion on the merits of this harvesting activity. And I think the other point that's interesting is that some of the quantities that are in here also relate to the Gull Island reservoir, and of course, that reservoir hasn't been harvested at all.

So the panel – and I think the, you know, the stated approach by the chair of the Joint Review Panel concluded that, you know, the role of the panel was to gather information from people who were interested. Needless to say, we had a view; others had a view; they collected those views, considered them, made recommendations to the federal and provincial governments for their consideration.

MS. URQUHART: Mm-hmm.

MR. BENNETT: And, you know, that was done here in relation to this and many other recommendations. But ultimately, the decision-maker – in terms of what happens in any of these recommendations – the decision-makers are the applicable government, be it the provincial or federal government, within the context of their jurisdiction.

MS. URQUHART: But we have a meeting here where Nalcor and the department, in advance of the hearings, are making sure that they're aligned on what their recommendations are going to be. So I guess before – you know, before the report has even been released, they've already ensured that they're aligned on their thinking.

MR. BENNETT: I think there were some important facts that we were trying to get alignment on.

So I think if we look back through the notes, what slopes can be safely harvested, what's the

province's plan for forestry management, how much – how big is the area, and what's the quantity of timber that's in those plans. I think those are fair comments for us, you know, as the – you know, as an entity who's – who could be harvesting large quantities of wood in the reservoir, to help understand that so that we don't get ourselves in a situation where we're not aligned on the facts or we're not aligned on what the safe working limits are. Those are important considerations.

Needless to say, the province is going to have to make a decision on what to do with the wood that's harvested, how much to harvest, what their other plans are. And I know that the harvesting of wood in the reservoir has been something that's been – or in Labrador, for that matter – has been something that's been the topic of provincial policy for many years.

And, you know, some of that effort goes back to as early as the paper mill that it used to operate in Stephenville, that at one point, there was wood harvested from Labrador and shipped to the mill. So the interest in forestry in Labrador has been an ongoing interest, and we certainly hear comments today that people are frustrated or not happy that the resource – it's not there, is not being used. And I think everybody who looks at that resource that's piled up many hundred-thousand cubic metres of wood and it's not being used, it's a sense of frustration.

But the – excuse me – the economic reality is that there's no market for that wood, that it can't be shipped in a cost-effective manner to a market. And we had evidence at the Joint Review Panel that indicated that to be the case, that in looking at the pulp and paper industry's cost of wood, you couldn't ship it from Labrador to a destination mill for – you know, for the price of other supplies delivered to the industry.

So we had provided that information to the panel. And, you know, from my perspective, ultimately, the province has to make a decision on what they want to do with that resource and what the appropriate disposition of it is once we've harvested from the reservoir.

MS. URQUHART: And so I also want to ask, and get your evidence on this on the record, whether the Department of Natural Resources or

any other government departments provided to Nalcor, or to you specifically, any presentations, any reports, any of those types of documents prior to them being presented to the Joint Review Panel?

MR. BENNETT: Oh gosh, we'll have to take that one away. I mean, to the extent that there was engagement or discussion among various entities in the province to explain what their management policies were, what they were looking for us to do or what the regulations were in various areas, I wouldn't have direct knowledge of all those issues off the top of my head.

MS. URQUHART: But I guess I'm wondering more specifically about sort of reports or presentations that were being provided to the Joint Review Panel, sort of prepared by the particular departments – say, in this instance, the Department of Natural Resources but, really, any department – their presentation to the Joint Review Panel whether any of that had been provided to Nalcor in advance.

MR. BENNETT: I can't confirm that. We can take it away and look, but these are presentations that would have been prepared anywhere between eight and 10 years ago and there are a variety of departments that interact with the project team. If it's helpful, you know, we can search for such documents, but I wouldn't have direct knowledge of that here today.

MS. URQUHART: Okay, thank you.

And, Madam Clerk, if we can go to P-001401, please. And this is the email that you were referring to earlier which is dated December 1, 2011, from yourself to Mr. Bown again and it's entitled subject: thinking. And essentially discusses some of the recommendations from the JRP, or at least this recommendation from the JRP and your thinking around it. So just – that was – you referenced that email and so that is there in the record.

And, additionally, P-01487 was attached in which – if you go down a little bit, you'll see this was from Mr. – oh, sorry – Paul Scott cc'ing Mr. Bown. And it's the – the current language – again, this is from December 1, 2011: The

current language on the response to rationale Recommendation 12.12.

And if you scroll down a little bit you can just see the draft, which you were asked to comment on in that case. So, that's just some of the – I just want to put that in for context.

MR. BENNETT: Right.

MS. URQUHART: In some of the early conversations in which Nalcor went to – when Nalcor was doing consultations with my client, Grand Riverkeeper, as well as other environmental and Labrador stakeholders, there's a discussion about – with DFO about fish habitat harmful alteration, disruption or destruction, which is colloquially known as HADD – HADD compensation plans.

And, specifically, DFO – the evidence from, or the paper from my client, indicates that DFO had indicated that an irrevocable letter of credit would be required to address – in the event that the compensation plan was not successful. And I'm wondering – they've been unable to locate any information about that, I'm wondering if you have any information about that.

MR. BENNETT: My recollection is that the regulations permit the Department of Fisheries and Oceans to require an irrevocable letter of credit, but I don't know that it's mandatory. So we have provided a proposal to DFO in relation to a habit compensation plan, and have committed to ongoing monitoring measures to confirm that that plan is satisfactory.

If the plan – if the monitoring indicates that the current compensation plan is not satisfactory, then the – then DFO has the authority to require modifications to our compensation plan.

MS. URQUHART: So was an irrevocable letter of credit required –

MR. BENNETT: No.

MS. URQUHART: – of Nalcor? No, so –

MR. BENNETT: No.

MS. URQUHART: – so that's doesn't exist. Okay.

Yesterday – or sorry, I’m saying yesterday because – anyhow, Tuesday, sorry, you were discussing with – or Ms. O’Brien was asking you questions, and you indicated – in respect of the Joint Review process and the environmental assessment process – essentially: “There was nothing that was going to be missed in that process.”

You go on to say the environmental assessment required – we’re in – the “environmental assessment, we’re required to look at the cumulative effects” You go on: So that we have an analysis of all of the effects associated with this project and other projects that are going to be in the area. And so when we’re talking about cumulative effects, did the JRP look at the Labrador-Island Link?

MR. BENNETT: My recollection was that it was discussed. Not in great detail, but there certainly was cumulative effects analysis completed in some more detail, as I recall, in the environmental assessment for the Labrador-Island Transmission Link.

MS. URQUHART: So in the – not in the JRP, in the LIL?

MR. BENNETT: My recollection is that the potential for the Labrador-Island Transmission Link undertaking was discussed, albeit at a high level, at the JRP. I don’t think – I think it was – I think there is a requirement in the terms of reference for us to consider and discuss projects that are likely to happen, or could reasonably be expected to happen near or at the same time as the generation project.

MS. URQUHART: And you’d indicated in your evidence that essentially there were a couple of options, seems to me really sort of two: one was that it would go – that there would be the Labrador-Island Link or the alternative would be that the energy or power would be sold to some industry in Labrador.

MR. BENNETT: And the third–

MS. URQUHART: You said – you had mentioned a mine or –?

MR. BENNETT: Well, it could’ve been an aluminum industry; it could be a mining

development, albeit at a very large scale. It could be also – the third option would be to export through the Quebec system and into the North American grid.

MS. URQUHART: So just – then there would be no benefit to Labrador or the Island?

MR. BENNETT: I wouldn’t say that.

MS. URQUHART: Other than just the returns on it?

MR. BENNETT: The returns, the employment – it’s still local infrastructure and still the ability to power industry within the province, even if we have exports. So those aren’t, as I see it, unilateral options, there could’ve been some combination thereof.

MS. URQUHART: And so do you know if an – sorry, what were you saying? Iron ore with it or an iron mine, yeah.

MR. BENNETT: It could’ve been –

MS. URQUHART: Aluminum –

MR. BENNETT: Well, I mean, it could be aluminum smelting –

MS. URQUHART: Smelting.

MR. BENNETT: – other industrial development, mining.

MS. URQUHART: Do you know if those were included in the cumulative effects that were looked at by the JRP?

MR. BENNETT: Off the top of my head? I’ve lost a little bit of track of what’s in the cumulative effects assessment in this environmental assessment. We have it here readily, if we have the EIS and the subsequent documents.

MS. URQUHART: Yeah. My understanding is that they weren’t – that they weren’t included, but we can look into that further. But in any case – so, the cumulative effects – really you’re saying the core effects from the generation project are dealt with in the JRP

MR. BENNETT: And there's a requirement to address cumulative effects. That's a requirement under the environmental assessment process.

MS. URQUHART: Yes. And you had – I'm not meaning you personally, I'm meaning Nalcor – had indicated that essentially there would be no effects beyond the mouth of the river. This was a sort of famous refrain and (inaudible).

MR. BENNETT: That was an early view based on the advice of our consultants, but in subsequent information requests from the Joint Review Panel, downstream effects analysis was undertaken as part of the EA

MS. URQUHART: Okay because the – and, there are – for example, if we go to P-00352 – please, Madam Clerk – 00352 at page 29.

This is the report – or the paper, sorry, that the Commissioner had requested from Grand Riverkeeper.

And – yeah, that's okay. It's big.

CLERK: Page?

MS. URQUHART: Sorry, to page 29 please.

And at the – go down a little bit.

So, again they – so the Grand Riverkeeper had learned of this report from LGL Limited that was from January 17, 2011 and it indicates here – and I'll just read from the last – the first paragraph at the end saying, "LGL Limited environmental research associates (LGL) was retained by Nalcor and concluded that the aquatic and the aquatic components of the 'terrestrial' Assessment Area should include at least Goose Bay and possibly inner Lake Melville of Central Labrador."

So this was the – this was a report obviously for Nalcor, which was indicating at that time in 2011 that the effects would clearly go beyond the mouth of the river.

MR. BENNETT: I think my point is there were evaluations of downstream effects beyond the mouth of the river completed during the EA. And I can't remember whether it was a response to JRP.165 or 166 but one of those specifically

addresses downstream effects, particularly in relation to methylmercury.

MS. URQUHART: Sorry, 165 –

MR. BENNETT: Methylmercury, total suspended solids and other aspects of the aquatic environment were considered in that – in that information request response.

MS. URQUHART: Okay. And do you know – like, that would be out to Goose Bay and –

MR. BENNETT: My recollection is it goes to Rigolet.

MS. URQUHART: Okay.

And, speaking of Rigolet, have you been – have you had an opportunity to go to Rigolet?

MR. BENNETT: I have been, yeah.

MS. URQUHART: Yeah.

And I had – it's just a little anecdote – I had an opportunity to go in June of this year, and there was still – there was still, like, not ice in the bay, but they were still out seal hunting, obviously. It's a big part of the culture there. And I would certainly encourage you, if you didn't already listen to the evidence of Carl McLean and Rodd Laing earlier – they were talking about the importance of seal to – did you get a chance to listen to their evidence, I'm just –

MR. BENNETT: I haven't heard that yet.

MS. URQUHART: It was – I found it riveting.

So obviously, the JRP, they had anticipated impacts on country foods, right; they have a number of recommendations around that issue, including fall clearing, was one of them. But you would agree that they – that the Joint Review Panel concluded that there – there were likely or – they were concerned about impacts on country foods.

MR. BENNETT: No question.

MS. URQUHART: And if we can – pull up the JRP – I think it might even still be up there – oh, no – sorry, that's P-00041, the JRP report.

Thank you.

And at page 122, please. At the very bottom of the page.

Thank you.

So the – just the last sentence here: “Because Nalcor did not acknowledge the risk that seals could be exposed to mercury from the Project, it did not address whether elevated mercury would represent any threat to seal health or reproduction.”

So I’m just putting that in context, that that was one of the concerns of the JRP that wasn’t addressed by Nalcor.

MR. BENNETT: Right, but has subsequently been addressed –

MS. URQUHART: Okay.

MR. BENNETT: – in terms of monitoring as well as some modelling.

MS. URQUHART: Okay. Thank you.

And if we can go, please, to P-00175.

This is a presentation from 2006 and – just wanna talk a little bit about the EA and the sort of staged approach or project splitting.

So I – it says – it’s really hard to read, but it says November 2006 there. If we can go to page 11, please?

This indicates the – this page is about benefits of the – of doing the EA for the generation and the transmission lines separately.

And – oh, sorry, I must have the wrong page number. Can you go down a little bit?

Oh, that’s the one, sorry.

So here, recommended. So this was Nalcor’s – oh sorry, at the time Newfoundland and Labrador Hydro’s – recommended approach was staged registration. And, can you just read those benefits out, please.

MR. BENNETT: Sure. That – first of all: Initiates the process to deal with core environmental issues; the project is contained within our province, entirely within NL, Newfoundland and Labrador; the sanction date is protected; participation of other parties is triggered as required.

MS. URQUHART: Okay.

So, one of the key – I put to you – one of the key issues that keeps coming up about this over and over is the schedule risk, right; so the sanction date is protected. That’s one of the four – of four benefits, that’s one of them.

MR. BENNETT: That’s one of the benefits, yes.

MS. URQUHART: And if we go to – please, Madam Clerk, P-00264 – this is two years later, page 12. I’m sorry, do you mind just scrolling down; I don’t have it written down what exactly this is.

So this is a briefing note. Anyhow.

Yeah, if you go to page 12 I think it becomes evident that the – that this was from – yeah, so I guess I was assuming that this information was coming from about 2008, because it says in February 2009. Oh sorry, about 2009, I guess, because it says that in February this had been submitted. So if you go – scroll down a little bit, please.

Number 2 here is “Project Splitting Challenge.” It indicates: “A decision to exclude the Labrador Island Transmission Link (LIL) from the Generation EA process increased the risk of those opposing the Project (e.g. Non-Governmental Organizations (NGOs) such as Sierra Club, Grand River Keepers, etc.) being successful in convincing the Generation Project EA JRP that project splitting had occurred. If this were successful, then Nalcor would have to redo the EA to include the EA for LIL within the Generation EA. The net result of this would have been up to a 12-month delay. The perceived risk level was characterized as medium to high. The key mitigating step would be early registration of the transmission project before the JRP Hearings.”

So again, clearly this risk had been identified – or the risk that this would be seen as project splitting.

MR. BENNETT: The risk of it being raised was identified, yes.

MS. URQUHART: And was categorized as medium to high –

MR. BENNETT: Yes.

MS. URQUHART: – so that was a significant concern for Nalcor.

MR. BENNETT: Yes.

MS. URQUHART: And the biggest issue being a project delay, or – sorry, I'll say a primary concern that's indicated in this is the net result of this would have been up to a 12-month delay.

MR. BENNETT: That was the thinking, yes.

MS. URQUHART: Okay.

And if we can go, Madam Clerk, please, to P-00206?

So this is from April 23, 2010, and at page 19, please. So the title of this slide is: "Shovels in the Ground – Spring 2011." So, again, this is from April 2010 and the second point here says: "Because we can do Muskrat non-firm we recommend starting some early site work in 2011 prior to overall project sanction in order to maintain schedule."

So, again, in this case we're looking at potentially doing – starting shovels in the ground, so to speak, prior to project sanction.

MR. BENNETT: That's right, prior to sanction we were looking to do preliminary work.

MS. URQUHART: And the only concern that's stated here is in order to (inaudible) schedules, again, really what we're working towards.

MR. BENNETT: I think an obvious prerequisite, though, would be clearing the environmental assessment process.

MS. URQUHART: Well, that's actually a great point, so let's – if we can go to P-00213, please, and this is later in 2010. And so, of course, environmental assessment's important, and I wonder – I'm not exactly sure of the context of this. This is August 1, 2010, it indicates on the front page there, the top corner.

If we go down to the last page, please. So this, of course, is a Nalcor document. I don't know who exactly prepared it, but it indicates here in 2011, January, award early works. And that's not until March here, as it indicated, the EIS approval would occur. So I guess in this iteration, someone within Nalcor thought that it would make sense to do early works prior to EIS approval.

MR. BENNETT: I think there was a – it's one thing to say I have a contract that's contingent on EA approval, but I think it's generally understood that the province is prohibited from issuing a permit in relation to an undertaking until the EA has been complete.

MS. URQUHART: Sorry, the province is –

MR. BENNETT: It would not be – it would not – the province is not – it's not legal for the province to issue a permit in relation to an undertaking until the EA has been completed.

MS. URQUHART: So you sign the contracts and –

MR. BENNETT: You could certainly run through a process and have contracts that are contingent on the approval, certainly.

MS. URQUHART: Did you – do you know if any of those contracts were –

MR. BENNETT: No, it didn't happen here because the generation EA didn't happen on this date, it happened later. And work – the – if I recall, the authorizing regulation for the Lower Churchill hydroelectric generation project wasn't issued until March of 2012. And after that date, when the authorizing regulation was released, we were in a position to acquire permits and start early works.

MS. URQUHART: And I'm just going to address a comment that you made on Tuesday.

And I know that we're going to get more significantly into the protests in the next phase, so I'm not going to get too deep into this, but I just wanted to kind of contextualize one of your comments.

So if we can please go to P-01488 and this is from – this is an email from August 29, 2011, which is just shortly after the JRP report was released. I just have my highlighted copy here.

THE COMMISSIONER: Did you say P-01488?

MS. URQUHART: Yes.

THE COMMISSIONER: Okay.

MS. URQUHART: And so, if you can scroll down, please, Madam Clerk?

So this is a news release issued by the Nunatsiavut Government and they've indicated that they were pleased with the JRP report. They recognize it as a starting point that recognizes the potential significant adverse effects on Labrador Inuit.

And they go on to say: "As a result of this report, we are looking forward to no longer being excluded from the table and being an integral part of the Lower Churchill discussions with the Government of Newfoundland and Labrador and Nalcor."

It goes on to say that – sorry – "... the panel concluded that Nalcor did not carry out a full assessment of the fate of mercury in ... downstream environment, including potential pathways that could lead to mercury bioaccumulation in seal and fish and the potential for cumulative effects of the project along with effects of other sources of mercury," and essentially goes on to say that they are pleased to see that the JRP had required further study of these issues.

And so, given that this was the tone of a news release by the Nunatsiavut Government immediately following the JRP, I would put to you that it seems probable, or at least predictable, that if the recommendations of the

JRP report are not – are rejected or aren't followed, that they would – there would be some sort of a backlash.

MR. BENNETT: I think there could be, and I think at this point in time where before the province and DFO have issued their response – so there's further work to be done. There was further commitments in the response to the JRP report that show up as obligations that Nalcor has in relation to monitoring and further study work, field programs to make sure that human health is protected, and those efforts are ongoing today.

MS. URQUHART: I guess my point though, or my question is, from the, you know, from the tone of these – of this press release and other – I'll just refer to this one – that it seems to me that a possible outcome that Nalcor would've considered would be if the – either the province rejected the recommendations or that Nalcor didn't, you know, follow through on recommendations, then there would be some sort of a backlash.

MR. BENNETT: I don't see the words protest or civil disobedience in this news release, and I recognize that this is before the province has addressed the situation in their response. And I'm fully aware that there is further monitoring work and further engagement going on between the province, the federal government and Nunatsiavut Government. There's – there will be further dialogue by ourselves in this.

I fully accept that this is an important issue and warrants an ongoing monitoring program, warrants additional work.

MS. URQUHART: I mean, they've called Nalcor out, they've called you out in this document, saying, you know, Nalcor did not carry out its full assessment. And so to me, that sets a tone that I – you know, it – I'm just wondering if you think that that would have – was that not a potential outcome that you were considering when it was released, as things were going prior to sanction, and after sanction, as construction was happening, that this was – that that protest or some sort of backlash was a potential outcome?

MR. BENNETT: I think there's no question that further conversation is going to be required. The full assessment of the fate of mercury in the downstream environment – so, you know, in relation to that question, the prediction of mercury levels in fish, the requirement for human health risk assessment plan, the requirement for ongoing baseline monitoring among the population as well as in fish, and later in seals, were measures that were required and necessary to make sure that human health is protected.

So, one of the challenges that we see in some of these recommendations is that they represent planning activities as opposed – and investigations – so understanding what potential pathways that could lead to mercury bioaccumulation in seal and fish. Some of that work, and there was information to that effect provided during the hearing. Now, whether it was at the level detailed at the Joint Review Panel was looking for and that led to their recommendation, that's understood. But ultimately, the province and DFO, on behalf of Canada, need to look at these recommendations and turn them into obligations for us. And some of those obligations we had already taken on and made EA commitments to look at. For example, both the points I made a second ago: understanding what happens with mercury levels in fish and understanding what the risk is to human health, and then taking steps to mitigate those.

So this is an impotent issue. I'm – there's no question about that, but I didn't read a protest from this one news release.

MS. URQUHART: At the time that – let's say the project was released from environmental assessment. You were aware of the opposition to a project of, for example, Grand Riverkeeper, and that the support of the project, of a number of organizations, was dependent on some of those recommendations.

MR. BENNETT: The support – I'm not sure I follow your last statement.

MS. URQUHART: To me – at the time that the project was released from environmental assessment, did you – was potential protests

contemplated – were you contemplating protests of the project?

MR. BENNETT: I think that, you know, the possibility of a small-scale event wouldn't have been a surprise, but a large-scale protest activity like we saw in 2016 was not – I don't think was really on our radar at that point in time.

MS. URQUHART: And I don't want to delve too much into 2015, 2016; I understand that's outside of what we're dealing with here. But you said on Tuesday there was no connection between pre-sanction and the protests. And I just find that hard to believe that you see no connection between things like this type of news release, which is calling out Nalcor for failing – what Nunatsiavut believes is its obligation, and the rejection of a number of these – of the recommendations and/or inaction on the part of Nalcor, and the eventual backlash that ensued.

MR. BENNETT: I actually don't think that these – that some of these recommendations in relation to protection of human health and consideration of mercury levels in fish – I don't think they were rejected. I think – my recollection on this is that DFO had a requirement for us to make sure that our Environmental Effects Monitoring Program looked at mercury levels in fish. And there were other recommendations that were accepted by Cabinet that we needed to take appropriate steps – I'm paraphrasing to simplify my response – that we needed to take appropriate steps to make sure that we were monitoring mercury levels, both in fish and in the population, to make sure that human health was protected.

MS. URQUHART: And I expect we'll have a lot more evidence on that in the following sessions.

So that's all for me for today.

Thank you, Commissioner.

THE COMMISSIONER: Thank you, Ms. Urquhart.

MS. URQUHART: Thank you, Mr. Bennett.

THE COMMISSIONER: All right.

Emera Inc.?

MS. PHILPOTT: No questions, Commissioner.

THE COMMISSIONER: Okay.

Former Nalcor Board Members?

MS. G. BEST: Good afternoon, Mr. Bennett.

My name is Glenda Best, and I'm counsel for Former Board Members for Nalcor, 2004-2016.

MR. BENNETT: Okay, good afternoon.

MS. G. BEST: So I'm going to be going over some of the things that you've already discussed, but I just want to make sure that I have the – these issues straight in my head.

Did you sit or attend board meetings of the board of Nalcor?

MR. BENNETT: I was present at some meetings, yes. I think that that would be recorded in the minutes for the various meetings.

MS. G. BEST: Were you, or do you, recall whether or not you were present when the board sanctioned this project?

MR. BENNETT: So that would've been in late – or rather, in December of 2012 –

MS. G. BEST: '12, yes.

MR. BENNETT: – I think I was present for at least some of those meetings.

MS. G. BEST: Okay.

And do you have any knowledge whether or not Mr. Martin would've been present during that meeting – or those meetings?

MR. BENNETT: Mr. Martin would've been present, yes.

MS. G. BEST: Now, the strategic risk that we talked about, or has been talked about here, and it has had many formats since then, was initially quantified by Nalcor at the \$400,000 to \$500,000 amount.

Was that quantification disclosed to the board?
Was that information provided to the board?

MR. BENNETT: I don't know that – I think, just for clarity, I think it was 400 to 500 million. The – I don't believe that that report was specifically given to the board.

MS. G. BEST: Okay.

MR. BENNETT: I'm comfortable in saying that risks associated with the project were discussed, but I haven't found that that Westney report was simply transmitted to the board.

MS. G. BEST: Okay.

And was the board ever given any indication that the contingent equity necessary to deal with the risk was not included in the budget?

MR. BENNETT: I'm – I believe that the board – my understanding is that the board was aware the contingent equity beyond the cost estimate for the project could be required to address risk and that the ability of the province to fund that contingent equity was an important factor.

MS. G. BEST: Okay. And with respect to the strategic risk, was the board aware that Nalcor was dealing with it, mitigating it, managing it?

MR. BENNETT: There certainly was – you know, from my general recollection, the need for the team to mitigate those strategic risks was very important.

MS. G. BEST: Okay. And that information was conveyed to the board, that it was ongoing?

MR. BENNETT: I'm – I don't know exactly how that message was delivered to the board. I understand that there were conversations about risk that obviously some of the items that were identified as strategic risks; I can vaguely remember seeing those in board meeting minutes where similar topics were raised.

MS. G. BEST: Okay.

MR. BENNETT: Although I don't think the minutes have –

MS. G. BEST: (Inaudible.)

MR. BENNETT: – the same level of detail that we would see in some of our working presentations internally within the team –

MS. G. BEST: Okay.

MR. BENNETT: – within management.

MS. G. BEST: Do you have any idea who would've communicated any of this information to the board or who was responsible for communicating the information to the board?

MR. BENNETT: I believe Mr. Martin would've – I think the minutes do show that he discussed some of these topics –

MS. G. BEST: Okay.

MR. BENNETT: – in the minutes.

MS. G. BEST: Thank you.

There was some discussion, as well, when Mr. Coffey and Ms. van Driel were asking you questions about a residual risk that existed, and was the board ever advised, to your knowledge, of the residual risk?

MR. BENNETT: Residual risk – just help me understand.

MS. G. BEST: Okay, what I understood you to say is that, yes, there were strategic risk; that we dealt with them, we mitigated them, we were managing them and as the project moved along, there remained residual risk.

MR. BENNETT: Right.

MS. G. BEST: And my question is: Was that communicated to the board? That, for example, you say the point of no return was the financial close. Was that communicated to the board, that there were still risk outstanding that had not been quantified or had been dealt with or had not been managed?

MR. BENNETT: I think the potential for unforeseen events or activities that go beyond the budget in the form of a cost overrun or other type of risk, I think that that was – that concept is noted in the minutes that that risk existed – potential for a cost overrun exists. So I – you

know, at the very highest level the potential for it to happen would have been communicated.

MS. G. BEST: At the highest level.

MR. BENNETT: I mean, when somebody says there's, you know, you should be – that the possibility of a cost overrun exists, then that would stand to reason that there was something behind it, there was some risk that manifested itself.

MS. G. BEST: But was the board ever advised that when you're talking about risk or they were being – risk was being discussed – that the risks that were included in that was that the project would not finish on time as contemplated, or that the project was likely to come in over budget. Was that ever communicated directly to the board?

MR. BENNETT: I believe that the – that there were discussions about those possible events. Yes.

MS. G. BEST: And would those discussions have taken place prior to sanction?

MR. BENNETT: I'm relatively certain, based on my memory of the minutes, that those topics are recorded in the minutes.

MS. G. BEST: Okay.

So in P-00271 at page 6 – we discussed this and you don't need to bring it up, Madam Clerk – the six principles of corporate core values of Nalcor were listed: Honesty, trust, open communication, respect, dignity and teamwork. And in your testimony you gave examples earlier this week of how those core values were conveyed to the employers and to the management team and to others.

MR. BENNETT: Mm-hmm.

MS. G. BEST: And those core values then, in your opinion, would they be equally applicable to the executive and to the board?

MR. BENNETT: Absolutely.

MS. G. BEST: And do you feel that the core values were followed by you or by Mr. Martin,

if it was his responsibility in his dealings with the board? You know, you had information about significant risk that existed that weren't communicated to the board.

MR. BENNETT: I think that the risks and the potential for those events was communicated. I would acknowledge that there was more detailed information available from some work and that there were multiple analyses that discuss this topic. And I guess we had – you know, there were two sets of schedule analyses, there was the Manitoba Hydro work.

MS. G. BEST: Mm-hmm.

MR. BENNETT: And I think that, you know, the issue was raised. I'd acknowledge that some of this detailed information I can't find, but it was presented to the board.

MS. G. BEST: Now, you acknowledged earlier in your testimony as well that you had a fiduciary relationship or a duty to Nalcor.

MR. BENNETT: (Inaudible.)

MS. G. BEST: Correct.

And was there any – did you consider that there were any limits on that fiduciary duty that you had?

MR. BENNETT: I never thought of this issue. Given the parameters around which we discussed the cost estimate – you know, certainly the probability of the estimate, accuracy of the potential for cost overruns, the other benefits and considerations associated with the project – I felt, from what I had heard, that that was being appropriately described.

MS. G. BEST: So it wasn't being fully disclosed but it was appropriately –

MR. BENNETT: I think there's – I mean, there are – there's a lot of documentation that we have, a mound of documentation at the working level. There's more information that we have at the management level and then there's information that, you know, is discussed with the board. And, you know, to my – from my perspective listening to, you know, Mr. Martin when I was there, describing that, I thought he

was describing that he was fully aware of the situation. I think his approach on cost management and contingency, I thought, was understood by all.

MS. G. BEST: I appreciate that there was a significant amount of information, but the people who are making this decision are the board and, ultimately, they are the people that are responsible for making that decision. So if there was important aspects of a – of the decision-making process that wasn't being conveyed to them specifically – a 500-page document doesn't specifically say, you know – the executive summaries didn't specifically say these things –

MR. BENNETT: Mmm.

MS. G. BEST: – then don't you believe or didn't you recognize that it was going to have an effect on their decision-making ability? That if it didn't have an effect at that point in time, down the road it was going to have an effect?

MR. BENNETT: It may, if those mitigation approaches that we had identified were unsuccessful.

MS. G. BEST: And certainly between DG3 and financial close it was clear that you were not able to mitigate some of the (inaudible).

MR. BENNETT: Some of those were starting to show up.

MS. G. BEST: Yeah and they were significant ones that were showing up. They weren't small risk, they were significant risk.

MR. BENNETT: They were in – in 2013 we were starting to see some of these risks, yes.

MS. G. BEST: Okay.

And did you at any point in time realize that these board members were putting their reputations on the line when they were making these decisions that were going to impact all of the people that are in this province?

MR. BENNETT: I think we're all on the same page there.

MS. G. BEST: Okay.

And did you have an opportunity to hear the evidence of the board? The testimony of the board?

MR. BENNETT: No, unfortunately I didn't.

MS. G. BEST: Yeah.

Because they did comment in their testimony about the significant amount of trust they had in you and in the executive of Nalcor and how important it was to them that you were all a skilled group of individuals who were carrying out this project. And I'm not so certain, I guess, with the testimony that we've heard here that that was appropriately placed.

I mean, did you not consider at any point in time that the trust that had been placed in you that you were putting that at risk by some of these decisions or some of these nondisclosures?

MR. BENNETT: I never looked at that as being, sort of, cavalier. We had different analyses with different indications. I had reviewed it carefully. It had been reviewed with our CEO, with Mr. Martin, and from what I heard at the board I thought that that was – that the concept and the issue was being discussed.

MS. G. BEST: Okay. Just one more question.

In response to a question asked by Mr. Coffey, you had indicated that with regard to the strategic risk it wasn't quantified but that there had to be members of the executive and the owner's of the operation who had to know that there were these contingent risks.

Other than yourself and Mr. Martin, were there any members of the executive that were aware of the extent of risk that wasn't contained within the budget?

MR. BENNETT: I'm not sure. I don't know that that strategic risk conversation got beyond Mr. Martin.

MS. G. BEST: Okay.

Thank you very much.

MR. BENNETT: Thanks.

THE COMMISSIONER: All right.

Manitoba Hydro?

MS. VAN IDERSTINE: No questions.

THE COMMISSIONER: Okay. Thank you.

MS. VAN IDERSTINE: I was flashing green, but no questions.

THE COMMISSIONER: Thank you.

All right. We'll take our break here and we'll come back after 10 minutes with Nalcor Energy.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

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

MR. SIMMONS: Thank you, Commissioner.

Mr. Bennett, it's been a long four days in that chair so I'm going to try to get you out of there as quickly as we can, subject to Ms. O'Brien's redirect when –

MR. BENNETT: Okay.

MR. SIMMONS: – I'm finished.

There's been a large number of topics that you have been questioned on; you have given a lot of evidence concerning them. I'm returning to relatively – a few just to bring out a couple additional points. And there's a couple more general things that I want to go over with you, so we'll move through this as quickly as we can.

I wanted to go back, kind of, to the beginning a little bit and talk about the Decision Gate process, just for a few minutes. And, for that purpose, can we please bring up Exhibit P-00079, please?

THE COMMISSIONER: On the screen?

MR. SIMMONS: So, Mr. Bennett, this is a 2009 version – if we can scroll down a little, please – of the Lower Churchill Project Gateway Process. And we’ve heard from you and others that the Gateway Process laid out the path that was to be followed in order to provide an organized way of approaching making decisions step by step that would lead up to sanction of a project, execution of a project and even through to a demobilization or dismantling of a project at the end.

And this is the 2009 version. Could we go to page 8, please? There’s a later one in 2011 also in evidence. Scroll down. Continue. You can stop there.

So this is where the five Gates are laid out. Now, you’ve told us before about Gate 1, which is described as the concept selection. And then Gate 2 is the next significant one which is described as: Approval of Development Scenario and to Commence Detailed Design. And Gate 3 is: Approval to Commence Full Construction.

Go to the next page, please, page 9, and there’s a diagram here. The green diamonds list the Gates and in between each gate is a phase described there. So can you give me just a general description right now of what the intended activities are in phase 1 leading to Gate 1, phase 2 leading to Gate 2 and phase 3 leading to Gate 3. I don’t need a lot of details, just –

MR. BENNETT: Okay.

MR. SIMMONS: – a general description at this point.

MR. BENNETT: Just at the highest level in phase 1, you’ve identified a series of opportunities. And you do some really preliminary screening at that point in time; you’re looking at those opportunities. And at Gate 1 you begin to ask yourself which of those should I carry to – into phase 2 to do feasibility work?

At Gate 2, you’re selecting your preferred development concept. You’re going to do detailed engineering, procurement planning –

procurement as well as contracting. And then at Gate 3 you make a decision whether you’re moving forward.

MR. SIMMONS: Okay, page 10, please.

So there’s a more detailed description here – we can all read it – of what each of these phases is. And I’m going to look at phase 2 here first: Generate and Select Alternatives.

And it says: “The objective of this phase is to generate and evaluate a number of development options from which a preferred option to develop the business opportunity is selected. This phase culminates at Decision Gate 2, at which point approval is sought for the recommended development option, the execution strategy, and to proceed with the start of detailed design.”

So in the context of the Lower Churchill Project, what were the – what was the objective of phase 2?

MR. BENNETT: Well, in phase 2 you’re trying to flesh out your alternatives and make sure that they’re feasible, that you have the necessary prerequisite work done so that you’re in a position at Gate 2 to decide which one you should be moving forward with –

MR. SIMMONS: Right.

MR. BENNETT: – in phase 3.

MR. SIMMONS: So Gate 2 happens at the end of phase 2.

MR. BENNETT: That’s correct.

MR. SIMMONS: So the Gate then – in order to pass through the Gate, what has to happen or what’s being measured or evaluated?

MR. BENNETT: You’re – in this particular case we were looking at CPW in the context of a very focused review of the Isolated versus Interconnected case with Muskrat Falls and the Labrador-Island Link. And then deciding whether the preferred option should be subject to further work in phase 3, including the detailed engineering, procurement and planning so that

you're in a position to sanction and undertake construction.

MR. SIMMONS: Okay.

So in phase 2 then, there are still multiple options on the table to address what the question is or the objective of the project is. And to one extent or another all those options have to be evaluated in phase 2 so that we narrow down the choices that you're going to move forward with.

MR. BENNETT: That's right.

MR. SIMMONS: So in this process there's, of course, cost incurred with doing all this. Correct?

MR. BENNETT: Absolutely. So the feasibility engineering, the effort associated with bringing those options or alternatives forward comes at a cost, both in terms of dollars and resources.

MR. SIMMONS: Right.

And the more options there are on the table to be evaluated, the more cost there's going to be incurred to continue working on all options, if they're all going to be brought forward. Is that right?

MR. BENNETT: That's right.

MR. SIMMONS: So is one of the purposes of phase 2, leading to Gate 2, to identify the best option or option on which money is going to have to be spent to do further preparation work to complete the evaluation of it?

MR. BENNETT: This effort is trying to pick the best ones.

MR. SIMMONS: Right.

MR. BENNETT: So your initial concepts probably should have been looked at earlier.

MR. SIMMONS: Hmm.

MR. BENNETT: And then now you're deciding whether you're going to spend additional funds and put additional effort into a, what I'll call, a subset of potential ideas –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – the ones that are most useful.

MR. SIMMONS: Right.

So in the early stages, much of the money that's spent and effort that's spent on evaluating different options in the – there's only one of those that's going to eventually move forward and be completed. So is this stage Gate process in part meant to try and control the cost of evaluating projects and make sure that the money is spent wisely on those options which have the greatest potential to eventually meet the need?

MR. BENNETT: Well, that's the idea. As you work through the process you're spending additional funds. And the amount of –

MR. SIMMONS: Hmm.

MR. BENNETT: The amount of, or the quantity of, funds that you're going to spend in each phase increases as you work your way through the phase –

MR. SIMMONS: Hmm.

MR. BENNETT: – through the phases. So the phase 2 effort costs more than the phase 1. The phase 3 effort costs a lot more than the phase 2.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: So –

MR. SIMMONS: Okay.

MR. BENNETT: – there's inevitably some selection of the better alternatives so that you're taking the best ones further into the process.

MR. SIMMONS: Right.

So in the case of the Lower Churchill Project, Decision Gate 2 is where the choice was made that the Interconnected Island Option was the option that was going to move through the Gate and now becomes subject to greater expenditure, greater workup, more detailed design as you move towards Gate 3.

MR. BENNETT: To be true to the process, that's correct.

DG2 is selecting your preferred alternative –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – and moving forward –

MR. SIMMONS: Okay.

MR. BENNETT: – with that. And in the case of Muskrat and the Link, now you're spending hundreds of millions of dollars –

MR. SIMMONS: Yes.

MR. BENNETT: – in detailed engineering and preparation for a sanction decision.

MR. SIMMONS: And even though hundreds of millions are being spent in phase 3, there still has been no decision been made that there's actually going to be a project built. Is that right?

MR. BENNETT: That's right. In fact, if we don't get through environmental assessment or some other event happens, you can stop.

MR. SIMMONS: Mmm.

So Decision Gate 3 then, at the end of phase 3 is, I'm going to suggest, in a sense an off-ramp that we heard of before, where if – at Decision Gate 3 the decision is going to be made to either proceed to construction or not. So a project can stop at Decision Gate 3 and not go forward any further. Is that right?

MR. BENNETT: Absolutely. You never – you could never get – it's possible that you don't get through the Gate –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – and you're done. You then – and then you may either go back, look at some other alternatives, try to do something else, re-evaluate the plan and then try something different or try again.

MR. SIMMONS: Right.

And I think you've told us also that even after this project passed through Decision Gate 3, you regarded commercial close, which happened later in 2013, as being when the full commitment was made to proceed with the project.

MR. BENNETT: At financial close you made – we would have made –

MR. SIMMONS: Right.

MR. BENNETT: – significant commitments –

MR. SIMMONS: Right.

MR. BENNETT: – to the Government of Canada on behalf of the lenders.

MR. SIMMONS: Right.

So at Decision Gate 3, if the decision was made to stop then, what would be lost in cost would be the money that had been spent up to that point.

MR. BENNETT: Right.

MR. SIMMONS: There's still more money being spent up to financial close, and if – if a decision were made then not to proceed, if that was regarded as an off-ramp, there would be a larger amount of spent money which would be lost. And once you go past financial close, I've heard you to say then that there's a full commitment made then to the project to proceed. Yeah.

MR. BENNETT: That's right. At that point in time we're awarding major contracts, we have the funds from – guaranteed by the Government of Canada. The commitments are very large at that point in time.

MR. SIMMONS: Okay.

So I'm going to go back and ask you a couple of questions now about DG2. And can we please have Exhibit P-00078, which is the DG2 Gatekeeper's package. Go to page 5, please. Scroll down a little bit. Okay, you can stop there.

This is the beginning of the Gatekeeper's package for DG2 and section 1.2 says: Gateway

Phase 2 Recommendation. It says: “After a thorough and comprehensive assessment of the options and alternatives to develop the hydro potential of the lower Churchill River for domestic use and export, a phased development of the Project has been selected as the basis of the Gateway Phase 2 recommendation.”

So phased development of the project. What did that mean at this stage?

MR. BENNETT: So the notion of phased development looked at Muskrat first, followed by the development of Gull Island. In terms of the project that was submitted for environmental assessment included both.

MR. SIMMONS: Now – then it says that “Nalcor Energy (Nalcor) believes this is the best alternative to meet the Island’s electricity needs, when considering the circumstances with respect to options for energy export.”

So, at DG2, did the Island’s electricity needs and the potential for energy export, were those both factors that were being considered at that time?

MR. BENNETT: Those are both considerations, and I think in addition to the initial thinking of Muskrat, the potential for further export development with Gull Island was still in people’s minds. Although, the sanction decision will take one of those through to sanction at Gate 3.

MR. SIMMONS: Okay.

Page 6, please, section 1.4. In this section here there’s a reference to the Energy Plan. The first sentence read: “The phased development of the Lower Churchill Project is consistent with commitments made in the Government of Newfoundland and Labrador’s Energy Plan.”

Can you tell me anything about what part those commitments from the Energy Plan played in the choices that were being made here at DG2?

MR. BENNETT: Well, the broad Energy Plan objectives, the least cost idea for domestic supply development of the province’s energy resources, unlocking export opportunities providing interconnection to the markets and providing an opportunity for further development

of the province’s energy warehouse, we collegially refer to really as the province’s renewable energy resources that are outlined in the plan.

MR. SIMMONS: Okay. Page 14, please, section 5.1.

So this section, section 5 is the Business Case, 5.1 says: The Need for the Project. It says: “The need to develop the Lower Churchill Project is driven by three inter-related factors: Directives outlined in the Energy Plan” – that you just described – “Domestic energy requirements” and “Future growth in export markets.”

Now, as we move on through the story, the question of which is the least-cost option for the supply of electricity to the Island of Newfoundland takes on a dominant – seems to take on the dominant role in the story. At this point, in DG2, can you offer me any kind of comment – maybe you can, maybe you can’t – on the relative importance of these three objectives in the work that was being done at this stage?

MR. BENNETT: I think they were all – all of these considerations were there in everybody’s thinking. There’s no doubt that the desire to develop and deal with their domestic requirements –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – was an important consideration. But the opportunity for developing paths to feasible and desirable export markets was an import part of everybody’s thinking.

So, an example of that, of that thinking, shows up in the Emera negotiations, and it shows up in our desire to secure a firm transmission path to the New England market.

MR. SIMMONS: Okay.

MR. BENNETT: So, that’s a feature in the work with Emera and the development of the Maritime Link that enabled an export path to a desirable market.

MR. SIMMONS: Now, I'm going to use the alignment word. How well – can you comment on how well aligned or not these objectives were with those of the province, the Government of Newfoundland and Labrador at DG2?

MR. BENNETT: To the extent that they're in the Energy Plan, they're, you know, from everything I've heard, highly aligned.

MR. SIMMONS: Hmm.

So one of the factors that then was developed in this Gatekeeper's report, and in other material that supports, is the analysis of which would be the least cost for supply of electricity to the Island of Newfoundland, we've talked about the CPW analysis, about various inputs into it, things – I'm not going to take you back through any of that. But I will take you now to the PUB reference, which is P-00038, please, which followed DG2. DG2 was November of 2010, the PUB reference was made in June of 2011.

These are the Terms of Reference, you've been brought to them before, and you've already pointed out the second sentence here, which starts: "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" et cetera.

So, that is a correct statement of the outcome from DG2, is it not?

MR. BENNETT: That was the conclusion that was drawn –

MR. SIMMONS: Yes.

MR. BENNETT: – at the outcome of the DG2 analysis.

MR. SIMMONS: And as we've just seen, that analysis of least-cost option, was that the only factor that was considered at DG2 when the question was whether to move through Gate 2 and move on to more detailed work on the Interconnected Island Option?

MR. BENNETT: Right. The potential or the opportunity to address other policy objectives was identified and known.

MR. SIMMONS: Okay.

So, in this referral to the Public Utilities Board, I'm going to suggest and ask you if you would agree or disagree, that what the Public Utilities Board was asked to do was to review one of the important factors that had played into the decision at DG2 to go through Gate 2, but not all of them.

MR. BENNETT: The – that's right. The reference question (inaudible) assumed that there was no value given to the export revenue.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: It assumed that all the costs associated with Muskrat and LIL were borne by our domestic market, and, I guess, the final consideration here is that there was no consideration given to any future development that might be available through those transmission assets that are created in our interconnection to our neighbouring markets.

MR. SIMMONS: Right.

So, when this referral was made to the Public Utilities Board – and again, I don't know if you will have an answer to this question or not – did you have any expectation of what the use was that was going to be made of the outcome of this referral; what the intention was to make use of the outcome, whichever it was, whatever the PUB said?

MR. BENNETT: I understood that this was to be, you know, a review of that process that was undertaken at DG2 –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – and it also looked at a specific configuration where all of the costs were recovered as our domestic supply.

MR. SIMMONS: Yes, okay.

Now, while we're with the Public Utilities Board, you've been asked a fair number of

questions about Nalcor's participation in it. You've spoken about difficulties that were encountered in providing documentation and information to the public and to the Public Utilities Board. And I just wanted to go through one example, perhaps, with you – one scenario.

There are a number – a fair number of the questions focus on whether the PUB – why the PUB didn't get more updated cost information work than the DG2 numbers, right? And we know that the referral to the PUB was in June of 2011. Do you know how long before that SNC had been awarded the EPCM contract, approximately – had it been by that point?

MR. BENNETT: The contract was awarded – there's a timeline for this but my recollection was this contract was awarded in late 2010.

MR. SIMMONS: Okay. Do you know –?

MR. BENNETT: My memory is really getting tested here now.

MR. SIMMONS: Okay. Well, I'm going to suggest the record shows it was earlier in 2011. The – and SNC had responsibility under that contract for preparing the base estimate.

MR. BENNETT: That's right.

MR. SIMMONS: Is that right?

MR. BENNETT: That's right.

MR. SIMMONS: And by the time the referral was made in June of 2011 to the PUB, do you have any idea how far along SNC was in preparation of that base estimate?

MR. BENNETT: They were – that was early days.

MR. SIMMONS: Yeah. Do you know when they finished their work and handed it over to the project management team, to Mr. Kean, in particular?

MR. BENNETT: My recollection is that it happened in 2012.

MR. SIMMONS: Okay. And do you know what happened after that before the base

estimate was finalized? We've heard some evidence from Mr. Kean on that.

MR. BENNETT: It was certainly – there was further review. It was – internally, there were other items that were added to the base estimate. Needless to say, the contingency analysis was completed.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: There was other work done on that estimate before it was brought to completion.

MR. SIMMONS: Right. I think we've heard from Mr. Kean that there was – and even Mr. Lemay, that there was a bullpen set up and there were SNC people and project people who finished off the work to bring the estimate – base estimate up to Mr. Kean's satisfaction that took into late in the spring of 2012. Does that sound –

MR. BENNETT: That sounds right.

MR. SIMMONS: – consistent to you?

MR. BENNETT: Yeah.

MR. SIMMONS: Okay.

MR. BENNETT: So that would have been after the PUB hearing was complete.

MR. SIMMONS: Right. So the PUB report was delivered in March of 2012.

MR. BENNETT: Right.

MR. SIMMONS: So in the time frame from the referral being made to the PUB in June of 2011, until they delivered their report in 2012, can you give me any comment on whether you think there would have been any practical useful information to come out of the work that was ongoing in preparation of the estimate that SNC was working on, that would have been of any practical use or benefit to the PUB?

MR. BENNETT: I don't know. I still struggle with what could have been done with it, that there would have been, you know, working versions of the capital cost estimate to varying degrees of detail, and now we're mixing

feasibility work with the detailed engineering as it's progressing. CPW calculations would be based on a different set of information. Like, I really struggle with what one could do with that at the PUB.

MR. SIMMONS: Okay. Thank you.

So a couple of questions now regarding the decision support packages. And we've seen those packages that were prepared at DG2 and at DG3.

When the decision support package is finalized and it's delivered to the Gatekeeper, or reaches the Gatekeeper for the Gatekeeper to decide am I accepting it and signing off that we've passed through the Gate or not, would that be the first time the Gatekeeper sees any of the information contained in that package?

MR. BENNETT: No, the individual topics would've been discussed and built as that package is – well before that package is compiled. These are – this is not a set of issues that just show up on the Gatekeeper's desk when they're all complete.

MR. SIMMONS: Right.

MR. BENNETT: These are important deliverables that are being developed over the course of the work phase.

MR. SIMMONS: Right. So these deliverables, typically taking the form of documents like: risk analysis, the capital cost estimate, project plans, execution plan, various policies – these sorts of things, I think, would be some of the – generally, the type of deliverables were talking about, are they?

MR. BENNETT: Right.

MR. SIMMONS: Yeah.

MR. BENNETT: Right.

MR. SIMMONS: And those are in the forms of prepared documents?

MR. BENNETT: Yes.

MR. SIMMONS: How was – within the project, Nalcor generally, through the period leading up to DG2 and DG3, how were those documents managed? Was there a process? Were they kept somewhere? Did people have access to them? Generally, how was that done?

MR. BENNETT: So many of our – most of our management system documents are revision controlled. They're passed through an approval path leading up to the – through the approval process. Once they're finalized, drafts are circulated. Once they're issued for use, they're in our document control system and are available to the team.

MR. SIMMONS: So the document control system is an electronic database of these documents. Correct?

MR. BENNETT: Yes.

MR. SIMMONS: Yeah. And I understand that there are a couple of different systems that have been used. Currently, it's one called Aconex?

MR. BENNETT: That's right.

MR. SIMMONS: And prior to that it was one called Documentum?

MR. BENNETT: Right.

MR. SIMMONS: And in either of Aconex of Documentum, when things like the basis of estimate are prepared or the – a risk analysis, is each revision contained in that document management system?

MR. BENNETT: So if that document is revised, a new revision –

MR. SIMMONS: Right.

MR. BENNETT: – is made available.

MR. SIMMONS: Right.

So if I have the appropriate access, and I want to see the A1 version of the risk assessment, the A2 version, the B1, the B2 version, I can log on to that system and I can look at those documents if I'm granted access?

MR. BENNETT: If you have access. That's right.

MR. SIMMONS: Right. Okay.

Now, I would presume that the higher up you are in the organization, the greater access you have to those types of materials?

MR. BENNETT: You do.

MR. SIMMONS: So that in your case you probably have pretty wide open, full access to whatever's in Documentum and then in Aconex.

MR. BENNETT: I don't think –

MR. SIMMONS: Yeah.

MR. BENNETT: There are some areas. If I looked at – sort of, if we're doing a commercial evaluation or an RFP evaluation, then it's kept very –

MR. SIMMONS: Right.

MR. BENNETT: – very close to the review team until that process is completed. But, generally speaking, I have access to documentation.

MR. SIMMONS: Yes.

And the CEO – would I be correct in presuming that the CEO has probably the fullest access to documentation that's in the document management systems?

MR. BENNETT: He has. I'm not sure that it's used frequently but he would have access. He would have the ability to ask for any document that we have.

MR. SIMMONS: Right. Okay.

So when documents are referred to in something like the Gatekeeper package and they have a number – we've seen various long numbers that are in them – those are reference numbers that can be used to call them up from these document management systems. Is that correct?

MR. BENNETT: Yes, that's right.

MR. SIMMONS: Yeah, okay.

Now, the Gatekeeper packages at DG2 and DG3, it seems to make sense that they would be used to build up the information necessary to inform the Gatekeeper so the Gatekeeper decides if the project moves through the Gate.

MR. BENNETT: That's the ultimate objective.

MR. SIMMONS: Yeah.

MR. BENNETT: To build a support package to be able to provide the body of information necessary to support that decision.

MR. SIMMONS: Yes. Yeah.

And you've already told me that the Gatekeeper wouldn't see all this for the first time when the package comes in. That the Gatekeeper would have been aware and involved in some of the work that's – that leads up to the development of the material that goes in the package.

MR. BENNETT: Right. So maybe, you know, to take some examples, you know, if the CPW analysis is underway, that would've been discussed as a matter of course –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – before it all shows up at the end of the process.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: Just a point on sort of the electronic versions: Not everybody is adept in the document control system –

MR. SIMMONS: Yes.

MR. BENNETT: – and necessarily digs for documents. But, you know, sort of the subject matter in the critical documents so, you know, the CPW analysis, what the alternatives look like, some of the other conversations: they would've been –

MR. SIMMONS: Sure.

MR. BENNETT: – reviewed and discussed before they show up in the final package.

MR. SIMMONS: Okay, sure.

Now, the Gatekeeper packages also – would it also be correct that in addition to purely informing the Gatekeeper’s decision, that they would also fill a role as kind of a memorial or a record of the information on which the decision was made?

MR. BENNETT: Absolutely.

MR. SIMMONS: Okay.

Okay, so I’ve got a couple of more specific questions for you on them now. We’re not gonna go through them in great detail.

Can we have P-00078, the DG2 Gatekeeper Package again, please?

So – and I think it was Mr. Coffey went through with you, that the IPA report is attached as an attachment to this one and the Independent Project Review team report – the IPR report – is attached. Westney’s work is not attached as an appendix.

So can we go to page 33, please?

This is an appendix called, “Status of Decision Gate 2 Key Deliverables.” Was this kind of a, monthly report that was kept on an ongoing basis and was updated as the work was done leading up to a Gate?

MR. BENNETT: This document did get updates and helped us understand where the progress is on various activities that were needed to fill up the –

MR. SIMMONS: Mm-hmm.

And I –

MR. BENNETT: – support package.

MR. SIMMONS: And I think the project even at this time in 2012, had kind of a monthly reporting system where there was a monthly document prepared that described the status of many aspects of the project and the preparations. Is that right?

MR. BENNETT: That’s right.

MR. SIMMONS: And that this – these – this kind of chart, this kind of a traffic-light chart would appear in those monthly –

MR. BENNETT: Right. So –

MR. SIMMONS: – monthly reports.

MR. BENNETT: – that we could look at where we were in the planning process so understand which ones were complete, which ones need more attention.

MR. SIMMONS: Right.

MR. BENNETT: So on and so forth.

MR. SIMMONS: And what kind of circulation did that report have?

MR. BENNETT: Trying to remember now when – how far that one went around the organization. Distribution list is not something that’s –

MR. SIMMONS: It certainly would go to the project management team. I’d expect the executive – your level and the Gatekeeper?

MR. BENNETT: I would expect. We should confirm the distribution list – certainly the project team has it. They’re the ones who were working this.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: I can remember seeing it from time to time.

MR. SIMMONS: Mm-hmm. Okay.

So in this particular one, this lists – it’s got a reference number on the left, it’s got category, key deliverable, status, and then the overall status is a light – whether it’s green or some other number, and then it’s got – it says, “Reference Documents (as required)” in the last column.

Go to the next page, please. Page 34.

And scroll down.

Okay, just stop there, please.

The third last row from the bottom there – starts at G2-KD-10? It says, “Cost and Schedule Risk Assessment Performed and Supported by a Project Risk Management Plan.” And when you look on the far right it says, “Gate 2 Project Risk Analysis,” and then it’s got a long number there, LCP-PT-ED – we can go to that in – we could go that in the evidence. It’s actually P-00097, for anyone who wants to note it.

And what’s referred to there is the Gate 2 project risk analysis that has the Westney work attached to it. So from this document, am I correct that the DG2 Gatekeeper package includes in this reference, a reference to the risk analysis document that has the Westney report.

MR. BENNETT: That’s right.

MR. SIMMONS: And that number can be used to access that report, which has the Westney report in it as an appendix.

MR. BENNETT: That’s right. And when the ultimate paper package is put together or the PDF, that document will be there.

MR. SIMMONS: Okay, right. And I’ll bring you to Exhibit P-01494 just for a moment.

This is just a set of indexes that says for “Decision Gate 2 Decision Support Package Reference Information – Binder 1 of 3”

Does this seem familiar at all?

MR. BENNETT: Right, those are the cover sheets for the three volumes in the package.

MR. SIMMONS: Okay, and if we scroll down to the bottom part of that page, item 10 there, is that – again, is that the same Gate 2 project risk analysis report that has the Westney report appended to it?

MR. BENNETT: That’s right.

MR. SIMMONS: Yeah, okay.

So certainly at DG2 those reports were in the package, the full package that went to the Gatekeeper.

MR. BENNETT: Right.

MR. SIMMONS: So, unfortunately, I have a few questions for you about P-values, but I won’t be very long with this.

MR. BENNETT: Okay.

MR. SIMMONS: We’re going to start with Exhibit P-00901, please.

So this is report – a presentation, a deck from June of 2008 called “Cost, Schedule & Risk Update to Gatekeeper.” Now, I don’t know if you’d remember this at all, but it appears that it was prepared for presentation to the Gatekeeper.

MR. BENNETT: Right.

MR. SIMMONS: And I’m going to go right to page 20, please. And this is 2008, so this is two years before DG2. And if we maybe go back to the previous page for a moment. Okay. So on the previous page here, there’s some discussion of risks – tactical risks are defined there and there’s something called “Gate-Keeper Risks.” You can take a look at that for a moment. Does that phrase, “Gate-Keeper Risks” here, appear to be what we’ve been calling strategic risks, as the process moves on?

MR. BENNETT: Yes, it looks that way.

MR. SIMMONS: Okay. So go to the next page, page 19 – 20, please.

Now, in 2008 when we’re, the capital cost that’s being referred to here – that would be what? Would that be Gull Island or Gull and Muskrat? It’s not Muskrat Falls alone, is it?

MR. BENNETT: No, 6,935 looks like Gull.

MR. SIMMONS: Okay.

And it says, at that point, it’s a Class 4 estimate. But what I want to draw your attention to here is that there’s a base estimate number, there’s a contingency number for tactical risk, and there’s a financial exposure for Gatekeeper risk.

And, at this point in 2008, the tactical risk contingency is described as a P50.

MR. BENNETT: Right.

MR. SIMMONS: Right.

And it is the financial exposure for Gatekeeper risk that at this point is described as a P75.

MR. BENNETT: That's right.

MR. SIMMONS: Now, we've seen, sometime later – a couple years later in 2010 – a deck that's been referred to by many people – P-00206. We won't go to it now; it's the one that has a list of assumptions that were being used for various options that were being considered, depending on the outcome of the Régie –

MR. BENNETT: Right.

MR. SIMMONS: – review. And it has a P75 in there for the assumptions that were used for the cases that were being examined at that time.

MR. BENNETT: Right.

MR. SIMMONS: So, my question is, in this time period – 2008 up to 2010 – had there been any settled view, or any decision made that you were aware of, to kind of formally adopt what P-value was going to be used for the work that was being undertaken to evaluate these options?

MR. BENNETT: I haven't been able to find a specific road map. Here, on this page, the Class 4 estimate – there's not much definition behind that.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: That's one observation I can safely make –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: That the – at this point in time, not a lot of definition on the project under consideration.

MR. SIMMONS: Right.

MR. BENNETT: And –

MR. SIMMONS: Right.

So, we know from other evidence – from things you've been shown to and asked – that by the

time you reached the Public Utilities Board review process, after having passed through DG2, it seems to be well settled that P50 was the value that was being used at that point.

MR. BENNETT: That's right. In the PUB review, I think it's actually stated in the submission that –

MR. SIMMONS: Yes.

MR. BENNETT: – it was going to be P50.

MR. SIMMONS: Right.

Now, Mr. Westney gave evidence, and he told us that he learned – I think, from Mr. Dodson – that Mr. Dodson said he had told Mr. Harrington that P50 was too conservative and that some higher level should be used, but that that recommendation isn't in any of the written reports or the materials that they provided.

So my first question is did you have any information available to you, in 2012, that anyone at Westney was recommending something other than a P50 value?

MR. BENNETT: I don't recall anything coming up.

MR. SIMMONS: Okay.

And do you have any view on whether that was an appropriate or effective way to deal with a recommendation like that, to have it in a conversation, when there's been written reports submitted where there was a full opportunity to include a recommendation like that?

MR. BENNETT: A report or document or letter would've been useful to have on the record.

MR. SIMMONS: Okay.

Okay, a few questions regarding some of the strategic risk assessment at DG3 that you've been brought to in a number of your questions, so we'll go to Exhibit P-00130, please.

And that's the DG3 risk report.

MR. BENNETT: Okay.

MR. SIMMONS: Page 158.

So this is the page that has the risks identified as R18 and R19 on it, and R18, the title is: “Lack of support from other Aboriginal groups.” And the description is: “As a result of a perceived lack of consultation by other Aboriginal groups, EA process may be challenged, which could lead to a delay in the EA process and other demonstrations.”

So was this risk specifically considering the potential that the environmental assessment could be delayed as a result of lack of support from other Aboriginal groups? Was that the context and the specific thing that was being considered here?

MR. BENNETT: That’s the description that’s there –

MR. SIMMONS: Right.

MR. BENNETT: – in the EA process.

MR. SIMMONS: Yeah, and I think you’ve given us evidence that by DG3 this risk was considered either fully mitigated or it wasn’t necessary to put a financial value on it?

MR. BENNETT: It was – this risk, in terms of the EA process –

MR. SIMMONS: Yes.

MR. BENNETT: – was disappearing.

MR. SIMMONS: Right.

So because the project had been released from environmental assessment by both the federal and provincial governments at that time?

MR. BENNETT: By sanction, yes.

MR. SIMMONS: By sanction.

So the risk described in R18 certainly has been fully resolved by the release of the project from environmental assessment?

MR. BENNETT: In relation to EA –

MR. SIMMONS: Yes.

MR. BENNETT: – and delays and approval, yes.

MR. SIMMONS: Yes, okay.

Now, R19 is: “Non-governmental organization / stakeholder protest.” And a number of people have questioned you about this. This is another one where I believe you’ve said the risk was considered mitigated to the extent that it wasn’t necessary to assign some financial exposure to it at time of sanction. Is that right? Did I get that right?

MR. BENNETT: Well, at the time of sanction, the – I’m just looking at the notes there – that legal challenge –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – had been heard – wasn’t – we didn’t have the decision back from court but it –

MR. SIMMONS: Right.

MR. BENNETT: – came back very quickly –

MR. SIMMONS: Okay.

MR. BENNETT: – in relation to that first challenge.

MR. SIMMONS: Right.

So the specific risk that’s identified here is “stakeholder protest.”

MR. BENNETT: Yes.

MR. SIMMONS: So these risks – are these risks that are being analyzed for the purpose of determining whether they could have a financial impact on the project that would have to be taken into account in the risk assessment?

MR. BENNETT: I think it was more about making sure that we had a good mitigation or management strategy –

MR. SIMMONS: Right.

MR. BENNETT: – to address this potential.

MR. SIMMONS: Right, okay.

And is there a difference between there being a protest, which would have to be dealt with or that would take place, and a protest that would actually disrupt the project to the point where there would be a cost or delay?

MR. BENNETT: So protests, public events outside our office, protest activity at Confederation Building or some other –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – location, that’s not unusual or surprising. Having people overrun and occupy the camp –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – I think we looked at as a little different in this situation.

MR. SIMMONS: Right.

At time of sanction in 2012, based on where you were then with Aboriginal consultation, arrangements that were in place with what was known, was there any thought, at that point, that there was an existing risk that had to be accounted for of there being protests on a scale that would interfere with the construction of the project?

MR. BENNETT: I didn’t think so.

MR. SIMMONS: Okay.

Page 159, please. Oh, we can see it there. Scroll down just a little bit? Okay, stop there.

Part of that same risk, R19, you’ve been brought to a phrase that’s there under action plan, second-last column from the left. It says: “Leverage Quebec versus NL debate to rally support for this venture.”

Now, that’s one line of many, many in a risk assessment here and in many documents. And my question is was that ever adopted as a policy or an action item or something that Nalcor decided it was actually going to try to do?

MR. BENNETT: I don’t think Nalcor, in the context of our outreach in relation to the project, actively pushed this button.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: I have no doubt that we’ll find political media coverage, statements, speeches that address that to varying degrees. So I think the – you know, from a project team perspective, this wasn’t front and centre in our thinking, but –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – we knew that – I think everybody understood that that lever was there.

MR. SIMMONS: Right.

So when we see a line in the action plan in the risk report like this, is that something we should regard as being a policy that’s been adopted as a direction that Nalcor, corporately, wants to proceed in?

MR. BENNETT: I mean, to the extent that it’s documented here, it’s, you know, it’s a thought. It’s one of those levers that the communications team was aware of.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: But in terms of our engagement strategy at the project level, we were much more focused – if I think back about those activities – we were much more focused on talking about opportunities, benefits, employment, business opportunities and talking about the benefits of the project within the community, whether that be across the Island as a whole or in Labrador. More at that level as opposed to the broader, what I’ll say, political, interprovincial, historic debate.

MR. SIMMONS: Okay.

Question for you regarding the transition from SNC being a full EPCM contractor to a participant in the integrated management team. You’ve told us a lot about that already, about why it happened and how it was done incrementally over a period of time and, eventually, it was documented in a contract

change later. One thing that you'd said, and I want to confirm whether this is correct or not, is that, within the project management team, you said that this was regarded as something that could be done without any contractual change with SNC. Is that correct?

MR. BENNETT: That's right.

MR. SIMMONS: Yeah.

MR. BENNETT: That was our position that these – that we had some flexibility in the resources –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – and we had contracted for whether we could –

MR. SIMMONS: Right.

MR. BENNETT: – add to the – add to some of the functions without terribly interfering with that contract.

MR. SIMMONS: So in 2011, 2012, was this looked at being something that was management within in the terms of the existing contract or changing the contract as it existed with SNC?

MR. BENNETT: The view was that we were working with the contract.

MR. SIMMONS: Okay.

And the suggestion in a lot of the questions you've been asked is that these events – SNC's initial less than perfect performance in some areas, the transition to deal with that by adopting an integrated management team approach in various areas – that that somehow created a financial risk to the project that should have been recorded or taken account in the estimate at sanction. So I'm going to put that question squarely to you. Was there anything about what happened with that transition, with SNC, that, in 2012, in your mind, created a risk of cost in the future to the project that should've been recorded at that time?

MR. BENNETT: I wasn't seeing it that way and I had been given no communication from the team that they saw it as a major issue. It was

an issue that they were working through, that there were issues undoubtedly and, particularly, in specific functions. There were – questions about the systems at SNC-Lavalin was brought to the table but they were being managed.

MR. SIMMONS: Okay.

A couple of questions regarding the potential option of purchasing power from Hydro-Québec; okay, a number of people have questioned you about that. You were asked a number of questions about what price Hydro-Québec might have been expected to sell the power for if there were to be a purchase of power from Hydro-Québec, instead of building Muskrat Falls or continuing the Isolated Option. And the proposition was put to you that the price would be the avoided cost to Nalcor of its next cheapest option to purchase from Hydro-Québec.

Now, my question to you is: Would that be – is that the way the question of what Hydro-Québec would want to charge should be looked at, the avoided cost to Nalcor? Or would it be what Hydro-Québec's option was to sell that power elsewhere in another market?

MR. BENNETT: So there's no question that if you're selling, you might consider both.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: But you would definitely not sell it for a discount to what you could earn somewhere else.

MR. SIMMONS: Okay.

And in 2010, 2011, 2012 was Hydro-Québec selling the power available that it didn't use domestically into other markets in North America?

MR. BENNETT: They were selling it to the US, yeah.

MR. SIMMONS: And you also spoke about the importance of having firm power. Can you give us just a brief explanation of what that means? Because not everyone may appreciate what firm power is, compared to the other basis on which

power might be purchased in a power purchase contract or on the spot market.

MR. BENNETT: So maybe there are a couple of examples that I could use with Emera. So if you look at the Nova Scotia Block, the base block that's in that arrangement, there's a defined delivery schedule, there's a commitment. The power is delivered from, you know, early in the morning to late in the evening at a specific delivery rate and we consider that to be firm. You've guaranteed you're going to make that power available.

You could look at it another way and say that I'm going to sell you a certain amount of energy over the course of the year or some other period, but I'm not guaranteeing when you're going to get it.

MR. SIMMONS: Mmm.

MR. BENNETT: That's what we refer to as non-firm. There are other market – and construction markets, particularly in the US, you sell power on an hourly basis or some shorter period as defined by the market and you bid into that market with a specific price. If you clear the option, you deliver the energy and if you fail to, you may be subject to a penalty. So there's an energy sale.

Now, in that case, you're deciding on an hour-by-hour basis whether in fact you're going to participate in the market. So those are some definitions of varying degrees of firmness.

MR. SIMMONS: Okay. So from the perspective of the Province of Newfoundland and Labrador that needs power to meet the baseload, the need for firm power is to have power that's available for sure at the time you want it.

MR. BENNETT: You need it when you need it. So in – typically in mid-February on a cold night in the middle of the month when the wind is blowing –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – we need the production.

MR. SIMMONS: Okay.

MR. BENNETT: Otherwise, we're not going to be able to get our demand.

MR. SIMMONS: Right. Now, Nalcor Energy has an Energy Marketing division that has been in place for some time, I think, since the recall power sales have been managed by, first, Newfoundland and Labrador Hydro and, then, Nalcor Energy.

MR. BENNETT: Right.

MR. SIMMONS: Right. Does that Energy Marketing division have any – does that provide any insight into what is happening in the energy markets in North America?

MR. BENNETT: So as part of their business, they are monitoring developments in each of their target markets and keeping abreast of the situation as it evolves in the region for markets that we want to work in.

MR. SIMMONS: Right.

MR. BENNETT: Or what – that they want to work in, rather, I should say.

MR. SIMMONS: So you were questioned on one example of a power sale by Hydro-Québec to Vermont – and the exhibit we've seen is one newspaper story. Do you actually know, as you sit here today, anything about what the actual terms of that power sale were and how firm it was?

MR. BENNETT: I have not drilled into the details of that.

MR. SIMMONS: Right, okay.

So for information like that, back in the 2010 period, 2011, 2012, where would Nalcor have looked for information about what was happening in those power sales?

MR. BENNETT: So typically you could look at market reporting –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – from the system operator in the relevant market, you could gain information

from consultants who are active in the market; Navigant would be an example there.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: I know that we had people looking at Hydro-Québec's annual reports and strategic plans that they made public –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – to try to gather information in relation to their marketing activities.

MR. SIMMONS: So did these – those activities then inform the view, back at that time, that Hydro-Québec would not have had firm power available or be willing to sell firm power to Newfoundland and Labrador?

MR. BENNETT: Yeah, we didn't have an indication that that was the case. And, I guess, as another observation at the time, around 2007, 2009 they had launched construction of new projects themselves –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – including the Romaine development.

MR. SIMMONS: Right, so what does that tell us? That ...

MR. BENNETT: That they didn't – would have thought they didn't have lots of capacity because they were building their own.

MR. SIMMONS: Okay, all right.

MR. BENNETT: That would be the conclusion –

MR. SIMMONS: Now –

MR. BENNETT: – that you could draw from that.

MR. SIMMONS: Now, some of the questions that have been asked concerning this issue have been why Nalcor didn't just engage in discussions with Hydro-Québec about purchasing power.

So is that something that Nalcor – the people at Nalcor at the time – could have engaged in independently? Or would that have required involvement of the Government of Newfoundland and Labrador to make a move like that and open those types of discussions?

MR. BENNETT: There's no question that there would have needed to have been a discussion –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – with the province and – to use that famous word – a level of alignment before –

MR. SIMMONS: Right, right.

MR. BENNETT: – we get to that conversation.

MR. SIMMONS: So the position of the province on that issue would be an important one that would play into whether or not such discussions could ever begin.

MR. BENNETT: Before they could go any distance at –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – you know, at an earnest level. It'd be hard to imagine that you wouldn't be – we wouldn't be talking to the province about that.

MR. SIMMONS: Okay, thank you.

Thank you, Mr. Bennett. There's much more we could talk about but I'm going to leave it there.

Thank you.

THE COMMISSIONER: All right, redirect, Ms. O'Brien?

MS. O'BRIEN: Thank you.

One question arising out of your examination by Ms. Urquhart earlier today; she had brought you to P-00041, page 142. And it was just – that document was discussing seals and methylmercury and contamination within seals. You said that – and it was a concern raised by the JRP; that's what P-00041 is. You did say, in

replying to her question: That has subsequently been addressed in terms of monitoring.

That addressing that you're talking about, is that work that happened after sanction?

MR. BENNETT: Yes, it is.

MS. O'BRIEN: Okay, and there was – so there was no plans for it at sanction, but this was one of the ones that was implemented after sanction.

MR. BENNETT: Right. So to clarify, we have a requirement to continue to capture baseline information mercury levels in fish and we had made that commitment during the environmental assessment. Subsequently, that effort has been expanded to include mercury levels in seals. We're now doing it in water and sediment.

MS. O'BRIEN: Okay. So, that expansion came post-sanction. Okay.

MR. BENNETT: Yes.

MS. O'BRIEN: I just wanted to clarify that point.

Okay. Mr. Smith, who's representing Ed Martin, asked you to – talked to you a bit about strategic risks, and he asked you to define what they were and I understood that in answer to your questions to him, you were – you stated that the expectation was that the project management team would mitigate these risks to the greatest extent possible. I don't know if those were your exact words but is that a fair interpretation of your answer?

MR. BENNETT: There's no question that we want to put efforts in expected – we're expected to put efforts into mitigating those risks.

MS. O'BRIEN: Okay. I would assume – would it be fair to say that any competent project manager would do their very best to mitigate all risks to the greatest extent possible?

MR. BENNETT: Well some risks, in terms of some of the tactical risks, you have, like – they exist simply because you have not done the necessary work yet or you don't have the level of definition.

MS. O'BRIEN: Okay.

MR. BENNETT: So they will get addressed, you know, as the project unfolds. But these, you know, specifically, required additional mitigation and required a focus on mitigation.

MS. O'BRIEN: Right. But I – my question to you – isn't it that any competent project manager would do whatever they could to mitigate whatever risks, whether they mitigate it by doing more work or whatever it is they need to do, isn't that, I mean –

MR. BENNETT: Sure.

MS. O'BRIEN: – isn't that what any competent project manager would do?

MR. BENNETT: Yes. I agree.

MS. O'BRIEN: Okay. I mean, that's a very important element of project management, isn't it? Identifying risks and then doing whatever you can to mitigate them.

MR. BENNETT: Absolutely.

MS. O'BRIEN: Okay. So, that's just what you would expect from a competent project management team. Right?

MR. BENNETT: Yes. I'd agree. We should be mitigating risk where we can.

MS. O'BRIEN: Okay. And, so, is it also true then that, as a fact, that no project management team – no matter how competent they are – can fully mitigate every risk.

MR. BENNETT: I agree with that.

MS. O'BRIEN: Okay. And that can be true for tactical risks and strategic risks. Correct?

MR. BENNETT: Yes. So – yes. I accept that.

MS. O'BRIEN: Okay. So, another important part of risk management then is doing a quantitative risk analysis – so a QRA – to help quantify contingencies and reserves for those risks that either you can't fully mitigate or there's some uncertainty as to whether your

mitigation strategies will be fully effective. Is that fair to say?

MR. BENNETT: I think that's fair.

MS. O'BRIEN: Okay. And contingencies and reserves – by doing these QRAs – they are quantified in dollar values for items that may cost money and then for – and in days and weeks for – when it comes to schedule and time risk. Is that right?

MR. BENNETT: Right. Which I guess, ultimately, the schedule one you could translate to a dollar cost.

MS. O'BRIEN: Right.

MR. BENNETT: Yes.

MS. O'BRIEN: You look at it both ways, don't you – on the schedule (inaudible) you put a dollar amount to it and you look at days and weeks.

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

All right, can we please bring up P-00245? This is a document that Mr. Smith was questioning you on and is the UARB decision. Can we go to page 91?

So I just want to – I – he brought you to this decision, he brought you to this page. And if I understood your evidence, I believe you reviewed it and concluded that Emera did not quantify schedule risks. Did I understand you correctly?

MR. BENNETT: No, I think what I – all I noted here was that there were some risks that weren't quantified.

MS. O'BRIEN: Doesn't it say that there were some risks that were not fully quantified?

MR. BENNETT: Right.

MS. O'BRIEN: Where would you get that there were some risks that weren't quantified?

MR. BENNETT: Well, if they weren't fully quantified I guess I was concluding that that effort hadn't completed.

MS. O'BRIEN: Okay.

Would you agree with me – and I'll take you through some – if we go to paragraph 281, just below where Mr. Smith brought you, it does say there: "Enerco concluded that numerous uncertainties and serious risks exist, but it is not known how they were quantified by NSPML."

And there they talk a little earlier that it says, look: "The result of the Cost and Schedule Risk Assessment shows a total cost exposure that in our opinion does not fit with the qualitative assessment and ... seems somewhat low for" the project.

So from reading this, doesn't it sound that they did do a cost and schedule risk assessment and that the finding here was that it seemed that they did put a cost exposure around it but it just seemed low? Is that not –

MR. BENNETT: That's what that paragraph says, yes. It shows an exposure that doesn't fit with the qualitative assessment and seems low.

MS. O'BRIEN: Okay. And there it says that: "The result of the Time Risk Assessment Ranging Sheet implies a tight schedule without sufficient float." Now, would you understand a float in a schedule would be the same thing as reserve – schedule reserve?

MR. BENNETT: Yes, I would say they're generally the same.

MS. O'BRIEN: Okay. So doesn't it sound, from reading this, that NSPML did do a time risk assessment to assess schedule reserve?

MR. BENNETT: They did something at this point in time. Yes, they have a ranging sheet and it applies to a schedule that has a little float.

MS. O'BRIEN: Okay.

And paragraph 282 here suggests that as a result – it says here: "During questioning at the hearing, it was pointed out that NSPML indicated" that "it had considered Enerco's

suggestions and recommendations and had made changes, or was in the process of making changes, related to” these suggestions.

So would you agree with me, from just reading this decision, just those few paragraphs that I’ve taken to you, it appears that NSPML did present to the UARB QRA results that showed a total cost exposure for cost and schedule risk?

MR. BENNETT: At the hearing, it appears they have something here, yes.

MS. O’BRIEN: Yes, and also something that shows some schedule reserve risk.

MR. BENNETT: Looks that way.

MS. O’BRIEN: Okay.

And isn’t that the same type of work – can we bring up P-00130, please? Page 283.

So isn’t that the assessment of the exposure for cost and schedule risk and schedule reserve QRA work. Isn’t that the exact same type of work that for the Muskrat Falls Project is contained in this slide deck from Westney?

MR. BENNETT: The information from the hearing looks to have similar language to what we have here.

MS. O’BRIEN: Yep. Okay.

And please do keep this one up on the screen, Madam Clerk.

Now, in response to questioning by Erin Best, you – I understood your evidence to be that you felt government received the information that was absolutely necessary to make the sanction decision.

MR. BENNETT: That was – yeah – I think we went back and forth a little bit on that and –

MS. O’BRIEN: Okay.

MR. BENNETT: – we –

MS. O’BRIEN: Where did you land?

MR. BENNETT: They – we – I felt that they had the information necessary.

MS. O’BRIEN: Okay, so that was your feeling. Is this a knowledge or a feeling? Like is this – you knew, is that what you’re saying: I know they did?

MR. BENNETT: Well I guess, ultimately, you know, the determination of – ultimately, the full body of information that they’re looking for is something that they would have to decide on. I think, from our perspective, there was significant discussion about what we were trying to undertake. I understand that there was discussion about some of the risks that were inherent – some of the risks that were inherent in the work, and that there was, you know, review by a third party of those issues through MHI.

MS. O’BRIEN: Okay. Well – I’d like you to look at that document and that particular page that’s right on the screen before you, Mr. Bennett, and read what the title of that slide presentation is.

Please read it out loud and into the record.

MR. BENNETT: For this slide here?

So it’s –

MS. O’BRIEN: This is – just to be clear –

MR. BENNETT: I’m sorry.

MS. O’BRIEN: – that’s the title page of this key work by Westney that we have been speaking so much about.

MR. BENNETT: So –

MS. O’BRIEN: This is the title page, okay?

MR. BENNETT: “Analysis of Potential Management Reserve and Lender’s Owner Contingency for the Lower Churchill Project.”

MS. O’BRIEN: Okay. So, the – who is the Lender’s Owner Contingency?

MR. BENNETT: So, ultimately, that would be the province.

MS. O'BRIEN: Right.

Now, are you aware that the province did not receive this document?

MR. BENNETT: I'm aware of it, yes.

MS. O'BRIEN: Okay.

And so am I to understand that your feeling as to what was necessary for government to have – that you did not feel that this document was necessary for government to have prior to making a sanction decision? Is that your evidence to the Commissioner?

MR. BENNETT: My – and I think my perspective on this was that there was a broad discussion about the various factors associated with the project. There was a discussion about risks and there is another – as we talked about, there's another discussion on the schedule.

MS. O'BRIEN: Okay.

MR. BENNETT: And there's a discussion about the potential to which the province might be required to fund cost overruns and an evaluation of the – some sensitivities that looked at the CPW preference under some of those stress conditions.

So this document – what I can say is that it was reviewed with our Gatekeeper and I, myself, didn't see reason to send this document in a path around our Gatekeeper.

MS. O'BRIEN: No, that was absolutely not responsive to my question.

MR. BENNETT: I'm sorry.

MS. O'BRIEN: My question was – you have testified here under oath before the Commissioner that you felt that the Government of Newfoundland and Labrador had all information that was necessary for it to make the sanction decision.

And my question to you is: Can we take from that – because it does seem clear, but I want it 100 per cent confirmed – that you did not feel that it was necessary for the Government of Newfoundland and Labrador to have this

presentation by Westney? This one right here that says: Analysis of Potential Management Reserve and Lender's Owner Contingency, that you did not feel that it was necessary for Government of Newfoundland and Labrador to have that information?

MR. BENNETT: Unfortunately, I didn't at the time.

MS. O'BRIEN: Okay.

MR. BENNETT: At the time, I didn't.

MS. O'BRIEN: Okay.

Are you aware that when Government of Newfoundland and Labrador officials, including the minister of Finance, Tom Marshall, testified and when he was – he testified he had not seen this work and, not only that, he was not told about the dollar value that this work revealed, the 497 million. He was not told about the schedule reserve that this document revealed was – would be necessary to bring it up to a P50 or whatever level, that he believed that this information should have been provided to him. Are you aware of that?

MR. BENNETT: I understand that now.

MS. O'BRIEN: Okay.

But doesn't it make sense that the minister of Finance for the province – I mean his department is responsible for ensuring that the province has the money to pay for this big undertaking. You understand that that's his role and the role of that department?

MR. BENNETT: I absolutely understand that.

MS. O'BRIEN: Okay.

How it is, Mr. Bennett, that you did not understand that a quantification of owner contingency and management reserve would be information that Minister Marshall and others in government would want to see?

MR. BENNETT: There was – we were doing additional work to mitigate. But, in hindsight, I can see that this information should've been

provided and that we wouldn't be having this discussion about what it might mean today.

MS. O'BRIEN: Okay.

Can we go to page 17? Can you read out the first paragraph there, please?

Now, this is the QRA document; this is a Nalcor document prepared for Gate 3, okay? Can you please read out the first paragraph?

MR. BENNETT: So: "In an effort to quantify an amount of *Management Reserve* required to be held by the Gatekeeper and Shareholder, an assessment of financial exposure due to Strategic Risks was completed using Westney's PRIMSTM modelling technique."

MS. O'BRIEN: Okay. So would you agree with me that, that's referring to that document we just looked at two minutes ago?

MR. BENNETT: Yes, I'd agree.

MS. O'BRIEN: Okay.

And then it goes on to describe it and it talks about what management reserve is and how – and all that. But I'd like you to particularly read the last sentence here that begins with project best practice.

MR. BENNETT: So: "Project best-practice suggest that it is prudent to recognize that such events could potentially occur, and the potential financial exposure quantified and communicated to the decision makers."

MS. O'BRIEN: Do you not agree with me that if you'd read Nalcor's own document, you would've seen that best practice is – that the potential financial quantified exposure should be communicated to the decision-makers?

MR. BENNETT: And I interpreted that as our Gatekeeper.

MS. O'BRIEN: You did not see –

MR. BENNETT: I didn't see –

MS. O'BRIEN: You didn't see the board of directors as being decision-makers?

MR. BENNETT: So my direction communication was to the Gatekeeper.

MS. O'BRIEN: But –

MR. BENNETT: I understand now, reading it as you say, the –

MS. O'BRIEN: How could you have determined decision-maker so narrowly? You knew the board would – had to be voting, did you not?

MR. BENNETT: I understand that and I understand that there were conversations about risks and funding requirements, but –

MS. O'BRIEN: Okay.

MR. BENNETT: I –

MS. O'BRIEN: So you knew the board was a decision-maker? Yes or no.

MR. BENNETT: Yes, okay.

MS. O'BRIEN: Okay.

MR. BENNETT: And I –

MS. O'BRIEN: And did you not know this was going to the House of Assembly?

MR. BENNETT: Yes, I did.

MS. O'BRIEN: Okay. And did you know that – so did you not see that members of the government were decision-makers?

MR. BENNETT: I understand that.

MS. O'BRIEN: And did you know – did you understand it at the time?

MR. BENNETT: I understood the decision-making process, and I guess my primary thinking in delivering this, in making this information available was – be to the Gatekeeper.

MS. O'BRIEN: Pardon?

MR. BENNETT: My primary focus was on making this information available to the Gatekeeper.

MS. O'BRIEN: And you didn't see it, as any part in your role, to make that information available to anyone in government who you were dealing with or the board of directors?

MR. BENNETT: Not around the Gatekeeper, no.

MS. O'BRIEN: Okay.

When you say not around the Gatekeeper, are you suggesting that Mr. Martin would have objected if you tried to do it in his presence?

MR. BENNETT: No, I'm – I guess my point was that the communication path from our organization to government was via Mr. Martin.

MS. O'BRIEN: You've heard Ms. Best – Glenda Best – talk to you about the evidence of the board of directors and how they have testified as to the level of trust they had in you.

MR. BENNETT: I understand that today.

MS. O'BRIEN: And you understood that you were there at board meetings communicating to the board of directors?

MR. BENNETT: I played a role in those communications, yes, and as did Mr. Martin.

MS. O'BRIEN: Okay. Do you not believe that Mr. Bown, who we've yet to hear from – but do you not believe that Mr. Bown would have been putting trust in you as well?

MR. BENNETT: I understand that.

MS. O'BRIEN: Okay. And do you not believe that these people would have had a genuine expectation that you personally would have made sure that they got relevant information?

MR. BENNETT: So, as I said, my view of the communications path on this type of information was via our CEO.

MS. O'BRIEN: Did you ever say to that CEO: Mr. Martin, we need to make sure these people get this information?

MR. BENNETT: I do not recall having that conversation.

MS. O'BRIEN: You've said that when Ms. Best put to you that the reputational risk that the board members were taking on by taking that position on the board and making that very important decision when they voted for sanction – she asked you if you understood that reputational risk and you said: We are on the same page.

MR. BENNETT: I understood – I understand it today.

MS. O'BRIEN: Okay, so you weren't saying –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: You weren't saying you're on the same page as the board of directors?

MR. BENNETT: No.

MS. O'BRIEN: Okay, you're saying you understand –

MR. BENNETT: No, that I have common understanding was –

MS. O'BRIEN: Yeah –

MR. BENNETT: – the point.

MS. O'BRIEN: – that they had that huge – okay.

MR. BENNETT: Right.

MS. O'BRIEN: Now, when you were asked a question about – and I failed to record which counsel asked you this, but you were asked a question about communicating the project sanction cost as 6.2 billion – it might have been Mr. Peddigrew, actually – 6.2 billion versus including the interest in it and using, like, the more fulsome number of 7.4.

And you – I believe your answer was that you said that interest was not under control of the

project management team, so it was not in the base estimate. So Nalcor was always careful to communicate the 6.2 amount, but when it communicated it, it always said that it did not include interest.

Did I understand your –?

MR. BENNETT: That's my consistent recollection – that, when we talked about the \$6.2-billion capital estimate, it was the direct capital expenditure.

MS. O'BRIEN: Okay.

But I believe you said that, look, the most important thing was that you communicated that it did not include interest, because I thought you said, to your thinking, this was fine, as long as the assumptions are communicated.

MR. BENNETT: As long as we're consistent in our explanation.

MS. O'BRIEN: When – did you say assumptions are communicated?

MR. BENNETT: I think – in terms of trying to describe what the capital cost included, what was in that 6.2 million – or billion, rather.

MS. O'BRIEN: But is – in communicating the assumptions, would you also be communicating what is not in the 6.2 billion?

MR. BENNETT: I – my intent was to explain that we have consistently said that the 6.2 billion was a direct capital expenditure and didn't include financing costs.

MS. O'BRIEN: Okay, so was it important that you said and it does not include financing costs? Was that an important communication?

MR. BENNETT: It's been a subject of comparison and inconsistency for a long time – that there are many references to the project that sometimes include financing costs and sometimes don't include financing cost. So we were trying to be consistent that we had common ground on that –

MS. O'BRIEN: Okay, but was it –

MR. BENNETT: – in our communication.

MS. O'BRIEN: But was it also important to communicate to the public what was not included in the 6.2 billion?

MR. BENNETT: I thought we were being consistent.

MS. O'BRIEN: No, I didn't ask you –

MR. BENNETT: So –

MS. O'BRIEN: – about consistency.

MR. BENNETT: – what was not included – were you – I guess –

MS. O'BRIEN: I understood you saying to Mr. Peddigrew, look, we communicated, to the public, interest wasn't included.

MR. BENNETT: Right.

MS. O'BRIEN: And that was an important communication, so they would know interest was not included in the 6.2. That's what I'd understood your evidence –

MR. BENNETT: That's right.

MS. O'BRIEN: – to be, but –

MR. BENNETT: That's right.

MS. O'BRIEN: No – okay.

MR. BENNETT: That's right.

MS. O'BRIEN: So then I wanna say, well, if that was important for you to communicate to the public – look, 6.2, but look, that doesn't include the interest – why wouldn't you have done the same for the management reserve? Why wouldn't you have said, look, this 6.2 – well, look, this doesn't include interest and it doesn't include management reserve. Why wouldn't you have had the same open, transparent communication to the public on that point?

MR. BENNETT: Our approach, rightly or wrongly, was to talk about the \$6.2-billion direct

capital cost, including escalation and tactical risk.

MS. O'BRIEN: And I understand that you've said, look, the reason why we only put contingency in the – in our capital cost estimate that we were working for – this was the project – when we're talking about the budget that was being given to the project management team, we wanted to keep that low, we wanted to, you know, hold their feet to the fire and that's why we didn't give them control over the strategic reserve. Is that fair to say?

MR. BENNETT: That's basically the message, yes.

MS. O'BRIEN: Okay.

But would you agree with me that this is not a matter of – this doesn't mean just because you're going to just give the project management team a certain amount of money that they're going to get to work with, that doesn't prevent you from including the strategic risk in communications to government, to communications to the public. What the project management team has to spend is a matter of financial controls, is it not?

MR. BENNETT: It is.

MS. O'BRIEN: Yeah, so you could've given the project management team, look, that this is the amount you get to work with, and you still could have communicated to the public, communicated to the government, the strategic reserve, couldn't you have?

MR. BENNETT: There are other ways possibly to do that, yes.

MS. O'BRIEN: You could've done it, yes, right?

MR. BENNETT: Yeah, I guess so. Yes.

MS. O'BRIEN: Yes. Okay.

And, certainly, it wasn't a matter of not letting the project management team know that this strategic reserve had been estimated because they were one of the small group of people that

actually knew the work had been done and the estimate had been made, right?

MR. BENNETT: They knew it was there, yes.

MS. O'BRIEN: Yeah.

Okay, can we please – P-00130. That's up. Can we please go to page 296, please? Okay.

So this is the QRA work done by Westney on schedule risk, okay? That's what I have up in – on the screen.

Now, in response to questions by Harold Smith, I understand that you said the purpose of Westney – getting Westney to do this work was to stress test the schedule and to identify risks that needed to be addressed and mitigated. Is that correct?

MR. BENNETT: That's correct.

MS. O'BRIEN: Okay.

But that's not the only reason this type of work is done, is it?

MR. BENNETT: No.

MS. O'BRIEN: No.

MR. BENNETT: No, there are other points that you can get. So this is an indication of what that delay could look like.

MS. O'BRIEN: Yeah, one of the other reasons is you want to see how realistic your schedule is. That's one reason you do this work, right?

MR. BENNETT: That's one aspect, yes –

MS. O'BRIEN: Yeah.

MR. BENNETT: – to test the schedule.

MS. O'BRIEN: Test the schedule. See, you know, like, probabilistically, how accurate is it, right? And another reason you do it is to assess how much schedule reserve you might want to include in the sanction schedule, right?

MR. BENNETT: Yes, okay.

MS. O'BRIEN: Now, do you know how much money you paid Westney Consulting Group to do this QRA work at DG3?

MR. BENNETT: Oh gosh, I haven't seen that number.

MS. O'BRIEN: Okay.

Mr. Kean estimated it – I think he was just sort of, you know, giving an educated guess, but he said between \$150,000 and \$200,000. Does that sound about right for you?

MR. BENNETT: That would sound like the right order of magnitude –

MS. O'BRIEN: Okay.

MR. BENNETT: – to me.

MS. O'BRIEN: Okay.

Now, the work – and the QRA work that was done on the schedule by Westney is not the same work that was done by SNC to develop the schedule, right?

MR. BENNETT: No, but the Westney work should've looked at the high-level SNC-Lavalin schedule and incorporated it in their model.

MS. O'BRIEN: And they did, didn't they?

MR. BENNETT: Yes, they did.

MS. O'BRIEN: They did do that.

MR. BENNETT: That's –

MS. O'BRIEN: Yeah.

So I mean, you had said in – I think, in a question – I'm not sure if it was to Bern Coffey – you talked about there being conflict between the two pieces of work, and then you just changed and you said they were different. But – I mean, the schedule that SNC provided you showed you a first-power date of June 2017, right?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

And that was based on their schedule work. And what you did then was you took that schedule that SNC provided you, and then you got Westney to do a quantitative risk assessment of that schedule with the same first-power date, right?

MR. BENNETT: Right –

MS. O'BRIEN: Okay.

MR. BENNETT: – but not necessarily using all the detail –

MS. O'BRIEN: No.

MR. BENNETT: – that's in the SNC-Lavalin schedule.

MS. O'BRIEN: That's right.

And – but that's the way QRA work is done, isn't it?

MR. BENNETT: That is the way it's done, yes.

MS. O'BRIEN: Yeah. You don't provide – when you get someone to do a QRA of a schedule, you don't provide them with every single line item in the schedule, right?

MR. BENNETT: No.

MS. O'BRIEN: That's not how it's done? No.

MR. BENNETT: No, that's right.

MS. O'BRIEN: No.

What you do is you go through that schedule and you pick out the key activities at that schedule that are on the critical path, that have the most risk associated with them, and you build the truncated schedule, and that's what you do your QRA analysis on, right?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay. And so that's what is done in standard practice, and that's exactly what Nalcor did?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

And SNC was never asked to analyze the risk exposure in their schedule, were they? You didn't ask them to do any QRA work on their own –?

MR. BENNETT: I – no, we didn't ask them to do another QRA, no.

MS. O'BRIEN: Okay.

So, just to be clear, Westney's work is not any less accurate because it was using a truncated schedule. I mean, that is how that work is done. No one's saying that this is – you know, no one is saying that this is a guarantee, what comes out of this Monte Carlo analysis. But it's not like if you had provided him with the full SNC schedule, the results would have been any different.

MR. BENNETT: Whether the workweek would've mattered, I'm not sure. But there's no – I have – I agree that the – I mean, I agree with the statement that's on the left-hand side of the slide here, that those are the key issues driving the results. Driving the slide from the SNC-Lavalin detail schedule to the results of the model.

MS. O'BRIEN: Okay.

And now – but what I'm – the point is, if you provided, like, the full SNC schedule to them, with all the line items in it, that wouldn't – that would not have resulted in more accurate work.

MR. BENNETT: It might have resulted in a different outcome if the Westney work was able to look at the six-day workweek that was in the SNC-Lavalin schedule and take advantage of that. So I don't know the answer to that.

MS. O'BRIEN: But I thought that six-day one – so leaving that – let's leave that six-day one aside. Let's talk about the difference of them analyzing a, you know, hundred thousand item schedule – you know, hundred thousand –

MR. BENNETT: Right.

MS. O'BRIEN: – items in the – activities in the schedule versus a truncated one that just takes

out the key critical path ones, doesn't lead to a more accurate result.

MR. BENNETT: Not sure.

MS. O'BRIEN: Okay.

Now, let's talk about that six days. So, if you're paying – you're saying you don't know what Westney was told about whether it was six days, or seven days, or five days. You don't know.

MR. BENNETT: I understood that they had the durations as identified in the SNC-Lavalin schedule.

MS. O'BRIEN: So whatever SNC was using, you understand that that's what Westney was using?

MR. BENNETT: Well, they had the durations for the work.

MS. O'BRIEN: Okay. And you don't know –

MR. BENNETT: At the higher levels. So I'm – if they took it from the SNC-Lavalin schedule then they would've been having – they would've had work crews with the six-day week.

MS. O'BRIEN: Okay.

And now, I don't know what you're saying – you understand seven days. If you had information – if the project management team had information that would have improved the schedule outcome, because you don't know what Westney was told, right? You don't know what they – I believe that's what you said to Mr. Smith, isn't it?

MR. BENNETT: I understood that they had the SNC-Lavalin durations with the six-day workweek.

MS. O'BRIEN: Okay. Why – if the project management team had more information to give him that might improve the schedule analysis, why would the project management team have withheld that information from Westney?

MR. BENNETT: I'm not sure that they knew at the time what the workweek rotation would be, because that wouldn't be defined until

contractors finalized their work and we actually have their bids. So it's –

MS. O'BRIEN: So that's not 'til after sanction.

MR. BENNETT: That's correct.

MS. O'BRIEN: So you didn't know until after sanction.

MR. BENNETT: We weren't entirely clear. We knew that the opportunity would be there to address that.

MS. O'BRIEN: Or it might be there to address that. I mean –

MR. BENNETT: I think that's something that could be fairly easily negotiated in the contract, what the work days – what –

MS. O'BRIEN: Well –

MR. BENNETT: – the workweek is for the work.

MS. O'BRIEN: Then, if you knew that was something that you definitely had, why wouldn't you have communicated that to Westney? I mean, before spending \$200,000 on them to get – to do this work.

MR. BENNETT: Because the detailed schedule that we had at the time was based on a six-day week.

MS. O'BRIEN: Well, why would you have not told that to SNC-Lavalin: Look, we're intending to get all these contractors to work a seven-day week? Why wouldn't you have given that information to SNC-Lavalin if they're spending all this work – time and work in preparing the schedule? Why would you not be forthcoming with the information?

MR. BENNETT: It's not that we're forthcoming that they had taken approach in their schedule development and built a detailed schedule with thousands and thousands of line items in it. And that's just the way they did it. That's the reality. It's not that we knew, one way or the other, or we weren't being transparent. That was the way they built up the schedule. And it's just an observation that we're making.

MS. O'BRIEN: So this is information we're getting from you. We didn't really get it from Mr. Harrington or Mr. Kean.

MR. BENNETT: He didn't say that it was built on a six-day week?

MS. O'BRIEN: Not to my memory.

MR. BENNETT: Okay. 'Cause I thought that was in one of the notes that –

MS. O'BRIEN: I'll go back and check.

MR. BENNETT: Okay.

MS. O'BRIEN: It's not to my memory, but –

MR. BENNETT: Okay.

MS. O'BRIEN: Okay. So you don't know any – if you're – if the project management team knew it, you believe they would have communicated it to Westney. Is that fair to say?

MR. BENNETT: If they knew what the duration was – I don't think the conversation actually got to that level of detail. They had a schedule from SNC-Lavalin; they took the simplified milestones that we've talked about, and they ran that through their model.

MS. O'BRIEN: Okay. But in early September, Jason Kean actually went back to Westney, because this result – this P1 result – had caused some concern, right?

MR. BENNETT: Right.

MS. O'BRIEN: Right. And so he went back to Westney, and he said, look, we're trying – we're doing some things here, now; we think we got it up to a P20, P30, right? That's there in the emails in this document. You recall that, right?

MR. BENNETT: I recall that, yes.

MS. O'BRIEN: And so he said, look, we've done all these things to mitigate, mitigate. Can you – you know, we think we're at a P20 or P30 now. Can you please check that for us?

Now, if he had more information to give Westney at that time, don't you think he would have given it to him – to them?

MR. BENNETT: If he had more to say, then I –

MS. O'BRIEN: He – yeah –

MR. BENNETT: Yeah, I (inaudible) –

MS. O'BRIEN: If he had other mitigation strategies up –

MR. BENNETT: Right.

MS. O'BRIEN: – his sleeve, don't you think he would have communicated that to Westney then? Can you think of any good reason why he would not communicate it to Westney when he was very concerned with trying to get up the P-factor on the schedule?

MR. BENNETT: I don't have any insight into what else he was thinking about. I'm –

MS. O'BRIEN: I mean, it just doesn't make sense. If he's there, he's communicating to Westney, and he's trying to see, if we've taken all these mitigation measures, could we have improved the P-value, doesn't it just make common sense that he would have given whatever he had to Westney then?

MR. BENNETT: And I don't know – I guess I'm – I can't speculate on what that conversation might look like.

MS. O'BRIEN: I know but could you recognize that it would make sense?

MR. BENNETT: Well, it might but it also might mean that they have to go back and look at the durations and reassess those. So I'm not sure what it meant in terms of this updated sensitivity.

MS. O'BRIEN: Okay.

But you're aware then, that at P20 or P30, that's what Mr. Kean thought. He went back to Westney with whatever extra information he had about mitigation strategies and it came back as a P3.

MR. BENNETT: It came back. That's right. That's what I understand.

MS. O'BRIEN: And we have no further analysis by Nalcor of the risk associated with the schedule after that date. Is that not right?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

MR. BENNETT: It's – from that point on, we were then looking for more detailed information from the contractors as that information became available.

MS. O'BRIEN: Okay.

MR. BENNETT: And that that would be ultimately the definitive view of where things were going.

MS. O'BRIEN: But we don't have any quantitative risk analysis that would tell us what schedule you had, other than that last number from Westney which was a P3.

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

MR. BENNETT: That's – it never went beyond that, to my knowledge.

MS. O'BRIEN: Okay.

Now, P – page 287 of this document, please. When you were talking – in response to questions from Harold Smith, you talked about the completion bonuses. And I believe your answer was that the trades did not get a completion bonus. Was a completion bonus anticipated for anyone else?

MR. BENNETT: I think there were some staff personnel who actually have a modest bonus.

MS. O'BRIEN: So who would they be?

MR. BENNETT: Members of the construction team. I think there are –

MS. O'BRIEN: Like the project management team?

MR. BENNETT: I think there are some members of the project team.

MS. O'BRIEN: Okay. So who do you know?

MR. BENNETT: I don't know any specific individual. I know –

MS. O'BRIEN: Would it be like Mr. Harrington? Mr. –

MR. BENNETT: No, no.

MS. O'BRIEN: – Mr. Kean?

MR. BENNETT: No.

MS. O'BRIEN: So who are the types of people? What –

MR. BENNETT: People who were on-site.

MS. O'BRIEN: People who were on-site. So, Scott O'Brien, is he on-site?

MR. BENNETT: Scott's not on-site.

MS. O'BRIEN: So who's the most senior person on site?

MR. BENNETT: Today the most senior person on-site is Mr. Jeff Reid.

MS. O'BRIEN: Okay, so it's people – the senior people on-site have a completion bonus.

MR. BENNETT: There are some individuals. I don't have the information in terms of the specifics of those individuals, but I understand that there were some individuals who have a completion bonus.

MS. O'BRIEN: Okay.

Now, Mr. Coffey and Mr. Fitzgerald questioned you about the PM team, Mr. Harrington, Mr. Kean, editing of some of the conclusions from some of the – on the – of editing of conclusions and findings of some –

MR. BENNETT: Right.

MS. O'BRIEN: – of the reviewers who'd been retained. And, you know, you have said already,

clearly, you didn't condone that. It shouldn't have been done, right? And you've said it's not consistent with Nalcor's core values –

MR. BENNETT: Right.

MS. O'BRIEN: – right? That's a fair summary?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. Now – but then, one of – in one of your answers – I forget whether it was – to which of those gentlemen it was – you said: Well, you know, we have lots of other consultants.

And I took from that statement that you were suggesting that this type of – shall we say – uncondoned, wrongful activity of the PMT was the exception not the rule. You know, you said: We have lots of other consultants. Is that what you were trying to imply?

MR. BENNETT: What I was getting at was that there is, you know, a lot of – there are a lot of reports that go back and forth. They go through a formal process where – and I think I explained, for example, with some of our engineering reports: they come in in draft; they get reviewed; there are comments provided, and eventually, they're finalized. And I wasn't aware of many examples of the situation that you described with the two examples that we reviewed here.

MS. O'BRIEN: Okay.

But now I just want to put it to you in that light, because what we're talking about here is very different than other consultants who are just, you know, working on the project. These are very particular consultants, right? These are independent, third party reviews that are asking to validate, check, review, cold eyes review, et cetera, the work of the PMT, right?

MR. BENNETT: Yes, that's right.

MS. O'BRIEN: Okay. And in terms of those types of consultants – you know, I put it to you it's actually a very small group, because even if we look at Gate 2 work and the Gate 3 work, we have the IPR, IPA, Validation Estimating that was asked to do a check on the base estimate, Navigant and MHI –

MR. BENNETT: Right. Those –

MS. O'BRIEN: – right? So that's five.

MR. BENNETT: Those are the key ones, right.

MS. O'BRIEN: Those are the key ones. So we – you have evidence now before you that there was, you know, un-condoned, wrongful editing work done on IPA, right? That's one of the ones that we went through already. Do you recall that?

MR. BENNETT: Right. The email –

MS. O'BRIEN: Yeah, that was one of the ones you said you don't condone –

MR. BENNETT: Right.

MS. O'BRIEN: – shouldn't have happened.

MR. BENNETT: Right.

MS. O'BRIEN: Do you recall that? So that's on IPA. You're aware that Mr. Harrington did it on IPR?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay. And the Validation Estimating, that's the report that came back and got deep-sixed by Jason Kean, right? Right?

MR. BENNETT: Right.

MS. O'BRIEN: So that's three out of five we're talking about here.

MR. BENNETT: Well –

MS. O'BRIEN: Do you see that that suggests that this is more of the rule than an exception?

MR. BENNETT: No, I think I have – we have three examples of the correspondence back and forth.

MS. O'BRIEN: But your – do you acknowledge that out of the five third party reviewers of the work at DG2 and DG3 – you acknowledge that out of the five independent reviewers at both those Gates that this type of behaviour by the PM team, this type of

behaviour that is not consistent with Nalcor core values, affected three out of five of those?

MR. BENNETT: I don't think it affected them because the changes that – or the suggestions weren't accepted. So –

MS. O'BRIEN: They either did it or attempted it –

MR. BENNETT: I understand.

MS. O'BRIEN: – with three out of five.

MR. BENNETT: I understand that.

MS. O'BRIEN: Okay. So do you agree with me that's very poor statistics indeed.

MR. BENNETT: Well, it's – I mean we can – if you look at the number of reviews we're talking about, I appreciate that, but I think there was more traffic back and forth between those consultants over the years. But I accept your point that I don't – under any circumstance, I'm not happy.

MS. O'BRIEN: Yeah.

MR. BENNETT: Okay? And I'm – I guess I can say that the fact that the reviewers didn't accept those comments and suggestions is a good thing.

MS. O'BRIEN: I know you've testified that you have spent – you spent your – majority of your time during this period on the environmental assessment in the JRP and Indigenous consultations. Correct?

MR. BENNETT: And the commercial work and the PUB review.

MS. O'BRIEN: Right and so –

MR. BENNETT: Correct.

MS. O'BRIEN: – yeah, you said majority, I think on those first things –

MR. BENNETT: Right.

MS. O'BRIEN: – and then in additional to that you did the PUB, in additional to that, you were doing the Emera.

MR. BENNETT: Right.

MS. O'BRIEN: I want to put it to you that – you know, look, have you considered the fact that if you had had more time to devote to doing oversight of the project management team, if you had not – if your time had not been consumed by those other activities, if you had more time to do the oversight, you may have looked for the Hollmann report, you may have been more involved with, you know, the drafts that were coming back from these third party reviewers. That you may – it may have come to your attention that this – that the project management team was engaging in this, you know, really, you know, wrongful activity.

MR. BENNETT: Well, it's hard to say. I mean, I've known Mr. Owen; a phone call, an email could've put that to bed, too. But there's no question that there was a lot on my plate and I was doing, you know, the things that I was asked to do and needed to do in order to get through the planning for the work.

MS. O'BRIEN: Yeah. I mean you (inaudible) say Mr. Owen could've called me – I mean, you're saying like, look, all these other people, but have you – you know, looking at what you could've done, one of the things you could've done was to have been paying more attention to what the project management team was doing.

MR. BENNETT: I understand but I think it would've been hard for me to find some of the examples here which were personal, individual emails that didn't rise beyond that, but they were direct communications.

MS. O'BRIEN: You would've – for example, the Hollmann report is an easy one that you could've caught, right?

MR. BENNETT: Um –

MS. O'BRIEN: You knew the work was being done. You could've – if you had time you might've gone looking for it.

MR. BENNETT: Well, I don't think Mr. Harrington – so this is Validation Estimating one, right? I don't think Mr. Harrington was aware of that.

MS. O'BRIEN: No, but you knew the work was being done. You knew the man had been hired, you knew he was going to be giving a report.

MR. BENNETT: I know now, right.

MS. O'BRIEN: You – no, your testimony – are you saying you didn't know it at the time, when he was retained?

MR. BENNETT: Could we go back and look there? I need – I mean I know –

MS. O'BRIEN: We covered this in direct, at some –

MR. BENNETT: Yes, I understand. I –

MS. O'BRIEN: – length, and we brought up the slide, remember, and you knew the slide, you knew he was doing that –

MR. BENNETT: Oh, I had read the exhibit, so I knew about the report.

MS. O'BRIEN: And you knew he was being – had been retained to do a review?

MR. BENNETT: I knew he had been retained, yes.

MS. O'BRIEN: Yeah, and you knew his standing, and –

MR. BENNETT: Absolutely. I was familiar – I was –

MS. O'BRIEN: Yes.

MR. BENNETT: – familiar with him.

MS. O'BRIEN: Yeah, but, you didn't – so you knew this man had been hired to do a review, but then you didn't go looking for the report.

MR. BENNETT: I knew he was – he had been retired, and so in response to your specific question, did I know had he been retired? Yes, today, I know he had been retired. Did I –

MS. O'BRIEN: Retained – retained.

MR. BENNETT: Or retained, rather. Did I know at the time that this report existed and the engagement was happening at the time? No, I was in the same position as Mr. Harrington at that time.

MS. O'BRIEN: Mr. Harrington knew he'd been retained.

MR. BENNETT: But is it –

MS. O'BRIEN: Are you saying you didn't know he'd been retained?

MR. BENNETT: – that this report – that this – I thought Mr. Harrington had said he didn't know at the time that he was –

MS. O'BRIEN: No, he's saying he didn't see the report.

MR. BENNETT: Right. And nor did I see the report.

MS. O'BRIEN: I know.

MR. BENNETT: Okay.

MS. O'BRIEN: But your evidence in direct was that you knew that Mr. Hollman [sp Mr. Harrington] had been retained? Are you changing that now?

MR. BENNETT: No, I'm just – I'm saying –

MS. O'BRIEN: No. Do you stand by the evidence you gave on –

MR. BENNETT: Yes.

MS. O'BRIEN: – on Monday or Tuesday?

MR. BENNETT: Yes. Okay. Yes.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Mr. –

MR. SIMMONS: I've got green, so I'll have to speak up.

I'm just wondering, Commissioner, it is redirect, and normally it is confined to new matters that have come up on examination, and Ms. O'Brien has been careful to make reference to those.

It is 5 o'clock; I wonder if we can get some indication of how much longer she'd be, because it's quite obvious Mr. Bennett has been on the stand a long time, and I'm not sure that his – that he's as on top of answering questions at the moment as he might be if he were fresh after a break.

THE COMMISSIONER: Ms. O'Brien?

MS. O'BRIEN: I only have one more question.

THE COMMISSIONER: One more question? Okay.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: (Inaudible) gonna have one more question, wouldn't you rather deal with this today than come back tomorrow?

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. O'BRIEN: It may be a two-part question. But it really has to do with communications with Mr. Martin. That's what I want to talk to you about.

THE COMMISSIONER: All right.

MS. O'BRIEN: When is the last time that you communicated with Ed Martin, either directly or indirectly on any of the material that you've covered in your evidence before the Commission this week?

MR. BENNETT: Not in – in this material? I haven't.

MS. O'BRIEN: Okay. What material have you – when did you last have either direct or indirect communication with him?

MR. BENNETT: It would've been a couple of months ago, I may have spoken with him to see how he was doing, but it was no time during this

–

MS. O'BRIEN: Okay. And what did you –

MR. BENNETT: – during my testimony.

MS. O'BRIEN: And that couple of months when you spoke to him, what did you discuss in terms of – I don't mean how's your family. I –

MR. BENNETT: And that's – that was – not much more than the conversation. I mean, the last time I saw him was in Happy Valley-Goose Bay –

MS. O'BRIEN: Okay

MR. BENNETT: – at the hearing.

MS. O'BRIEN: All right. Thank you.

And Mr. Martin was in the media today, and he was actually discussing with the media elements of your testimony. Did you read that article?

MR. BENNETT: No.

MS. O'BRIEN: Okay. Thank you.

MR. BENNETT: I'm trying –

MS. O'BRIEN: Trying to keep yourself isolated?

MR. BENNETT: Trying not to be on the media either. So –

MS. O'BRIEN: Yeah.

MR. BENNETT: It's not helpful for my blood pressure.

MS. O'BRIEN: Okay. All right.

Thank you, Mr. Bennett. Those are my questions.

MR. BENNETT: Thank you.

THE COMMISSIONER: Okay. Mr. Bennett, thank you very much. Four days, it's a long period of time. I appreciate you providing your testimony. We'll adjourn now 'til tomorrow.

I just wanna just make a couple of comments about tomorrow.

So tomorrow is water management, and, as I had decided earlier, this is going to be an in camera hearing. All – finally, all issues have been resolved in making sure this happens tomorrow, as far as I know.

So the plan tomorrow is that we're going to be hear from – in camera – from Philip Raphals; Peter Hickman, who is counsel with Nalcor or Churchill Falls corporation. Then we have a panel that will be testifying that will include: Todd Stanley; also Mr. Bennett; and also the Consumer Advocate, Dennis Browne, but he's basically going to be testifying not as the Consumer Advocate but as really a part of the – what was the 2041 Group.

There are exhibits that are publicly available. We have tried to make available what publicly we can that would not impact in any way the results of the present litigation before the Quebec courts on this – on potentially leading to this issue. But there are also some other in – or some private exhibits that will not be made public. So I encourage those who want to review anything on the – well, you know, what we do have available will be on our website. If not now, it will be on the website shortly.

We then will come back next Monday, and we start with – next week is Mr. Bown? Or, no, Mr. –

MS. O'BRIEN: I think Mr. Kennedy and then –

THE COMMISSIONER: Mr. Kennedy.

MS. O'BRIEN: – Mr. Bown.

THE COMMISSIONER: Yeah. Mr. Kennedy and Mr. Bown next week.

So for the rest of counsel, thank you very much. Have a good weekend, and, otherwise, we'll see who's coming for tomorrow.

All right. That's it.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.