



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 50

Commissioner: Honourable Justice Richard LeBlanc

Monday

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CLERK (Mulrooney): This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

Mr. Learmonth?

MR. LEARMONTH: Thank you.

The witness today is Jerome Kennedy. Could Mr. Kennedy be sworn?

THE COMMISSIONER: Okay.

Mr. Kennedy, if you could stand and just place your right hand on the Bible, please.

MR. LEARMONTH: The exhibits –

CLERK: Do you swear that the evidence which you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. KENNEDY: I do.

CLERK: Please state your name for the record.

MR. KENNEDY: My name is Jerome Kennedy.

CLERK: Thank you.

MR. LEARMONTH: I'd like to enter the following new exhibits: P-01208 to P-01223, P-01225 to P-01237, P-01240 to P-01304, P-01311 and P-01522 to P-01526.

THE COMMISSIONER: All right.

Those are entered, then, as (inaudible) – thank you.

MR. LEARMONTH: Mr. Kennedy, can you tell us about what educational pursuits you had after high school?

MR. KENNEDY: Yes, Mr. Learmonth, I graduated from Memorial University in 1981 with an honours degree in English and classics. I finished my law degree at the University of New Brunswick in 1984, and I also did a master's degree in criminal law in 2016 from Osgoode Hall in Toronto.

MR. LEARMONTH: All right.

And after you graduated from law school, you began a private practice of law?

MR. KENNEDY: Yes, I was admitted to the Newfoundland bar in July of 1985.

MR. LEARMONTH: And you continued to work as a practicing lawyer until you were elected to the House of Assembly on October 9, 2007?

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: Yeah. And I believe you served just one week short of six years. You resigned on October 2, 2013. Is that correct?

MR. KENNEDY: That sounds correct, Sir.

MR. LEARMONTH: Yeah. And can you confirm that you were the minister of Justice and Attorney General from October 30, 2007, to October 31, 2008?

MR. KENNEDY: Yes.

MR. LEARMONTH: And that you were minister of Finance from October 31, 2008, until October 7, 2009?

MR. KENNEDY: Sounds correct, Mr. Learmonth, yes.

MR. LEARMONTH: Yeah. Minister of Health from October 7, 2009, to October 28, 2011?

MR. KENNEDY: Correct.

MR. LEARMONTH: Yeah. Minister of Natural Resources from October 28, 2011, to January 16, 2013?

MR. KENNEDY: Again, that sounds correct, Sir.

MR. LEARMONTH: And, last, minister of Finance from January 16, 2013, until October 2, 2013?

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: Okay.

Mr. Kennedy, I'd like you to give us a general overview of your relationship, as minister of Natural Resources, with Nalcor while you were the minister of Natural Resources, that period being October 28, 2011, to January 16, 2013.

MR. KENNEDY: Yes. Well, prior to becoming minister of Natural Resources, I would have had contact with Nalcor, Mr. Learmonth. They presented – primarily Mr. Martin and Mr. Bennett – they presented to Cabinet on – it seemed to me to be on numerous occasions. And so I was familiar with them, and, obviously, I was familiar with the Muskrat Falls Project.

One of the first things that I did, Sir, was to review some of the documents. Even before becoming minister, I think I reviewed the environmental assessment report in October 13, 2017, and the Navigant report October 17. So I did some reading prior to becoming – being sworn in as minister. And it appeared to me that there were – the role of Nalcor versus the role of government was somewhat confusing to me.

So in the initial – the first couple of months there were some growing pains, if I could call it that, in terms of defining my relationship with Nalcor. But after the first number of months, things appeared to improve, and the relationship was fine after that.

MR. LEARMONTH: Yeah. Now, you said that the – you found the relationship between government and Nalcor to be somewhat confusing when you first took the portfolio of minister of Natural Resources. Is that correct?

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: Can you just define that a little better?

MR. KENNEDY: Well, part of the difficulty – when I come into – my practice as a – when I came into a portfolio was to really dig down into

that portfolio and try to understand what it was that I was doing, my – what my new job entailed.

And in reading the environmental assessment report, there, I was a little bit confused as to the role of Nalcor. There appeared to be – Nalcor – there were individuals writing letters to the editor; there were interviews being given.

Then I read the – some of the correspondence between the chair of the Public Utilities Board and Nalcor. So I wasn't clear as to who was responsible for what. I've – I know a term, integrated, has been used at times. Obviously we had to – government – depend on Nalcor to a great extent. But it was just trying to define my role as the minister, vis-à-vis the premier's office, and with Nalcor.

MR. LEARMONTH: Now, the term integrated team, I think, was used by Robert Thompson. Do you – would you describe your relationship between Nalcor and government as that of an integrated team?

MR. KENNEDY: It was integrated to the extent, Mr. Learmonth, that there had to be reliance on Nalcor in terms of provision of information to government. I saw my role as minister a little bit differently. I saw there being an obligation on me to learn as much about the project as I could and to dig down as far as I could in terms of trying to understand personally what was going on.

So I asked a lot of questions, but that was my – the way I did things, and tried to determine exactly who was doing what. So when I – I didn't see my role as integrated with Nalcor at, you know, at all levels. Obviously, with some levels, Sir, we had to rely on them for information.

MR. LEARMONTH: But there's an oversight duty on government when dealing with a Crown corporation, is that not true?

MR. KENNEDY: That's correct, Sir. Yes.

MR. LEARMONTH: Yeah, and how do you see that oversight role? Or how did you see that –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – oversight role when you were minister of Natural Resources?

MR. KENNEDY: The – what I tried to do, Mr. Learmonth, was not accept everything that was told to me at face value. I saw there being a duty of due diligence imposed upon me as the minister and as an elected official to ensure that the information being provided to us was tested, to ensure, as best we could, that we were doing the right thing.

So there was different levels of oversight, if I could use that term, Sir, in relation to Nalcor. By that I mean the premier was very involved in meetings and in dealing with Nalcor – the premier to premier's office. The civil service, from Mr. Thompson to Mr. Bown, they were very involved. And there was Cabinet oversight in terms of the – Cabinet was fully aware of everything that was going on. And when I say fully aware, Sir, there were presentations to Cabinet on a regular basis from Nalcor.

MR. LEARMONTH: With the slide decks? Always with the –

MR. KENNEDY: There – the –

MR. LEARMONTH: – slide decks?

MR. KENNEDY: Yeah, the – and I was surprised that I didn't see as many, that I expected to see a lot of those.

Nalcor, yeah, would come into Cabinet – and this started, Sir, at least some of my notes go back as far as 2009 or '10. That was the way they would present things, would be in the presentation deck or the PowerPoint.

And I also remember Mr. Martin used to like using the – there'd be a – it's almost like a board where you put up and you turn the pages. And he was – he made a lot of notes on the pages, almost like what a whiteboard, from what I understand that would be.

MR. LEARMONTH: All right.

MR. KENNEDY: But it was just paper.

MR. LEARMONTH: Yeah, we're – just referring to your interview, I think there was at least one occasion when you took exception to Nalcor's – manner of presenting at a Cabinet meeting. That was one in Corner Brook?

MR. KENNEDY: I took exception, Sir, to a number of different things, but that wasn't necessarily anything personal. That was just the way I saw my role; it was the role I played in every – in every department. But, yeah, there was one particular occasion where there was a – this wasn't as much an exception to Nalcor as an exception to the way things were done.

And there was a Cabinet meeting or retreat, and there was the – a deck was handed out that I had not seen and I did not take too kindly to that. As the minister of Natural Resources, I'm the person who has to go out in front of the public every day, almost – it seemed like every day, Mr. Learmonth, dealing with this – and all of a sudden there, I'm bypassed?

No, I did not take kindly to that, Sir, and I don't think – it was after that, I think, that relationships started to be defined in terms of you don't present to Cabinet – either to Cabinet asking or Nalcor presenting without me being aware and our department having an opportunity to review the documents to make sure that it was consistent with what we were doing.

MR. LEARMONTH: Okay.

Now, you mentioned that you'd review presentations from them and so on. Now, we've been told that no one at government ever reviewed the detailed cost estimates for the project, and – for example, the people in the Department of Finance said that they didn't have the capacity to do a CPW analysis and they never did a review of either the DG2 figures or the DG3 figures.

Were you aware of that at the time that you were minister?

MR. KENNEDY: I was very focused, Sir, on what I was doing in terms of what I'll refer to as the theory of Muskrat Falls, for lack of a better term, Commissioner, in terms of, is this the – you know, do we need the power, is this the least-cost option? So I can't say, Mr. Learmonth,

I was aware that that wasn't happening, but certainly there's nothing in my – in my notes to indicate that I was aware that it was happening.

MR. LEARMONTH: All right. Now, does that surprise you? That there was never a review done by the Department of Finance or by any other government department of either the DG2 or DG3 cost estimates?

MR. KENNEDY: It surprises me, Mr. Learmonth, to the extent that when I'd been the Minister of Finance on a couple of different occasions, we had very good people in the Department of Finance. Whether or not there was the capacity to do the CPW analysis certainly sure there was a capacity to review financial information. There was actually a – I think – I don't know if it's an economic section.

MR. LEARMONTH: Mmm.

MR. KENNEDY: I don't know if that's the –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – term that would be used in the Department of Finance. They were – I found them always to be excellent to deal with, Sir.

MR. LEARMONTH: Yeah, but the evidence that we've had is that –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – the Department of Finance did reviews of economic effects of our – you know, potential economic spinoffs and multipliers and so on –

MR. KENNEDY: Yeah. I was aware of that, Sir. Yeah.

MR. LEARMONTH: – from the spending of it, but not a detailed analysis of the cost estimates.

MR. KENNEDY: Yeah, that –

MR. LEARMONTH: We've been told that.

MR. KENNEDY: Yeah, I accept that.

MR. LEARMONTH: And there's no evidence, really – there was some work done in the

Department of Natural Resources on – by Mr. Paul Parsons, I think, and some other individual, but there was never a thorough review done of the cost estimates by government. And I just wonder – some may find that very surprising. Do you find it surprising?

MR. KENNEDY: Mr. Learmonth, over the last number of years there have been, I don't know how many occasions I've asked myself are there things that we could have done differently, are there things I could have done differently? And there was a lot of moving parts in relation to Muskrat Falls. I was focused on the project and looking at –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – the options that were available. So, yeah, I'm surprised but I do know, Sir, that there – that at least I was informed that the – under the federal loan guarantee that the federal government were engaging in a significant financial analysis of the project. Whether or not it's the kind of analysis, Mr. Learmonth, that you're talking about, I can't say, but, yeah, I'm surprised by that –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – Mr. Learmonth.

MR. LEARMONTH: And the federal – the independent engineer's work was done after sanction. I'm talking about up to the time of sanction.

MR. KENNEDY: But I thought during the federal loan guarantee negotiations that there was an economic analysis done by the –

MR. LEARMONTH: I don't think we've seen that.

MR. KENNEDY: Okay.

MR. LEARMONTH: I know there was one done –

MR. KENNEDY: Okay.

MR. LEARMONTH: – in November or thereabouts 2013 but, anyway, we'll – you were surprised and that's fair enough.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Now, Mr. Kennedy, you're a lawyer. You're trained as a lawyer. Do you have any training or – that would allow you to understand cost estimates and in complex construction matters?

MR. KENNEDY: No, Sir, I did my best to understand and to try to understand everything that was going on here, but, no, I have no –

MR. LEARMONTH: Yeah.

MR. KENNEDY: I have no training or basis. And that's one of the things, though, Mr. Learmonth, I would say as a minister, I was the Minister of Health and I had no training.

MR. LEARMONTH: Oh, I know.

MR. KENNEDY: We've got to rely on the officials and on the experts and consultants to help us work our way through that, so we can make the policy or political decisions necessary.

MR. LEARMONTH: Yeah.

Now, we've also heard that – well, I'll ask you the question, but did you ever ask for, or were you ever given reports from experts that had been retained by Nalcor; for example, Westney or other experts that were retained or ...?

MR. KENNEDY: Yeah. In terms of the – one of the first things I did, Mr. Learmonth, I think the election – I can't remember, the election was either October 9 or 11, 2011.

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: I can't remember the exact date. And my notes indicate that on October 17, 2011, I reviewed the Navigant report in detail, trying to understand –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – the project. I'd never seen any reports from Westney. My understanding of Westney was that that was something that had happened in 2010. That was the only recollection –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – I have of that, yeah.

MR. LEARMONTH: But they also did a, you know, other reports between 2010 and the time of sanction –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – including this strategic risk or management reserve.

First of all, were you aware that Nalcor had retained Westney to prepare such reports?

MR. KENNEDY: Sir, I've never heard – I mean, the term or the company, Westney, they were – I remember at some point they were around 2010. I wasn't aware of anything after that, although somewhere in one of my notes there's a reference to a company, I've got it written as Westnave. And I have no idea; it must be the same company I was referring to but that's much later, Sir.

MR. LEARMONTH: Okay.

But I guess the question is: Did you ever see their reports?

MR. KENNEDY: No. No, I didn't.

MR. LEARMONTH: You were aware of them but did you ever see –

MR. KENNEDY: I wasn't really –

MR. LEARMONTH: – see their reports?

MR. KENNEDY: – aware of them, but I – no, I didn't see that, I didn't see any reports from Westney.

MR. LEARMONTH: Is there any reason why you wouldn't have asked in – you know, in doing some kind of a due diligence that would ask to see all the expert reports that they had?

MR. KENNEDY: Sir, there was a – you referred to an integrated approach. I mean – and I can take you through this if you want to go through it, Mr. Learmonth, but there were always these meetings, there were teams of

people involved. You know, like, there would be meetings with eight and 10 and 12 people, and information was provided on a regular basis.

The – I was always acutely aware of it. And when I use the term risk, Commissioner, the thing – what risk meant to me in my experience in government was that of an overrun. Was a project going to cost more? And so I had not seen any reports. I had no reason, Sir, to believe they existed.

MR. LEARMONTH: You didn't know because they didn't – Nalcor didn't tell you, is that right?

MR. KENNEDY: I wasn't aware of them, that's correct, yeah.

MR. LEARMONTH: Okay.

You're aware of it now – of the reports now?

MR. KENNEDY: I'm aware, Sir, since – I think the first time and – I seen any of these reports, Mr. Learmonth, would have been during the – you asked me during our interview and I –

MR. LEARMONTH: Yeah so –

MR. KENNEDY: – I was quite surprised, Sir, by some of the information you provided that day.

MR. LEARMONTH: Yes. Well, we'll get into that later.

Now was there – can you describe for us the nature of the contact that you had with the Nalcor representatives while you were Minister of Natural Resources? In other words, was it usually meetings, telephone calls, emails, was there any schedule for meetings, as – I'm – just expand on that if you could.

MR. KENNEDY: Sure.

The – Mr. Learmonth, a lot of this as I think you've heard, Commissioner, throughout, was ran out of the premier's office obviously, the way government is set up. Decisions – the premier's the ultimate decision-maker or Cabinet's the ultimate decision-maker. As a minister I certainly had – I could make certain

decisions but on a project as big as Muskrat Falls there was no decisions made without going through the premier's office. So there was a – the premier's office, you had the officials in Department of Natural Resources and Mr. Bown, the deputy minister, had extensive contact with Nalcor.

If I can give you an example, Mr. Learmonth, of – besides all of the presentations that Nalcor would give and they would be scheduled either through the premier's office, or at the request of the premier's office, where there would be primarily Mr. Martin and Mr. Bennett were – seemed to be always – the two of them always seemed to be present and Mr. Sturge was present at a lot of meetings.

But let me give you an example of how I found Mr. Martin to be very cooperative. I travelled to New York in November 28 – I think it was – 2011 to meet with Wood Mackenzie on shale gas energy markets and I learned some things about the energy markets and I apologize if I'm jumping ahead, Commissioner, but I want to give you an example that caused me concern. I phoned Mr. Martin up and the next day he's in the meet with me.

So Mr. Martin, whenever there was a – so I would meet with Mr. Martin – my notes indicate I met with him on a number of occasions by himself. He was always very cooperative, always there, always available – Mr. Martin was always available.

MR. LEARMONTH: Yes.

And while you were minister, right up to the time of sanction, did you have any reason to question whether Nalcor was giving you complete and – being transparent in the delivery of information to you?

MR. KENNEDY: No, once we got over that first few months and the roles were better defined and people understood how I – I thought they understood how I approached things that I found that things were very good. I never – I had no reason to – not to trust Mr. Martin or anyone else at Nalcor.

MR. LEARMONTH: And you believed that you were being provided with all relevant information on the cost estimates?

MR. KENNEDY: Yeah, but I also questioned, Sir.

MR. LEARMONTH: Okay.

MR. KENNEDY: As we'll move a little later on –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – later on. I questioned. I sat there specifically. I asked about contingencies. And there's one meeting in – I think it's October 18, 2012, where – Mr. Martin is breaking down for me the cost of steel, the cost of gates, why things have gone up, the cost of concrete. So I asked a lot of questions. It was not only that the information was being provided, Sir, I asked questions, also.

MR. LEARMONTH: Well, at that meeting or any other time, any other meeting, did you – or any form of communication – did you ever know about this strategic risk amount of \$497,000 dollars?

MR. KENNEDY: No, Sir, no, Commissioner, I'd never heard that amount.

MR. LEARMONTH: So Mr. Martin was giving you all this information – and you referred to an October meeting – he would have had that final report by then. He didn't discuss it or –?

MR. KENNEDY: There were a number of meetings, Mr. Learmonth. I think October – August 3, 2012 there's a DG3 alignment –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – meeting. I'm not sure if that's the – the numbers were available. Then we move into September 19, October 2, October 18 –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and October 30. And at no point was that – reference to that number, no.

MR. LEARMONTH: You never heard about it until I showed it to you at your interview on September 6 of this year?

MR. KENNEDY: Yeah. Now whether it was referred to – I would have seen the Grant Thornton report, Sir.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Whether or not it was in that, I think –

MR. LEARMONTH: Okay.

MR. KENNEDY: – it was referred to in that. But the first time it really came out is when you showed it to me, Mr. Learmonth.

MR. LEARMONTH: Okay. Now just – we were talking about – we talked about Westney. I just wanted to put a few facts to you that in support of Nalcor's cost estimate for DG2 – that would be in 2010 –

MR. KENNEDY: Correct, yes.

MR. LEARMONTH: – Nalcor engaged Westney, which is a consultant in Texas, to complete a quantitative risk assessment. And the amount of contingent equity or management reserve for strategic risk identified by Westney was in the 300 to \$600 million range at a P50. Now, in a draft document, Nalcor chose to include an allowance, or an amount of 300 million for strategic risk, which was the bottom end of the range, but within the range proposed by Westney.

Now, during – we have information that during the negotiations leading up to the timing – signing of the term sheet with Emera – and that was signed on November 18, 2010. Nalcor executive made a conscious decision to remove the strategic risk allowance recommended in the DG2 QRA in order to respond to some concern that Emera had regarding its ability to sell the strategic risk concept to the Nova Scotia regulator. So it was removed.

Now, regardless of the reason that it was removed, it was not included in the \$5 billion figure that your government announced to the public at the time of signing the term sheet as

being the Newfoundland share. It was \$5 billion dollars.

MR. KENNEDY: Right. Yes.

MR. LEARMONTH: And there was nothing in there – not a cent for strategic risk – notwithstanding the report that I earlier referred to. Does that give you any concern?

MR. KENNEDY: Well I wasn't aware of that, Commissioner, at that point in 2010 – I'm trying to remember which department I was in. I think it might have been Finance at that time.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I wasn't aware of it, Mr. Learmonth, and I think I said this to you at the –

MR. LEARMONTH: Yea.

MR. KENNEDY: – at the interview, Sir, that anything that went to the cost of the project or that could potentially increase the cost of the project was something that was very relevant to me because what we were looking at was the least-cost alternative. So – and I know we'll get to this later – but there were various sensitivities that could be applied that could have an impact on that. So I wasn't aware of that, Sir, but, certainly, anything that went to the – that could increase the cost of the project is something that I feel we should have been aware of.

MR. LEARMONTH: Yeah. So you didn't – you weren't aware of it and you say that – are you saying that Nalcor should have advised you of it?

MR. KENNEDY: I see it – the question, Commissioner, is a little bit difficult to this extent – is that, we're looking back and that's what the Inquiry's about – I mean that's – I'm not – we're looking back and we're saying – well how – how were things done at the time? And we're looking at it in term of hindsight and speculation to a certain extent – you're asking me to speculate. But I would have to say – if I'm pressed for an answer, you know, in terms of the context of everything that was happening. Yes. It should have been disclosed.

MR. LEARMONTH: Yeah. Because you want to know – I mean we all know that, you know, megaprojects have a tendency to go over budget but I'm talking about amounts that were known, at the time, as being a potential cost. Not just a theoretical – well, it may go over budget. And this amount of 300 to 600 had been recommended by Westney. So in communicating a figure of 5 billion to the public, without mentioning the strategic risk amount – don't you think that that was misleading? I'm not saying it was intentional – if you didn't know about it – it wasn't – but don't you think that from the public's point of view, that was a misleading communication?

MR. KENNEDY: Yeah. I don't like to use the term misleading, myself, Sir – I mean the – and I – 'cause I don't know what happened. I have never found Mr. Martin, at any time, to be misleading me or anyone else. So I guess that's a question you're really going to have to ask Mr. Martin. I think he'd – the other members of the Nalcor team that have testified as to why it wasn't provided. All I can say, Sir, is that anything that went to the cost of the project should have been provided to us.

MR. LEARMONTH: Okay. So that would mean that the \$300 to \$600 million figure should have been communicated to you.

MR. KENNEDY: Again, I'm not there at that time. But as the government as a whole, when decisions are made, decisions of Cabinet are all of our decisions. So yes, Mr. Learmonth, based on what you're telling me –

MR. LEARMONTH: Yes.

MR. KENNEDY: – but again, I'd suggest that Mr. Martin is the person who could answer that.

MR. LEARMONTH: Well yeah, but I'm –

MR. KENNEDY: From my guess – okay. Yeah, sure.

MR. LEARMONTH: – (inaudible). Yeah, from your view.

MR. KENNEDY: Yeah, from my perspective, anything they were – right from the beginning Sir, early in this project, there were two

questions that I was asking myself were: Do we need the power and which is the least-cost alternative? Was it Muskrat Falls or was it Isolated Island?

I did go further later on and look at natural gas and wind, but those were the issues I was asking myself. So anything that increased the cost of the project – either side – was something that, yeah, we should've been aware of.

MR. LEARMONTH: And a risk would've increased the cost of the project, would it not?

MR. KENNEDY: Certainly – no question. We were aware of risk – I think I indicated to you during the interview that I'd been the president of the Treasury Board for a number of years so that overruns were something that we commonly encountered in government, whether it would be building a school or a hospital. So that – we were always aware of risk in a general way.

MR. LEARMONTH: Yeah.

MR. KENNEDY: But what we tried to do was either to mitigate that risk, or to minimize that risk and thereby, bring some certainty – as much certainty as we could. But in this particular case, yes. Anything that went to the cost of the project, we should have been aware.

MR. LEARMONTH: Right, we're – we've had evidence, and I'll get into this in more detail later on today. But we've had some evidence that Nalcor seemed to have a relationship with the premier whereby the communications would not necessarily go through Natural Resources, we'd go directly from Nalcor to the premier's office. Can you give us any information on that relationship?

MR. KENNEDY: Yeah, well the way our system is setup, Sir, the premier is the person who's in charge. But both Premier Williams and Premier Dunderdale brought their ministers into meetings. So while there was certainly a relationship between Nalcor and the premier's office, I don't know if it would've been primarily through the chief of staff or with the premier herself. I found that after a few months of defining how I like to do things, I felt that things were also coming through Natural Resources.

MR. LEARMONTH: So you didn't have any concern about that relationship, if it existed?

MR. KENNEDY: No, we –

MR. LEARMONTH: Or was Nalcor going directly –

MR. KENNEDY: No.

MR. LEARMONTH: – to the premier's office and getting instructions and so on and authorizations directly from the premier's office?

MR. KENNEDY: I thought things were happening, Sir, were – it was coming through our department. I mean, the primary contact in the department would've been a Mr. Bown; and Mr. Bown was a – Charles Bown was a very experienced civil servant, Sir. One who was very knowledgeable, it seemed to me, in the electricity, oil and gas. And Mr. Thompson would've been his contact. And again, Mr. Thompson – very knowledgeable, very experienced civil servant.

So, no, I had no great problem that things were going to the premier's office without going through Natural Resources – was a bit unusual, in terms of that – compared to other departments, but we had never done a project like this before. This was one where there were various departments involved, there was a – the premier wanted to be involved, and quite frankly, should have been involved and knowledgeable about what was going on.

And both Premier Williams and Premier Dunderdale were like that.

MR. LEARMONTH: Well, we've had – we'll get into some of the evidence later, but we've heard evidence – and I know in his interview and in his evidence Todd Stanley used the word – the term fiefdom for Nalcor – that they were, sort of, operating on their own and that there was concern in the civil service that they weren't going through the appropriate channels.

Do you have any comment on that?

MR. KENNEDY: Todd Stanley, Sir, is a very good lawyer; my experience with Mr. Stanley

during my dealings in government were that he was very experienced and offered very good advice.

In terms of how the civil service viewed things, Sir, I don't know. But the term fiefdom seems to be a bit strong, I would suggest.

There – Department of Justice were involved in various aspects of the – of this project all the way, and there were very good lawyers in there. So, I can't comment on that term, fiefdom – there – I guess there was – there could be a perception, but that's – I thought that by the time I was there after a few months that we had smoothed out some of those reporting relationships.

MR. LEARMONTH: Okay.

I'd like to turn to the Grant Thornton report. It's tab 127, Mr. Kennedy, and it's Exhibit P-00014.

MR. KENNEDY: Sorry, Mr. Learmonth, Exhibit –?

MR. LEARMONTH: It's tab –

MR. KENNEDY: 127?

MR. LEARMONTH: – 127, yeah –

MR. KENNEDY: That would be in binder –?

THE COMMISSIONER: (Inaudible.)

MR. LEARMONTH: Probably three or four – three or four.

THE COMMISSIONER: Binder three.

MR. KENNEDY: Yes, I have it, Sir.

MR. LEARMONTH: Okay.

And I believe you indicated at the interview that you read this the night before your interview?

MR. KENNEDY: Yeah, I had gone through it, Sir, yes.

MR. LEARMONTH: Yeah.

I'd like you to turn to page 9 of the report, Mr. Kennedy. And I'll first read line – the paragraph beginning in line 4, ending in six: "Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation. We have been informed by Nalcor's Project Team, that strategic risk exposure was to be funded through contingent equity from GNL."

Did – What is your reaction to that, assuming that it's true? It was excluded at DG, when you announced a \$6.2 billion figure as being a solid estimate, the 500 –

MR. KENNEDY: Yeah, okay.

MR. LEARMONTH: You understand what I'm saying, –

MR. KENNEDY: Yes I do, sir.

MR. LEARMONTH: – the 500 was not included in that amount. Now what do you have to say about that?

MR. KENNEDY: Again sir, my comment is similar to what I said earlier. I was not aware of this, that – I don't know if strategic risk is defined here, but my understanding is that it relates to future events or something that could happen in the future. That are more –

MR. LEARMONTH: Labour –

MR. KENNEDY: – catastrophic –

MR. LEARMONTH: Labour availability, schedule risks, and so on. But there is – I can tell you that the – there was a report prepared by Westney at a cost of, I think, \$150 to \$200,000. The report, the final version of the report was in the hands of Nalcor, I think, in the middle of September before sanction. And it identified a recommended amount of \$497 million for strategic risk for problems that were anticipated in the schedule, labour availability, and so on.

When did you first find out about the existence of that report?

MR. KENNEDY: When – unless it's referred to in here, sir, it would have been during the interview with you.

MR. LEARMONTH: Okay.

MR. KENNEDY: The – I don't know if it's referred to in this particular document.

MR. LEARMONTH: Well you reviewed it at the interview, didn't you?

MR. KENNEDY: The Westney report?

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yes, you showed it to me at – definitely, yes.

MR. LEARMONTH: So you know what I'm referring to.

MR. KENNEDY: Oh, definitely yes. There were two – my understanding was there were two reports, one that dealt with tactical risk of 368 million –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and the second being strategic risk of 497 million.

MR. LEARMONTH: The 368 million was included in the 6.2.

MR. KENNEDY: That's what I understand sir, yes.

MR. LEARMONTH: But the 497 was not.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Okay, now what is your – having – after you read this in the Grant Thornton report, what was your reaction?

MR. KENNEDY: There were a number of things I read in the Grant Thornton report, Sir, that caused me concern. Obviously as the minister, and again, Commissioner, we're trying to go out to the public with numbers that are accurate, sir. We want to – we're – saying to the people of the province: This is the best we can tell right now the cost of this project. So as the minister and especially someone like myself who is trying to determine, as a government, we were trying to determine the costs of the project, then yeah, it's – I was surprised. I don't really

know the explanation as to why it wasn't provided to us and I'm assuming that Mr. Martin will –

MR. LEARMONTH: Yeah. But there –

MR. KENNEDY: – have comments on that.

MR. LEARMONTH: We know Mr. Martin will have comments on it, but I'm –

MR. KENNEDY: I should've seen it, Sir, yes.

MR. LEARMONTH: I'm asking you –

MR. KENNEDY: Oh no, I should've seen this (inaudible), absolutely.

MR. LEARMONTH: Yeah. You should've seen it.

MR. KENNEDY: Yeah (inaudible).

MR. LEARMONTH: They should've given it to you.

You didn't – you know, we – you can't be expected to have seen it if they didn't give it to you, but –

MR. KENNEDY: And that –

MR. LEARMONTH: And there was no mention of it whatsoever.

MR. KENNEDY: Yeah, and I'm not – yeah, no there wasn't.

MR. LEARMONTH: Is that correct?

MR. KENNEDY: There was no mention of it.

Commissioner, this is not a question of hindsight. Like, some of the questions that I've got to look at, well, I should've done this. This is something that, yeah, I should've been aware of.

MR. LEARMONTH: Yeah.

MR. KENNEDY: We – it's not just me, I mean government should've been – when I say –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – I, we, government –

MR. LEARMONTH: Yes.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Well, I'm talking about, you know, you as minister –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – and the other Cabinet ministers. Because is there not a very high duty on politicians to give truthful information to the public, especially in a matter like this when you're giving a figure for the cost of the biggest project that this province has ever undertaken? Isn't there a high duty on politicians, in these circumstances, to ensure to the best of their ability that the information they're communicating to the public is true and transparent?

MR. KENNEDY: No question, Mr. Learmonth.

Commissioner, one of the reasons that I involved myself perhaps, you know, in this exercise and trying to be due diligent, I was aware of the – trying to exercise due – I was aware of the weight placed upon our shoulders, the – I mean there had been an election in 2011 where the issue of Muskrat Falls was front and centre. There were people out there, Sir, who raised very valid concerns and criticisms, so there was a lot of public debate.

So I wanted to make sure that the numbers I was going to – we were seeking to sanction, or the numbers we were putting forward, were the right numbers because the whole exercise – and I don't mean to simplify it too much, Commissioner, but from my perspective we were looking at a least-cost alternative, so any number that increased the cost of Muskrat Falls – now whether or not it applied to Isolated Island, I don't know the answer.

But there was a comparison being done and I think it was around the DG2 numbers, Mr. Learmonth. There were sensitivities applied by MHI so that if the price of oil – depending on the price of oil that you used, those numbers started to narrow and I think MHI did the same thing in DG3. So anything that increased the

cost of Muskrat Falls or Isolated Island was something we should've been aware of, yes.

MR. LEARMONTH: But quite independent of the CPW analysis, don't you want to get an accurate estimate of the costs?

MR. KENNEDY: Absolutely, Sir.

MR. LEARMONTH: Yeah, because even though – like, hypothetically, let's say –

MR. KENNEDY: Absolutely.

MR. LEARMONTH: – the estimated cost was \$7.5 billion dollars, let's just say hypothetically, that may not have affected the CPW to the extent –

MR. KENNEDY: Right.

MR. LEARMONTH: – that the Isolated Island would be –

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: – lower. But it's still information, I suggest, that you would want to know?

MR. KENNEDY: Well, this wasn't – and, again, Commissioner, I can speak for myself – this was not a – I never approached this from the perspective it's sanction at all costs or it's only Muskrat Falls. If the numbers went up, we then had to look at the issue of the effect on the ratepayers so – not only was there a question of the cost of the project, but now the rates will go up.

And if you look early on, Mr. Learmonth, you'll see the first month I spent a lot of time looking at the rates, trying to determine the rates that the – the effect to the ratepayers. So if the cost of the project went up, that could increase the burden on the ratepayer and that's something we certainly needed to know, independent, Sir, as you say, of CPW.

MR. LEARMONTH: Yes, right.

Now, on page 9 of the Grant Thornton report that we were looking at, lines 7 to 13 –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – I’m going to read them out: “Nalcor selected a P50 in calculating the tactical contingency included in their capital cost estimate ... A P-factor determines the probability that cost overruns or underruns will occur. The higher the P-factor, the lower the likelihood of cost overruns (and the higher the capital cost estimate). For a Company undertaking a stand-alone project (i.e. not a portfolio of projects), an independent consultant used by Nalcor informed us that P-factors ranging from P70 to P90 are more reasonable. Had Nalcor selected a P90, the capital cost ... would have increased by approximately \$767 million. This would have resulted in a higher CPW.”

Now, just to expand a little bit, Professor Bent Flyvbjerg testified that, in his view, he wasn’t – you know, generally for a project like this by a Crown corporation, a P50 – a P80 would be suitable. And we have evidence that Westney consultants recommended a P75.

Nevertheless, Nalcor settled on a P50, which increases the chance that the – the project will go over cost. Were you aware of this selection of the P50 at any time before sanction?

MR. KENNEDY: The first thing I – for my first comment, Sir, Mr. Learmonth – and perhaps it comes from everyone being here so long, they’re just so familiar with these terms – these terms meant nothing to me. A P50, P70 – the first time I have – I’ve seen these or any recollection is in the Grant Thornton report.

I’m not saying, Mr. Learmonth, that at no point in one of Nalcor’s presentations could there have been a reference to a P-factor, but in all of the notes that I have, there’s no reference to Nalcor advising of P-factors. So it’s not something that meant anything to me. I have no recollection of these terms.

When we’re dealing with risks, Sir, that’s something that, obviously, we were concerned about and cognizant of the potential for increased costs and having discussions with Nalcor as to how you minimize those potential costs –

MR. LEARMONTH: Yeah and so –

MR. KENNEDY: – increased costs.

MR. LEARMONTH: So you never engaged in a discussion –

MR. KENNEDY: No.

MR. LEARMONTH: – with Nalcor about the – choosing a P50. In other words, a discussion like, Mr. Kennedy, our figures are based on a P50 factor which means there’s a 50 per cent chance that the figures – the costs can go over or 50 per cent under. Are you satisfied with that?

MR. KENNEDY: Yes any –

MR. LEARMONTH: Was there any discussion like that?

MR. KENNEDY: Mr. Commissioner, I’ve got hundreds of pages of notes that I made as I went through – it’s just that something – I made notes on a daily basis just, I guess, a leftover of being in court and I did it with every department.

And I went through all of my notes, Commissioner, and most of them – they’ve all been provided to the Commission and a lot of them are before you. And there’s only one reference – I think Ms. O’Brien – we discussed this at the interview. There’s one reference in all of my notes to a P-factor – there’s an I-factor on a dam out of Edmonton somewhere – it’s around October 2 or it could be September 22 or October 2, 2012, and it’s on the figure of the 7.2 billion. There’s the 6 billion for – I think, for Muskrat and then underneath it, just a little note, it’s almost –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – impossible to read it, it relates to Emera and I think it says P50 and P75 and there’s a range given to us. It was – there was no explanation to that, Sir, I just wrote down what was being said.

MR. LEARMONTH: Yeah.

MR. KENNEDY: That’s the only reference I can find in my notes anywhere –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – to a P-factor.

MR. LEARMONTH: And you didn't know anything about P-factors at any time up to sanction. Is that correct?

MR. KENNEDY: That's correct, Sir. I mean, as you pointed out, Mr. Learmonth, this kind of – you know, this is very complicated stuff. There's experts and consultants we hire in every department in government and we expect these people to – you know, the experts and consultants to bring forward relevant factors.

And, no, I have no – I have no recollection of – there was – my notes do not indicate any discussion of P-factors, any of the explanations. Whether or not there could have been a reference, Commissioner, in one of the numerous presentations that Nalcor gave, I can't say, but I have – it was never discussed with me as to what factor was –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – being used or how that factor was being determined.

MR. LEARMONTH: Well, in fairness to you, I mean, I'm not talking about some fleeting reference here or there that you may not have understood, I'm talking about a very simple discussion or explanation by Nalcor as to what a P50 is. It's not that complicated to understand, it may be difficult to apply, but –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – it's not difficult to understand and you never had that information from Nalcor.

MR. KENNEDY: And if you look at my notes here you'll see that I write everything that's important; I write these things down, I elaborate on them and what people are telling me. No, there's no reference.

MR. LEARMONTH: So you were in the dark about that?

MR. KENNEDY: Absolutely Sir, I – and when I read this Grant Thornton report I – because when it first came out I'd seen the report – I didn't read the full thing but I'd seen it and there was reference to all of these P-numbers, Commissioner, and it meant nothing to me.

MR. LEARMONTH: Yeah.

The – next I would ask you to turn to page 64 of the Grant Thornton report, please. And you can see in the bottom that's a – there's a chart: "Risk Adjusted Schedule Suggests an 11 to 21 Month Delay for First Power."

Now, you can look at that, and I'm gonna carry on page 65. But before I do so, do you have any recollection of Nalcor discussing with you the possibility or probability that the target date of July 2017 for first power would not be met?

MR. KENNEDY: Never, Sir.

MR. LEARMONTH: Never?

MR. KENNEDY: No, in fact –

MR. LEARMONTH: Until you read the Grant Thornton report?

MR. KENNEDY: Yeah. And, in fact, when we go to – it's again, those notes that I made in October of 2012, when we're looking at the DG3 numbers trying to figure out what's going on, we're still told that power – my note indicates – and I – it's either October 2 or October 18 or September 22 – that first power in 2017. That's what we're still told back – as late as October 2012, we were told that the first power is in 2017.

MR. LEARMONTH: Well, I can tell you that the strategic risk report that expressed the – a different opinion was in the hands of Nalcor when you were told that.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Does that give you concern?

MR. KENNEDY: It obviously concerns me, Sir. Because if there's delay in the project, Commissioner, then there's going to be

increased cost. And if there are increased cost, then the cost of Muskrat Falls is going up. So not only, Mr. Learmonth, as you pointed out, is there the CPW aspect of it, but there's also the issue of the cost of ratepayer.

MR. LEARMONTH: Okay. Thank you.

Now, but – was there ever any the use of the word – that, look, we are on an aggressive schedule or something like that? Do you ever – do you recall any such information from Nalcor?

MR. KENNEDY: No. In fact, Commissioner, that – and I know we're going to come to this later. But in reviewing my notes, one of the issues in relation to the PUB was that we had to get the matter done, because the timelines were tight for Nalcor to get in and get their work done. There was never any indication, Sir, that this – the schedule would go beyond –

MR. LEARMONTH: Right.

MR. KENNEDY: – what they said. I was never told any of what you're talking about there.

MR. LEARMONTH: Yeah. And you were the minister?

MR. KENNEDY: I was the minister, Sir, yeah.

MR. LEARMONTH: The paragraph I want to look at on page 5 begins on line 3. The above image – that's the one I referred to you at the bottom page 64 –

MR. KENNEDY: Sorry, I've lost you, Mr. Learmonth. Where are you, Sir?

MR. LEARMONTH: Sorry. We were at the bottom of page 64 with a graph.

MR. KENNEDY: There is graph at page 61.

MR. LEARMONTH: No, page 64, top right-hand –

THE COMMISSIONER: It's the red numbers.

MR. LEARMONTH: – corner.

MR. KENNEDY: What?

THE COMMISSIONER: Red numbers on the right-hand side.

MR. KENNEDY: Oh, sorry, Commissioner. Yes, okay. Got you, Mr. Learmonth.

MR. LEARMONTH: Okay.

MR. KENNEDY: So bottom of 64.

MR. LEARMONTH: We looked at that graph, and then I am turning to page 65, first paragraph.

MR. KENNEDY: Okay.

MR. LEARMONTH: “The above image notes that July 15, 2017, schedule was a P1. This meant that there was a 99% chance that the schedule for first power would not be met. The LCP Project Team noted that ‘there was a low probability that a mid-2017 First Power date would be met. As such, the PMT recommended to Nalcor Executive that a provisional schedule reserve allowance should be made to account for the difference between the target date and the probable date. Given the desire to achieve the best possible date, Nalcor Executive wanted to maintain the Target Milestone Schedule, and thus no schedule reserve allowance was made to accommodate the residual risk exposure identified in the QRA.’”

So based on this information, there was a 1 per cent chance that the date of July 15, 2017, would be met. What was your reaction when you first found out they had a 1 per cent chance?

MR. KENNEDY: My reaction, Mr. Learmonth – and this might have been in the – you know, I can't remember specifically reading that part of the report. There were a number of things that jumped out at me with the report – were the P-factors, the operational expenses, the issue of reserves. When it really hit me, Sir, was during the interview when you pointed these things out to me one after the other. I was very – I felt surprised; I felt disappointed, and I felt a certain degree of anger, too, Sir.

'Cause we're putting out there, Commissioner – I'm out there every day in the public defending – and it pretty well – it seemed like every day, Mr. – I don't know.

MR. LEARMONTH: Yeah.

MR. KENNEDY: It seemed like every day I was out there in the public defending a project based on the information that's given to me by people who I have no reason to believe won't give me accurate information. I mean, that's a key piece of information.

MR. LEARMONTH: Yeah.

The – just to clarify, the – when they got this – when they received the – Nalcor received this September 15, I think, risk report showing a P1 – 1 per cent chance – Nalcor went back and gave some further information to Westney, and Westney adjusted it to a P3, which is a 3 per cent chance. And then – I think we've had some evidence later on that somehow Nalcor decided – between, you know – before sanction – decided in their own mind that they had mitigated the risk. But there's no report, I guess, no report indicating that. And they – I think they said – indicated it was a 20 or a 30.

But anyway, you weren't told about any schedule delay?

MR. KENNEDY: None at all, Sir.

MR. LEARMONTH: No.

And does this not only affect the cost – it obviously does – but also, at the time, there were – you were quoted in the paper saying that there's going to be blackouts in 2015, we'll have to wear sweaters to bed in 2020. I mean, quite apart from the extra cost, if that information was true – it didn't turn out to be true – but if that information was true in terms of the load forecast, that would have presented another problem, too, wouldn't it?

MR. KENNEDY: Yeah, well, the issue, Sir, of the – that you refer to – the demand for power was the first question, Commissioner. If we didn't need power, well, we didn't need to do Muskrat Falls. So I was told that – and I get these – excuse me, Commissioner, I do get these terms confused but – there was going to be an energy deficit, I think, in 2015 or capacity deficit in 2020. I could – it could be the other way around.

But what I understood with one is that we didn't – we wouldn't have enough power to maintain everything we needed in the wintertime – at the peak, Sir, when we needed the peak power and that, by 2020, we simply wouldn't have enough power. So my comments about the sweater, Sir, were somewhat hyperbole, but I was –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – sort of referring back to, when I grew up in Carbonear, in fact, there used to be – beds used to be heated – there was no electric heat, and beds would be heated with bricks in newspaper and people wore sweaters to bed. So I was – that's what I was told.

MR. LEARMONTH: Yeah.

MR. KENNEDY: That there – you know, we could reach the point where we won't have enough power for people to heat their homes.

MR. LEARMONTH: Yeah. So that is very important information, I suggest to you.

MR. KENNEDY: Everything – Mr. Learmonth, everything you said to me during the interview, everything you're saying to me today, is important information, Sir.

MR. LEARMONTH: Yes.

Now, in – on page 65 of the Grant Thornton report, on line 24, it says: "In the interview with Validation Estimating, we asked him whether risk associated with competition for resources included in strategic risk should have been included in the capital cost estimate. Validation Estimating explained that '*estimators were aware of the labour productivity problem.*' Validation Estimating went on to say that '*... strategic risk will appear in every risk analysis in a mega project and yes it should be funded.*' Further to this, we asked if you would get a skewed result if strategic risk wasn't included. In response, Validation Estimating stated that '*You would get a wrong result. I mean you don't not fund a risk that you have 100% probability of occurring. I put that in my report in 2012 – I was concerned that they were not including risks.*'"

Now, did you know that Validation Estimating had prepared a draft report for Nalcor in 2012?

MR. KENNEDY: No. I have never heard their names.

MR. LEARMONTH: We've had evidence that, even though it was draft report, there were some quotation – slightly out of context – used in presentations by Nalcor. Were you aware of that?

MR. KENNEDY: I'm not – I have no recollection, Sir, of the company – if that – their company Validation Estimating, no.

MR. LEARMONTH: Yeah. And then the next paragraph on line – page 65 says: "In a presentation on May 11, 2018, a former member of the LCP Project Team demonstrated that the DG3 estimate of \$6.2 Billion would have been \$7.5 Billion (\$1.3 billion higher), after adjusting for identified strategic risks using a P75 rather than the P50 that was used to quantify the management reserve. This was reiterated by the Project Team; they provided a binder of support for the sanction decision, in this binder it was stated 'if the P75 recommendation from the 2012 Quantitative Risk Assessment ... had been selected ..., the sanction basis would have been \$7.5B.'"

So, we understand that Westney recommended a P75. Professor Flyvbjerg recommended a P80 for a project of this kind, although he didn't have all the information. Do you see the effect of using a P50 rather than a P75?

MR. KENNEDY: I do, Mr. Learmonth, and I can say to you: We were aware of risk. I mean – obviously, Commissioner, Hebron I think, whether it had come on stream at that point or was being built, had certainly increased in cost. We knew that Valet, for example, had increase in cost; so we were aware of the issue of overruns.

I think, Mr. Learmonth, I used the example for you in the – that the way it worked in – commissioning in government that – for example, if a school – if \$20 million was budgeted to build a school –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – and that project increased by 5 million, then the department couldn't simply, Sir, approve that 5 billion – \$5 million. It had to come back through the Treasury Board, which was a committee of ministers, and we would look at that and say: Well, are we going to do this or not? I was the president of the Treasury Board for a number of occasions.

So, Sir, we were aware of risk – I was acutely aware of risk. So whatever way you use it – I mean, these terms, Sir, even though they are not ones that I am familiar with, at the end of the day, I want to know as minister to be able to say to the premier, and to my colleagues in Cabinet – you gotta remember, there are people sitting around this room who were trying to make the right decision, and I want to make sure they've got accurate information. If it's 7.5, that's the number that should have been given to us, Sir.

MR. LEARMONTH: At the P75 – and once again, I emphasize I'm not talking about the concept of megaprojects always go over budget. I'm talking about including known risks –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – at the time. You understand what I'm saying?

MR. KENNEDY: Yeah, and if I could say this Mr. Learmonth, I – and I think it's very early on that I meet with Mr. Bown and we breakdown the – when it was – the project was at 6.2 billion. There was a – the cost, Commissioner, I think was going to be – the rates to the ratepayer would be 14.3 cents a kilowatt hour.

Out of that 14.3 cents, there were operating and maintenance costs, there was the return on equity of either 8.5 – I think it was approximately 8.5 per cent. But there was also built in, Commissioner, a 15 per cent contingency – so into that 14.3 cents. So Mr. Learmonth, the higher that number went in terms of the cost of the project, obviously the higher the potential cost to the ratepayer. Which is a primary concern for me.

MR. LEARMONTH: Yeah, and before we leave that subject, the – now Nalcor had an independent project review done – on – the

report's dating August 31, 2012. It's Exhibit P-00083. And I just wanna refer to a quotation.

MR. KENNEDY: So P-0 –?

MR. LEARMONTH: P-00014.

THE COMMISSIONER: You don't have that in your list, so you –

MR. LEARMONTH: It's not in the list, but it'll come up on your screen.

MR. KENNEDY: Okay. Oh, so – I haven't been looking at the screen –

MR. LEARMONTH: So I'm just going to refer to –

MR. KENNEDY: – I'm sorry, Mr. Learmonth.

MR. LEARMONTH: No, no.

MR. KENNEDY: – Mr. Learmonth, I've been looking at the books – sorry.

MR. LEARMONTH: Sorry – 41?

UNIDENTIFIED FEMALE SPEAKER:
Eight – P-00083 – P (inaudible) –

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: P-00083. And it's page 41, please.

MR. KENNEDY: And who is this report by, Sir?

MR. LEARMONTH: This is by – independent project review. Nalcor had an independent project review – three experienced (inaudible) –

MR. KENNEDY: Is that – (inaudible) – I've heard the term cold eyes review, or I think the –

MR. LEARMONTH: Well, you can call it that – these – yeah –

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: – cold eyes review.

Now, at the bottom of the page 41, I just wanna read that out: "The IPR Team concurs with the expectations set" – out – "by the LCP Project Execution and Risk Management Plans that adequate provisions for Management Reserve and Schedule Reserve" – should – "be included in the Project Sanction costs and schedules."

So, on August 31, 2012, just before sanction, they had received this recommendation that this amount – these amounts be included, but they didn't include them.

Were you aware of this independent project review?

MR. KENNEDY: No, I was never aware of an independent – like, what you're talking about here – I – there had been some discussion, Sir, and I can't remember when, of cold eyes review, but it was not something that was ever – like, this is not something I'd ever seen, no.

MR. LEARMONTH: Well, they didn't put it in their DG3 package anyway, so I guess even if you'd got the DG3 package you wouldn't have known about it.

MR. KENNEDY: I don't remember seeing a –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – DG3 package either.

MR. LEARMONTH: Yeah, I just wanted to confirm that – did, you know, the DG3 package has a – it's a very big document. It can be condensed, but did you ever receive anything in the way of a DG3 package – like, a big stack of papers showing exactly how the cost estimate had been computed?

MR. KENNEDY: I didn't see it, Sir, no.

Whether Mr. Bown received it – what I can say to you, Commissioner – that the issue of when the DG3 numbers were received was an issue for me. And if you look at the – somewhere in the exhibits there's a – DG3 alignment numbers dated – there's a presentation dated August 3, 2012?

MR. LEARMONTH: Yes.

MR. KENNEDY: And there's reference there to the DG3 numbers.

But there's also, in my note dated September 19, 2012, when there was a meeting of – these large meetings, Mr. Learmonth, Mr. Commissioner – I – one of my notes – I asked the question, like, when were the DG3 numbers received? And my – what I've noted is Mr. Martin's reply; it's that they were recently received.

So, somewhere around that time frame the DG3 numbers were received. I don't remember a DG3 package, Mr. Learmonth, but to be honest I'm not sure I would – how much that would have meant to me. At the end of the day, Commissioner, the DG3 numbers are important, because that's going to tell us the cost of the project. (Inaudible) – excuse me, it's going to tell us the projected cost of the project (inaudible) –

MR. LEARMONTH: Based on all the information known at the time?

MR. KENNEDY: Known at the time, yes.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yeah.

MR. LEARMONTH: That's right.

Is there a reason that you – you mentioned that you wouldn't have been able to understand all the, all of the information in the DG3 package. But would there have been any harm in getting it? And flipping through it just to satisfy yourself that everything appeared to be in order?

MR. KENNEDY: Not at all, Sir. I mean, I would – What would normally happen – the way it would happen, Mr. Learmonth, is that Mr. Bown, as I've indicated, was a very experienced civil servant, someone who have lot of trust in – I found him to be a very honest individual who was very cognizant of his role as a deputy minister.

That, Mr. Bown had much greater understanding of these technical matters and I could – if Mr. Bown had it, he could say like: Mr. or minister, or whatever he would say, we have this package and I'm just gonna to tell you what it is. But I

don't – I have no recollection, Sir, of ever seeing it.

I – My attitude, Mr. Learmonth, was that I wanted to see things where I understood everything and all I have to say Commissioner, I struggle, I mean I go through my notes and I look at, you know, when we're talking natural gas, we're talking about MMBtus and VCFs, Sir, and I'm going like, I'm not sure I fully understand it, but – I tried.

So yes, Mr. Learmonth, there's certainly no harm in having the (inaudible) in the package. In fact, I'd prefer that.

MR. LEARMONTH: See, we'll get into this later. But one problem a citizen might have with respect to this strategic risk or management reserve, is that it appears that no one in government knew anything about it. Manitoba Hydro International, they proposed to do a review of this risk issue, including strategic risk and it was taken out of their scope of work with the agreement of government. And we'll get into that later.

So, the problem is that no one – based on the evidence we have today – there was no review whatsoever by any person, firm or corporation of the strategic risk amount. No review whatsoever. Isn't that an alarming situation?

MR. KENNEDY: (Inaudible).

MR. LEARMONTH: For a project of this size? And a population in the province of about 500 million [sp 500 thousand] people. And the great, you know, risk that a project like this would have. Isn't that an alarming situation in your view?

MR. KENNEDY: Yes Sir.

MR. LEARMONTH: Yeah. Mr. Kennedy, I want to – go through the Manitoba Hydro International issue.

MR. KENNEDY: Yes.

MR. LEARMONTH: I'll refer to them as MHI, I'm referring to –

MR. KENNEDY: That's fine.

MR. LEARMONTH: Now, we know that the PUB delivered its report to government on March 30 at 10 o'clock at night. Prior to receiving the report from the Public Utilities Board, had government considered retaining the services of MHI for a DG3 review?

MR. KENNEDY: Not that I'm aware of, Sir, no.

MR. LEARMONTH: Okay. And whose decision was it to retain MHI?

MR. KENNEDY: Sir, if I could ask you to – if I could do this and you tell me if you want me to, Mr. Learmonth, but I do know – I knew there were issues that you asked me at the interview so, anything, Commissioner, that I wasn't familiar with at the interview, I went back and looked at my notes. I do have notes of April 1 and 2 that are in the binder –

MR. LEARMONTH: Yes.

MR. KENNEDY: – in tab 37. Or, excuse me, yeah, in tab 37 and there's reference there –

MR. LEARMONTH: That was on the – April 1 was a Sunday because the report was delivered Friday night, March 30, so March 31 would've been Saturday and then April 1 would have been the Sunday, as I understand it.

MR. KENNEDY: Sir, I worked every day, didn't – it wouldn't necessarily – I wouldn't write down Friday or Saturday. I mean, to me, weekends were non-existent in that job. They're hard enough now as a lawyer, but we worked everyday as politicians. All I can tell you is my note indicates meetings on April 1 and April 2, and then I think you gotta go – you'll see that my notes – I'd read the PUB report.

MR. LEARMONTH: Right.

MR. KENNEDY: And then somewhere along that line there's a reference, in one of those notes, there's a reference of hiring MHI. As to who it came from or who made that decision, Sir, I can't tell you but if there was a decision made, there would have been an agreement of the individuals involved.

MR. LEARMONTH: But you would have been involved in that decision?

MR. KENNEDY: Oh, yes. Yes, Sir, yeah.

MR. LEARMONTH: Yeah. So why would you retain MHI? MHI had just completed a review of the Public Utilities Board. Wouldn't you want to get a fresh set of eyes, someone to have a hard look at this rather than have MHI, which it already, you know, expressed an opinion on the DG2 numbers?

MR. KENNEDY: Mr. Learmonth, I get your point, and you asked me that at the interview, and I thought about it since. All I can tell you, back at that time, Sir, if you look at the context and the way things are happening at the time, Commissioner, there are timelines that we're trying to meet, and one of them is getting into the House of Assembly in June of 2012. The premier wanted to have the matter dealt with in the House of Assembly, and meeting the timelines that Nalcor had for construction in terms of spending money.

So, when I look back then, Mr. Learmonth, in the context of what was happening back in 2012, around that time frame, I don't think there was – I didn't given any great consideration, nor did I see anything wrong with the hiring of MHI. It was based on the fact, they were familiar with the project, I know they wrote the PUB whether or not they were in conflict, and there was a letter came back. I didn't see anything wrong with it.

But it's like so many things, Mr. Learmonth, in terms of looking back, in hindsight, could it have been better? Sure.

MR. LEARMONTH: Yeah.

MR. KENNEDY: But, at the time, Commissioner, all I can tell you is that in the context of what we were doing at that time, in the timelines that we were working under, I'm not sure there was any great consideration – I didn't give any great consideration to it, Sir.

The decision – I can't tell you who specifically made the decision, but it was obviously one that I agreed with, Commissioner.

MR. LEARMONTH: Okay. But do you recognize the point that I've raised?

MR. KENNEDY: I do, Sir, yes.

MR. LEARMONTH: Yeah, yeah.

MR. KENNEDY: But, again, that's –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and Commissioner –

MR. LEARMONTH: It's hindsight.

MR. KENNEDY: Yeah, one of the things with commissions of inquiry, of course, is we're looking for the truth, and so you've got to look at the – what happened in the past, and all I can tell you, Sir, is that in the context of what was happening at that point in time, we didn't see anything wrong with it, but I certainly understand, Sir, Mr. Learmonth's point, that in hindsight, looking back –

MR. LEARMONTH: Yeah, and –

MR. KENNEDY: – it could be seen differently.

MR. LEARMONTH: – to take that a little further, I'll refer to a document. It appears that the contact with MHI was made through discussions with Nalcor. In other words, Nalcor was recommending them.

Anyway, I'm gonna turn to –

MR. KENNEDY: Yeah, I'm not –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – familiar with that, Sir, yeah.

MR. LEARMONTH: Okay.

If you go to exhibit – I'm not sure if it's in tab 739?

MR. KENNEDY: Okay, so tab –

MR. LEARMONTH: No, Exhibit 00739. It'll come up –

MR. KENNEDY: Okay.

MR. LEARMONTH: – on the screen –

MR. KENNEDY: Just bring it on the screen, Sir, I'm sure I'll see it.

MR. LEARMONTH: I think it's tab 129?

THE COMMISSIONER: Tab 129, yup.

MR. KENNEDY: Tab 129, what's (inaudible).

If I could just look at the table of concordance, Commissioner? One-twenty –

Do you know – do we have the same volumes here, Commissioner? Do I have the same volumes?

THE COMMISSIONER: Yes, you do.

MR. KENNEDY: What –

THE COMMISSIONER: It should be in volume 4.

MR. KENNEDY: Volume 4?

Is this the ones recently – you provided recently, Mr. Learmonth?

MR. LEARMONTH: No, actually, I –

MR. KENNEDY: I got them recently, I think.

MR. LEARMONTH: There were some documents – yesterday, I sent an email to Mr. Williams –

MR. KENNEDY: Yes, okay.

MR. LEARMONTH: – saying that there were –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – some documents –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – that weren't included, but I wanted him to know about them, but anyway ...

MR. KENNEDY: That's fine, yeah.

MR. LEARMONTH: So this is – do you see this email, 739?

THE COMMISSIONER: It's actually in tab – book 3, sorry.

MR. KENNEDY: Book 3, sorry.

One second, Mr. Learmonth, please. I think that –

MR. LEARMONTH: It's on the screen anyway. If you wanna look through –

MR. KENNEDY: Yeah, no, I know the one you're talking about. I read this –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – last night.

MR. LEARMONTH: So, this is April 1, that's Sunday, I believe, two days after you received the report from the Public Utilities Board, and it's an email from Gilbert Bennett of Nalcor to Paul Wilson of MHI. He would've known him because they, you know, worked on the DG2 numbers.

MR. KENNEDY: Yeah.

MR. LEARMONTH: It says: "Charles Bown, the Associate Deputy Minister of Energy with the Government of Newfoundland and Labrador, asked me to pass a message along to you.

"He would like to have a conversation with you sometime today. He can be reached at ... His email address is" cbown, et cetera.

Now, this was very quick off the mark following the receipt of the Public Utilities Board, but I suggest to you that a problem is apparent when you read this email. And the problem, which I describe as: Hold on now, this is an independent review. We're not taking any recommendation from Nalcor, and we want a fresh set of eyes on this.

Do you see the point?

MR. KENNEDY: I wasn't aware of that email, Sir, but I do see your point, yes.

MR. LEARMONTH: Yeah. I mean, you're –

MR. KENNEDY: I knew that Nalcor – let me put it this way, Mr. Learmonth, anything that took place I knew Nalcor would obviously have to be involved. They'd have to provide information. I knew that.

MR. LEARMONTH: Yeah.

MR. KENNEDY: But I –

MR. LEARMONTH: But surely not on the selection of an entity to review their DG3 numbers.

MR. KENNEDY: I think, Sir, they were present during those meetings; there was Nalcor representatives present in those meetings I referred to you earlier. I'm not sure but –

MR. LEARMONTH: But if you're doing an independent review of Nalcor's work –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – shouldn't there be some distance maintained. You know, why would Nalcor be involved at that level?

MR. KENNEDY: I can't disagree with you, Mr. Learmonth, but all I can tell you that in the context of what was happening at that point, the timelines that we were – that were basically imposed upon us, or we agreed, we imposed upon ourselves, that I'm not sure – I didn't give any great consideration to it, Sir.

And this is part of the problem with being a lawyer and a minister, Commissioner. As a lawyer and presenting evidence in a court room, I tend to look at things differently because, obviously, independent reports, how we define independence, who should have contact. But in government things were done a little bit differently in that always – I mean, in every department I was in, Sir, we used consultants' reports.

In my recollection – and I could be wrong on this – I can't point you – there were always

drafts going back and forth, people were involved in hiring consultants, and a lot of that would have been left to the officials, but in this particular case, I see your point, Mr. Learmonth. I don't think it's – it wasn't a point that I was acutely aware of at the time. In fact, I can't even say that I thought about it to be honest with you.

MR. LEARMONTH: Okay.

There's more than that because if we look –

MR. KENNEDY: I read your email, Sir, here.

MR. LEARMONTH: – at Exhibit P-00259, I think that's Tab 130.

MR. KENNEDY: Do you know the book –?

THE COMMISSIONER: Book 3.

MR. KENNEDY: Book 3. Okay.

MR. LEARMONTH: Well, on page 2 of that, that's an email April 1, 10:50 a.m. So that would be before the email that I referred to earlier from Gilbert Bennett.

This is 10:50 a.m., April 2 from Charles Bown to Paul Wilson – he's the MHI lead. And he says: "I am interested in a conversation with you to discuss next steps on Muskrat Falls. Are you available today? You can reach me at" such and such.

Now, my question is: What's the big rush? You know, we know that – and we'll get into this this later – there's a big rush with the PUB.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And it seems like there's a – well, a big rush – I think this is on a Sunday and you're jumping at this issue, you know, with considerable dispatch and I wonder why?

MR. KENNEDY: All I can tell you, Mr. Learmonth, there was no nefarious motive here on my part or part of anyone in government. We were just simply trying to obtain the information we needed to make a decision.

The whole issue, as we'll come to a little later I'm sure, the – of the PUB was based on there

were timelines that had to be met. And there were timelines – we were still trying to maintain these timelines in terms of getting into the House of Assembly and also in meeting Nalcor's schedule, which I've got – express – was expressly outlined in notes as to why they needed to get a decision made.

So, yeah, it's – it appears to be rushed, Sir, but at the time in the context of what we were doing, it was nothing more than we were simply trying to move the project along. It seemed to be logical to hire MHI where they had familiarity. They were hired by the PUB; they were totally independent of government. We – I understand that the PUB hired them either through an RFP process or – so we didn't – those were not issues, Sir, Mr. Learmonth –

MR. LEARMONTH: No.

MR. KENNEDY: Whether or not – again, in hindsight, Commissioner, whether or not they should have occurred to us, they – I don't have any recollection of those issues – of addressing those issues, Sir.

MR. LEARMONTH: No, I don't want to, you know, go overboard on this but I'm just thinking of a reaction like, look –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – I don't want any recommendation from Nalcor, I want to get someone who's completely clean, who hasn't seen any of this. It's going to cost us money, but we have to do it right because of the consequences of a misstep on cost overruns. I'm just suggesting that that would come to a reasonable person's mind. I'm not saying it's the only reaction that a reasonable person would have, but do you see the point?

MR. KENNEDY: I see your point, Mr. Learmonth, and, again, looking back on it, I can't disagree. But at that point we were told that Nalcor, in fact – we were told at one point they had to be in there by February 2012 to start early works. That they had to be in there by the summer, that June was the latest in order not to lose a construction year.

MR. LEARMONTH: Yeah.

MR. KENNEDY: That's what we were told.

MR. LEARMONTH: Yeah but the project wasn't even sanctioned.

MR. KENNEDY: But to get to the process of –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – sanction –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – the spending of money, Mr. Learmonth, was a concern prior to having the PUB report and prior to it being sanctioned. We knew that certain amounts of money had to be spent. But the whole issue was whether or not the House of Assembly, the plan – and if you look at, again, my notes, Sir, you'll see that we're still planning to have a special sitting in the House of Assembly in July.

So that was the reason that – the only reason that I can think of as to going to MHI. But I can't say, Mr. Learmonth, that there was any critical analysis engaged in by me, in terms of hiring. I accepted that it was okay to do, yeah.

MR. LEARMONTH: But, you know, there – well, I suggest to you there was a determined effort to move this forward as fast as possible. And –

MR. KENNEDY: It certainly – yeah, okay.

MR. LEARMONTH: And the puzzle is also made bigger, I suggest, by the fact that Emera didn't even file its application to the UARB until January 2013. They hadn't even filed it at the time of sanction. So assuming that the federal loan guarantee was an important part of this and that Emera's participation was mandatory if there was going to be a federal loan guarantee, it looks like you're way out of step with the Nova Scotia situation. And that adds to the puzzle as to why there was, what I would consider, a rush here.

MR. KENNEDY: One of the frustrations I felt, Mr. Learmonth, at times was that Nalcor would be in a hurry to get – we got to get things done. And we would then, as a government, make our

decisions based on the information provided by Nalcor and the PUB, the MHI as an example.

But for – getting the Emera deal done, getting the federal loan guarantee, they were always taking so much time and they seemed to be delayed. So, on the one hand as you say, we appear to be rushing towards making a decision on a project, and then on the other hand we don't have all of the parts in place. But, see, we're continuously told that the parts – we will have the DG3 numbers.

MR. LEARMONTH: By Nalcor you're told?

MR. KENNEDY: Yeah.

MR. LEARMONTH: Yeah.

MR. KENNEDY: We will have the DG3 numbers in June – we were told that.

MR. LEARMONTH: But you didn't.

MR. KENNEDY: No, we didn't, Sir. That's right.

MR. LEARMONTH: You didn't get them until October or November?

MR. KENNEDY: There – Nalcor had them, Sir, and there's no question we'd become aware of them by August 3, 2013, at that presentation deck. Whether or not the actual – they were final numbers, I don't know. By September 19 they're starting to come through. So somewhere in the summer –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – or fall of – early fall of 2013 we had the DG3, Commissioner.

MR. LEARMONTH: So this thing, this point about getting it to the House in June –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – which is something that I think you used as a reason for trying to speed up the PUB –

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: – situation. It was all a myth.

MR. KENNEDY: I don't know if it was a myth, Mr. Learmonth. I don't know if I'd use that term. I don't think there was anyone setting out to deliberately mislead us. I never had a sense, Commissioner, of anything like that with Nalcor. I don't think anyone set out. But there were – it was – aggressive schedules were met and it didn't seem to me that they – or were set, but they didn't seem to me to be met. And then we'd be sitting there going what just happened? I'd be sitting there – I don't know about anyone else, I'd be sitting –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – there going, like, what just did happened?

MR. LEARMONTH: Yeah. Well – now, just to get – return to this Exhibit 00259 and to add to the concern that some people may have. Here we have Charles Bown sending a draft work scope to Gilbert Bennett at Nalcor. So you're getting an independent review done, and there's a draft scope of work and the first delivery of this is to Nalcor. I – do you see the problem with that, or ...?

MR. KENNEDY: Yeah. Again, Mr. Learmonth, looking back at it, certainly, Sir, I do. We weren't thinking about that at the time. I can tell you there was never any sinister or nefarious motives on my part, certainly. When –

MR. LEARMONTH: Yeah, when you look.

MR. KENNEDY: – you look back at everything like you're doing here now, certainly, but it –

MR. LEARMONTH: Yeah.

MR. KENNEDY: I wasn't aware of this, in terms of these particular emails, but the scope of work – it was not unusual, in government, Sir, that scope of work, in other reports that I have been involved in, where the consultants and the department would define the scope of work.

MR. LEARMONTH: Yeah, but then you're getting an independent report.

MR. KENNEDY: In this particular case, I see, Sir, the issues that you're raising in terms of the public, the perception and everything that's gone on, yeah.

MR. LEARMONTH: Well, I – it's not for me to make a determination on this, but I just suggest to you that's it more perception – it's reality that you don't go to Nalcor in this situation and ask them to assist you in deciding what the form of this review is going to be.

MR. KENNEDY: I don't, Sir – I knew that Nalcor had to be involved in terms of providing information. I knew they had to have a role in order for it to proceed. But in terms of the degree of involvement, I don't remember anyone expressing concern about the – or defining the degree of involvement which, Commissioner, as a lawyer, if I was acting as a lawyer, that's something I would've done.

MR. LEARMONTH: Yeah.

MR. KENNEDY: But in this particular case, we've got –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – legal counsel involved in this.

MR. LEARMONTH: Yeah.

MR. KENNEDY: We've got officials involved, Mr. Learmonth.

MR. LEARMONTH: Yeah, there is –

MR. KENNEDY: Maybe it's something I should've done, Sir, but I did not.

MR. LEARMONTH: No, because the reason I'm asking you about this, probably more than other witnesses, is you're an experienced –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – lawyer.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And you – in the course of your criminal practice, you have, on

numerous occasions, obtained expert reports?
Isn't that true?

MR. KENNEDY: Probably.

MR. LEARMONTH: Yeah and now I'm not –

MR. KENNEDY: Probably more than 50, Sir,
over the years.

MR. LEARMONTH: But – yeah.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And you know that –
well, anyway, you understand the point and you
–

MR. KENNEDY: Yeah.

MR. LEARMONTH: – acknowledge that.

MR. KENNEDY: I do, Sir.

MR. LEARMONTH: And at the top of Exhibit
00259, there's an email from Don Burrage to
Charles Bown, re: Work Scope: The minister did
indicate and Brian agreed – would that be Brian
Crawley?

MR. KENNEDY: No, Sir, the individual who
was very (inaudible) – that would be Brian
Taylor, I would think.

MR. LEARMONTH: All right.

MR. KENNEDY: I'm assuming. I don't know
that.

MR. LEARMONTH: Okay.

“The Minister did indicate (and brian agreed)
that we have ‘moved on’ from the least cost
option question, so item 1 may not be were gov
is. Rather a due diligence on the DG 3
numbers.”

Do you remember – did you ever see this email
–

MR. KENNEDY: No, I haven't.

MR. LEARMONTH: – before the Commission
of Inquiry?

MR. KENNEDY: No.

MR. LEARMONTH: Do you – can you give
me – give us some clarification as to –?

MR. KENNEDY: No, I can't, Sir. I have no
recollection of that conversation, but if Mr.
Burrage said it would be accurate, I have no
reason to doubt the accuracy of anything put
down by Don Burrage.

MR. LEARMONTH: Okay, thank you.

MR. KENNEDY: I – but again, I don't
remember, and it doesn't make sense because
the whole thing was the – to go and have the
DG3 numbers reviewed, so I don't remember
that, no.

MR. LEARMONTH: Well, if it was the
intention to have all the DG3 numbers reviewed,
it didn't happen.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And we'll get into that
(inaudible) –

MR. KENNEDY: I accept that, Sir.

MR. LEARMONTH: Yeah.

Now, if we look at the next exhibit, which is not
in manual – not in the binder, but I did send it to
Mr. Williams yesterday. It's 00740.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Exhibit P-00740.

Yes, and if you go to – this is an email from Paul
Wilson of MHI to Charles Bown, April 2, 2012.
“Hello Charles, as discussed please find ...
MHI's letter to M. Greene on items MHI
considered necessary for the DG3 decision.”

So if you turn over to page 2, and then 3, you'll
see this was a draft letter to Maureen Greene,
legal counsel of the board of – the PUB. Perhaps
there was some anticipation that they were going
to DG3 review, I don't know.

But in any event, this is the “ITEMS TO BE
COMPLETED FOR DG3 DECISION.” This is

a draft, and if you turn to page 3, the fourth dot down. Do you see it says: "Update of the Project Risk Assessment and ... appropriate strategic reserve amount to be applied to the project"?

So this is Mr. – the same Mr. Wilson identifying, you know, for the DG3 thing, he was recommending this to the Board of Public Utilities. And that is something that, well, we'll deal with later, but I just wanted to show that to indicate that that seems to be a normal thing to include –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – in a review.

Now, the next document is P-00741. And once again, I sent that to Mr. Williams, but it's not included in the documents.

MR. KENNEDY: Okay.

MR. LEARMONTH: 00741.

Now, this is an email from Paul Wilson of MHI to Charles Bown, copied to Allen Snyder and Mack Kast of MHI.

Third paragraph: "Attached is a draft SOW to get our discussions started and I have begun to identify what information we are going to request under each areas of review."

So SOW is a scope of work?

MR. KENNEDY: Okay (inaudible).

MR. LEARMONTH: Okay.

Now, if we turn to – just go through it, page 2 first, it's a draft of the scope of work dated April 2, 2012. These are the services that Mr. Wilson is proposing MHI will provide. And then if we go down to page 5 of the exhibit, Roman numeral xi –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – it says: "Risk Analysis review. Review Nalcor most recent risk analysis assessment for gaps suitability to task, and appropriateness of reserve margins for costs estimate contingency.

"Information required: Strategic Risk Assessment Updated Report, and Westney update if available." So Mr. Wilson is proposing that this be included in the terms of reference.

Now, don't you agree that, in carrying out the review that you had anticipated or required for DG3, that a risk assessment such as was defined by Mr. Wilson was an integral part of that exercise?

MR. KENNEDY: It makes sense, Sir, yes.

MR. LEARMONTH: Yeah. I mean, you want to know the cost?

MR. KENNEDY: Yes.

MR. LEARMONTH: And this is right on point. But anyway, as we'll see later, it was removed. This is the last time we see it.

Now, next is Exhibit 01236, tab 36.

MR. KENNEDY: Okay, one two ...

THE COMMISSIONER: 01236.

MR. LEARMONTH: Tab 36.

I'm just going through this. Doesn't really add too, much but just for continuity –

MR. KENNEDY: Okay, sure.

MR. LEARMONTH: – and completeness.

So this is another email – this is from Brian Crawley. Now, he's at Nalcor, and he says: "Charles" – Charles Bown. This is April 4 – "I understand that Ed was trying to reach you on this. We are still working it but do have major concerns with what has been proposed. Will be in touch."

And I suggest it's clear he's talking about the scope of work that Wilson sent. Now –

MR. KENNEDY: Okay, yeah. I –

MR. LEARMONTH: – do you know who Ed is? Is this Ed Martin?

MR. KENNEDY: I would assume it would be Ed Martin, Sir. If it's –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – coming from Brian Crawley, I would assume –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – it would be Ed Martin, yes.

MR. LEARMONTH: But wouldn't this send off alarm bells? I mean, here we have Ed Martin, and they "have major concerns with what has been proposed. Will be in touch." Like, what business is it of Nalcor as to what the scope of work is going to be for the review of their – the independent review of their project? How can they expect to affect government's decision on this area? Can you answer that?

MR. KENNEDY: No, I can't, Sir. I mean, I understand your point.

MR. LEARMONTH: You understand the point? Yeah.

MR. KENNEDY: All I can tell you, Sir, is that there were – a lot of these decisions were not made by any one individual. There would be meetings where there could be the premier, there could be myself, there could be Mr. Thompson, there could be Mr. Bown; at times, legal counsel would be present.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So – no, it's – the issues you're raising, I don't remember being discussed, Sir.

MR. LEARMONTH: Okay.

MR. KENNEDY: And I – Commissioner, I have to admit, I mean, looking at it now, are these issues that I should have been alerted to? Sure.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I didn't know any of these emails were going back and forth, but in terms

of just – the determination or the use of the word independence, what it means to me as a lawyer.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I think it might have become watered down a little bit when I was – the way things were done in government.

MR. LEARMONTH: Yeah, well, I – you know, perhaps so, but I think it's watered down quite a bit if you have –

MR. KENNEDY: I've –

MR. LEARMONTH: – Nalcor, you know, wanting to participate as they did in defining the scope of work. But anyway, we'll go through the other exhibits.

Next is Exhibit 01178, tab 41.

Now, this is an email from Paul Harrington. He's the project manager. And this is April 4. It's to Brian Crawley, Gilbert Bennett, Paul Humphries, Jason Kean, re scope of work, "Government of Newfoundland – Muskrat Falls DG3 review."

So here you have Mr. Harrington saying: Please find my comments to the MHI proposal. In order for this to be performed in the time available, it has to be focused on what is needed. We do not want to have MHI telling us about reliability and NERC return periods. The basis of design is fixed, and we should not invite commentary on that. MHI should focus on the updated CPW analysis using updated numbers. This has to be an apples-to-apples comparison, so the expansion plan used in this review has to include the Maritime Link as per the DG2 review. This will make the review more straightforward and achievable in the time frame.

"The DG3 review will be later when the expansion plan is complete and all other DG3 inputs available.

"We must get MHI here in St John's to do the work and not have IR's flying back and forth – these will only go public. MHI should work directly with us thereby avoiding a lot of" paperwork "and we should compress the schedule to a couple of weeks when we have the

data. Unless this scope is controlled we will have a repeat performance with the same ‘experts’ with the same opinions.”

Now, I would suggest this is quite a bold statement.

MR. KENNEDY: It’s totally inappropriate, Sir.

MR. LEARMONTH: Totally inappropriate, yes. Thank you.

MR. KENNEDY: And if I had been aware of that, I would – that’s – I’d never met Mr. Harrington, Commissioner. It might sound strange, but Mr. Harrington, the – was never in my office. There was never a meeting with him. My meetings were always with Mr. Martin and Mr. Bennett and sometimes Mr. Sturge but – that one, Sir, if I was aware of that, bells would’ve started to ring on that time, at that point.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I was not aware, Commissioner, of any of these emails. But as the minister, obviously, I’m the person who –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – who’s ultimately responsible.

MR. LEARMONTH: Yeah.

And then on the page 2 of that document, 01178 – well, this is the original email from Charles Bown to Gilbert Bennett and Brian Crawley, Scope of Services, so I guess this is the communication – this is how they got the information.

Now, when we look at the Scope of Services, which has been edited and so on, there’s been a lot of changes made on this document, including the removal of the strategic risk review that had been proposed in Mr. Wilson’s email. Do you see that? That was (inaudible) –

MR. KENNEDY: Sorry, where are you Mr. –?

MR. LEARMONTH: Well, it’s gone – it’s –

THE COMMISSIONER: Page 6.

MR. LEARMONTH: Page 6, it’s (inaudible) –

MR. KENNEDY: So page 6 is the red number at the top, correct?

MR. LEARMONTH: Well, it is – actually here it is, xi, “Risk Analysis review.” Do you see?

MR. KENNEDY: Yeah.

MR. LEARMONTH: It’s crossed out. So he doesn’t want to have a risk review. Do you see that?

MR. KENNEDY: One second, Sir, if I can see this (inaudible).

What’s striking me, Mr. Learmonth, as a little bit unusual about this document, that these emails are dated April. I thought the signed scope of review, I saw that last night, it was something like June 15.

MR. LEARMONTH: It was finalized, it was approved by Cabinet on May 28, 2012 –

MR. KENNEDY: Okay.

MR. LEARMONTH: – and the agreement was signed and finalized with MHI on June 5.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Yeah. There was some delay.

But do you see down – the top one on page 6, is Roman number ix and then there’s Roman numeral vi and then Roman numeral xi, “Risk Analysis review.”

MR. KENNEDY: Yes, I see that, Sir, yeah.

MR. LEARMONTH: See, it’s gone.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Never to appear. Never. Isn’t that a matter of concern?

MR. KENNEDY: Yes, Sir.

MR. LEARMONTH: And then we look at page 8, and this is a comment that Mr. Paul Harrington puts in. The “Commented [PH1]: It is not possible for MHI to review the data in this timeframe – April to May 15, we are still working on the estimate, risk analysis etc – this is setting us up to fail and we cannot do that.”

Can you give me any ...?

MR. KENNEDY: Yeah, I would like to – it would’ve been nice to know that Nalcor had concerns about the ability to deliver the appropriate data because here – that’s one of the points I was making to you, Mr. Learmonth, is we’re basing our schedule, as a government, on the schedule that was given to us by Nalcor. Yet, we have a – again I didn’t even know, as I said, I didn’t know Mr. Harrington, but if I had seen this kind of involvement, Sir, I would’ve – this would’ve caused me concern.

I mean – and I can tell you, Mr. Learmonth, that there were some unpleasant meetings I had with people during my tenure as a minister, in all departments. And there were some very unpleasant meetings that took place in Natural Resources at times. This would’ve been an unpleasant meeting.

MR. LEARMONTH: Okay.

Now, the next document is P-01237, which is at tab 37. And it’s – at tab 37, it’s page 10 of that Exhibit, 01237. The notes –

MR. KENNEDY: Okay, so those are my notes –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – or they start from my notes, Sir?

MR. LEARMONTH: Yeah – that’s your handwriting, isn’t it?

MR. KENNEDY: Oh, that’s my handwriting, yes, Sir.

MR. LEARMONTH: Okay.

MR. KENNEDY: That’s my handwriting.

This is – so this – if I could just – okay, so yes, I see it. There’s my notes. Then there is the terms of – my handwritten notes on the front page of the PUB report, the notes I had made.

MR. LEARMONTH: Yeah, but this report on page 10, this is your note of a meeting –

MR. KENNEDY: Okay, gotcha, Sir, I – okay –

MR. LEARMONTH: – April 6, 2012. This is the time when the emails are being exchanged about the scope of work. So –

MR. KENNEDY: Yes, okay, I see it, Sir.

MR. LEARMONTH: So it says: “Meeting of Ed.”

MR. KENNEDY: Yeah.

MR. LEARMONTH: Would that be Martin?

MR. KENNEDY: Ed Martin, Sir.

MR. LEARMONTH: Brian, would be –?

MR. KENNEDY: Brian Taylor.

MR. LEARMONTH: Robert?

MR. KENNEDY: Robert Thompson.

MR. LEARMONTH: Yeah, and who’s the next ...?

MR. KENNEDY: Glenda Power was the director of communications for the premier.

MR. LEARMONTH: Yeah. And then Charles ...?

MR. KENNEDY: It would be Charles Bown.

MR. LEARMONTH: And you.

MR. KENNEDY: Yeah, anywhere in my notes you see JPK that’s usually –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – a reference to me or comments that are attributed.

MR. LEARMONTH: Yeah.

Now, this is – the draft report, or scope of work that Mr. Wilson had sent to Paul – to Charles Bown was received by Mr. Bown on April 3, so this is only three days after.

MR. KENNEDY: Right.

MR. LEARMONTH: And this is a meeting – and I think we’ll have some confirmation, or we may, from Mr. Bown that what was discussed at this meeting was the scope of work for the MH – DG3 review and that’s why all the representatives from Nalcor were there.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Do you recall this meeting?

MR. KENNEDY: I don’t recall the meeting, Sir, but when I look at my notes I can generally tell you what the meeting is about.

MR. LEARMONTH: Okay.

And it says down in the – you know, “risk analysis, contingency back up.”

MR. KENNEDY: Yeah, it says that, yeah.

MR. LEARMONTH: Yeah. So are you able to confirm that at this meeting Charles Bown would’ve – or prior to the meeting, sent you a copy of the scope of work that Paul Wilson had proposed?

MR. KENNEDY: No, I have no recollection of seeing the scope of work, Sir, but all I can tell you – my notes indicate that – it indicates a risk analysis and contingency backup was discussed. I can’t tell you what exactly is discussed, but they’re obviously – those issues are discussed. The –

MR. LEARMONTH: But so are you – you’re saying that you have no recollection of seeing the scope of work that Mr. Wilson sent undercover of his email of April 3, Exhibit (inaudible) –?

MR. KENNEDY: I’m not saying I didn’t, Sir. I have no recollection.

MR. LEARMONTH: Okay. You have no recollection. So you may have and you may not have.

MR. KENNEDY: Mr. Bown, generally, he knew the way I operated and he generally brought things to my attention, Sir.

MR. LEARMONTH: Okay. Well, if you have no recollection – and I think this meeting was held in the premier’s boardroom.

MR. KENNEDY: Yeah. The premier is also present and she says there has to be deadlines.

MR. LEARMONTH: Okay. And then – I don’t know if the premier was present, was she?

MR. KENNEDY: It’s not clear to me, Sir. Some times either Brian or Robert or it could even be myself, would say this is the premier’s position, for example. I don’t have her noted as being present at this meeting. So it could simply be the note of her position that there have to be deadlines.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yeah.

MR. LEARMONTH: So “Premier – there have to be deadlines.”

MR. KENNEDY: I have no – there’s no indication that she is present at that meeting, Sir. No.

MR. LEARMONTH: And then the next line down, something independent. Can you read that –?

MR. KENNEDY: Yeah. “MHAs involvement changes timelines. DG3 #s” – were – “always meant to be provided in June.” As I’ve said earlier today.

MR. LEARMONTH: And then on – the concluding part: “What we need, schedule, DG3 #s.”

MR. KENNEDY: Yeah. We’re trying to schedule for the House of Assembly, based on the DG3 numbers being provided in June.

MR. LEARMONTH: Yeah.

MR. KENNEDY: If I could just refer you to, though, Mr. – under “risk analysis, contingency back up,” Mr. Learmonth.

MR. LEARMONTH: Sure. Go ahead.

MR. KENNEDY: It says: “DG3 cap costs can be done by May 18” – I am assuming that’s capital costs. There’s an “updated schedule” and then an updated CPW with sensitivities. Now, my recollections, Sir, of the sensitivities would – there would be some kind of risk analysis inherent in that because you’re looking at contingencies for the cost going up. I thought that the sensitivities looked at various –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – different types of options.

MR. LEARMONTH: Yeah. But you see, the problem here is that – I don’t know if it’s a problem, it is for someone, I’m not sure who – that, as we will see, Paul Wilson put in that –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – Roman numeral xi clause to do a strategic risk review and government took it out.

MR. KENNEDY: I’m surprised, Sir, that MHI wouldn’t – if it was something very important, they wouldn’t have brought it to someone’s attention, because in these groups that I dealt with these were very – and I – MHI, I don’t know – but these groups were very, very professional. It wasn’t a matter of telling them: Do this or do that. That’s not the way I saw things operating. I can use Wood Mackenzie later on as an example.

So – but it is there, Sir. I have no – I mean, you’re telling me that that’s what happened there.

MR. LEARMONTH: And in terms of it –

MR. KENNEDY: That’s what happened.

MR. LEARMONTH: – you know, we’ll get into this later, in terms of if – unless anyone has

a suggestion, that well, even when it was taken out, it was implied – an implied term. Well, I think that’s a bit – that would be a bit of a stretch, because if I’m Paul Wilson, and I put something in and then it’s taken out, I don’t see how there can be any kind of an implication that: Well, we took it out but you should do it anyway. Do you see what I’m saying?

MR. KENNEDY: I agree with that (inaudible).

MR. LEARMONTH: Yeah.

MR. KENNEDY: I don’t know – there’s a number of pages that are blacked out, Sir, I don’t know if they have anything to do with –

MR. LEARMONTH: Well, it appeared in Wilson’s report and it – down the line, as we’ll see, it just disappears. It’s removed.

Now, next exhibit –

THE COMMISSIONER: Just a second, so – just so I understand what you said about the blacked-out pages. So, are you saying something in these blacked-out pages might –?

MR. KENNEDY: I don’t know – so Commissioner, I provided all of my notes –

THE COMMISSIONER: Right.

MR. KENNEDY: – to the Commission. I didn’t redact anything. There was one bundle that I put in a sealed envelope that I marked solicitor-client privilege because they were – it was work I had done as Minister of Justice in meeting with other officials.

I didn’t black out anything. So someone blacked these out. I don’t know what they are. I tried to identify these particular pages, Sir, by going to my original notes, but I couldn’t tell. Some of the original notes – whether it is redactions – I can tell by comparing to the original note, but I can’t tell what – I could not determine what these pages are. I don’t know what they are.

MR. LEARMONTH: Yeah. Well, you know, if there is something – or you suspect that there is something on those pages that might shed some light on this issue, I certainly – the Commission –

MR. KENNEDY: I'm not saying there is, no.

MR. LEARMONTH: – would have no problem in – no, no, I'm just saying if Mr. Ralph wanted –

UNIDENTIFIED MALE SPEAKER: I don't – I don't –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: – you know, you're free to do that.

MR. KENNEDY: No, I don't – I'm not saying, Commissioner, there is – I'm just saying, I don't know –

MR. LEARMONTH: No, I know.

MR. KENNEDY: – what's on those pages. But if they – they appear to be going in chronological order, so that the next date then is April 18, 2012, when I'm meeting with the executive. So my guess is something between April 6 and April 18 this meeting takes place – I don't, I have no reason to think, Commissioner, it relates to this, no.

THE COMMISSIONER: So I'll let –

MR. LEARMONTH: Oh no, and you didn't suggest that but I'm just making that offer, like –

MR. KENNEDY: Sure.

MR. LEARMONTH: – if you think that there's something that has been blacked out that you – would be of assistance in the presentation of your points, then Mr. Ralph will accommodate you, I'm sure.

THE COMMISSIONER: Just to add to that, Mr. Kennedy, is that we would have had your full document, then we would have had requests by various parties to redact –

MR. KENNEDY: Okay

THE COMMISSIONER: – certain things. So you obviously would still have your, I assume, copies of your –

MR. KENNEDY: Of my original notes, yes.

THE COMMISSIONER: – notes. So if you wish to review your copy of the notes to see whether or not there's anything further there, please feel free to do so. I do want you to have an opportunity to make a full answer.

MR. KENNEDY: No, Commissioner, I couldn't identify this one. Other ones I've identified. Like, I know other redactions; I'm familiar with because I can go back to my original notes, but this particular note I couldn't find.

THE COMMISSIONER: Oh, okay.

MR. KENNEDY: So, I don't – I have no reason to believe, though, that it has anything to do with what Mr. Learmonth is asking.

UNIDENTIFIED MALE SPEAKER: At the break, I can probably find it.

MR. KENNEDY: Okay.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay, I just want to go through – before the break, I have a few more documents I want to go through –

THE COMMISSIONER: Okay.

MR. LEARMONTH: – if that's all right.

THE COMMISSIONER: Sure.

MR. LEARMONTH: The next is, Mr. Kennedy, is Exhibit P-01179, which is at tab 150; it's the last document, actually, in volume 4.

MR. KENNEDY: Volume 4?

MR. LEARMONTH: Yes, the very last document.

MR. KENNEDY: Oh, sorry.

CLERK: Can I have the exhibit number again?

MR. LEARMONTH: 01179.

Now this is an email from Brian Crawley to Gilbert Bennett and Paul Harrington, May 9, once again about this scope of work.

Says: “Gilbert... Ed asked us to hold off on the MHI scope of work while he worked it with the Province. Have you heard anything on this since? Can we touch base with him today to see if there has been any progress? If we don’t help progress the scope it will be done in isolation of us, which might result in the review reflecting MHI’s original proposal as opposed to what is actually needed

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: Did you ever see that?

MR. KENNEDY: No, I’ve never see that, Sir.

MR. LEARMONTH: What do you make of that? (Inaudible) –

MR. KENNEDY: What I make of it, Mr. Learmonth, and again, it’s – I’m looking back on it, but – Nalcor has – is having too much involvement in this.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I mean, this is part of the – I think the issue that you raised earlier, in terms of the relationship between Nalcor and government, there’s one thing to be integrated and there’s another thing to be too close.

This is an example, I think, what you’re pointing out to me here, of the relationship being too close. I don’t –

MR. LEARMONTH: Mmm.

MR. KENNEDY: – think, again, Sir, there’s anything sinister about it, but in terms –

MR. LEARMONTH: No.

MR. KENNEDY: – of the word independent, yeah, that’s – I mean, that email – there’s a number of these emails that, if I had been aware of, I would have had conversations that would not have been polite.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And Brian Crawley would’ve been one of them.

MR. LEARMONTH: Yeah, because here it looks like it’s – I would use the word brazen –

MR. KENNEDY: Yes.

MR. LEARMONTH: – but it seems to be like they’re saying, no hold on now, we don’t wanna get mixed up in –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – whatever was proposed by Wilson, because it’s not needed. They’re deciding what’s needed.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And that’s the concern one might have about it, do you –

MR. KENNEDY: The –

MR. LEARMONTH: – agree?

MR. KENNEDY: There – yes I do.

There was a similar email, Sir, that had come from someone – and I don’t know where it is in all of these documents – that Ed Martin wasn’t – or Ed wasn’t happy with something we were doing; I ignored it and did what I was going to do.

MR. LEARMONTH: Okay.

Now, just to move on, Exhibit 00260, which is tab 131 of that volume 4, Mr. Kennedy?

MR. KENNEDY: Volume –

THE COMMISSIONER: One-thirty-one.

MR. KENNEDY: So what – do I know the tab number, Mr. –

MR. LEARMONTH: One-thirty-one.

MR. KENNEDY: Yeah.

THE COMMISSIONER: It's actually tab (inaudible).

MR. KENNEDY: Okay, one second now. Is it the same binder?

MR. LEARMONTH: Yeah, volume 4.

MR. KENNEDY: Volume 4. Exhibit –?

MR. LEARMONTH: One three one. It's 260.

THE COMMISSIONER: It's 260, it's at tab 31 in book 3.

MR. LEARMONTH: Oh, oh –

MR. KENNEDY: It's book 3, tab 31.

MR. LEARMONTH: – tab 31. Okay I got that – it's my mistake, sorry.

MR. KENNEDY: It's book 3, Sir.

THE COMMISSIONER: Tab 131, book 3.

MR. LEARMONTH: Now if you look at the – now, this is from, once again, April 3 – the draft's – well, actually this is the same email that I referred to, I think, in an earlier document. But anyway, just to refer to page 5. Once again, at this stage, April 3, the Roman numeral xi is still in there that we referred to earlier. I think I've already gone over that.

The next document is Exhibit P-00261. Now, I have that at tab 132. Although my markings have not been –

THE COMMISSIONER: 132, yeah.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: So 32 in the same book.

MR. KENNEDY: Okay.

MR. LEARMONTH: Now, this is an email. It starts off Paul Wilson on Sunday, April 15 to Charles Bown and others: "Hello Charles, both Al Snyder and myself are traveling to St. John's tomorrow and will be available to meet with you

Tuesday morning. Do you have a preferred location ...?"

And then, "Brian; MHI will be in town ... Please advise on availability of Nalcor staff ..."

So I guess Nalcor's gonna be meeting too.

And then on April 16 at the top Brian Crawley says to Charles Bown: "Thanks Charles. Tomorrow is fine. The Terms of Reference and the review are obviously Government's call, but whatever we can do to support we obviously will. Gilbert, Paul Humphries and Paul Harrington know MHI are going to be in town early this week and we will be available. Humphries and Harrington are both out of the office ... Let me know what time works for you."

Now, is this an email that you would have seen?

MR. KENNEDY: No.

MR. LEARMONTH: Not (inaudible).

MR. KENNEDY: I haven't seen any of these emails, Sir.

MR. LEARMONTH: Okay. I'll just flip through a few more.

MR. KENNEDY: Again, when I say I – I'm stating definitively, but I have no recollection is probably the better way to put it.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I have no recollection of seeing any of these emails.

MR. LEARMONTH: Well there's no indication that you were copied on them, so I'm certainly not challenging what you're saying.

Next Exhibit is 00742, which is tab 133.

Now, this is an email from Paul Wilson of MHI to Charles Bown, copied to Allen Snyder, Mack Kast. "Hello Charles, it was a pleasure to meet with you and Walter over the last ..." few days. So this was following a meeting in St. John's, two-day meeting. "As a result, we have gained a better understanding of the project constraints,

goals, and inputs for this important review project. Al and I have revised the scope of work which now captures all the important elements required and factors in the data availability and schedule. We have also removed the items that,” you, “do not require our involvement, in particular the power system reliability review, Muskrat Falls Hydrology review, and the detailed HVdc converter station” – et cetera.

Now, if you look at page – if you look at this – you know, so there’s a two-day meeting in St. John’s and then Wilson is saying – okay: Here’s the revised scope of work based on what was discussed there. And if you go page 3, second – first full paragraph – “A high level review will focus on existing engineering or financial documents used in the development of the CPW analysis including design documents, design studies, material and equipment specifications, cost estimates and schedules.”

Now – why – what’s your comment on – on the use of this term – a high level?

MR. KENNEDY: I don’t see that, Mr. Learmonth. Where is that – sorry – what page are you on?

MR. LEARMONTH: Page 3.

MR. KENNEDY: Sorry, I’m at page –

MR. LEARMONTH: A high level review. I suggest to you that a DG3 review – you know, in an important matter like this – is anything but a high – should be anything but a high level review. It should be, to use a phrase that I hear all the time now – a deep dive or something like that? Do you agree?

MR. KENNEDY: I don’t know what that means, Sir. All I can tell you, Mr. Learmonth, is that I wanted the most accurate numbers that were available. I wanted – and we go through this later if you want –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – or I can point to you now – like I wanted to know the – whatever term you used, the cost of the project, the issue of potential overruns, the increased cost –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – so there’s no – I don’t know what high level means, Sir. It’s –

MR. LEARMONTH: Yeah.

MR. KENNEDY: It’s not what I was looking for, Sir.

MR. LEARMONTH: Well, if – in terms of what the objectives that you were looking for – the three representatives from Manitoba Hydro, when they testified, they said that they had never seen that strategic risk report that we talked about earlier with the 497 million – they never saw it. Does that surprise you?

MR. KENNEDY: It surprises me, Sir, but I – you know, I have no – I didn’t see it myself. I have no explanation for it. I can only assume that Mr. Martin – I guess we’ll have to wait and see what Mr. Martin has to say.

MR. LEARMONTH: Yeah.

MR. KENNEDY: ‘Cause I think the other Nalcor people have testified, haven’t they?

MR. LEARMONTH: Well, as far as – based on the evidence received to date, I can put it to you confidently that this strategic risk management reserve report was secret – that no one saw it outside of Nalcor. Government didn’t see it, MHI didn’t see it. No one saw it.

But anyway, we’ll have to wait until we hear all the evidence on that. But that’s the way it looks (inaudible) –

MR. KENNEDY: Yeah, whatever – all I – again, I just repeat, Mr. Learmonth, I was looking for all the information, and you’ll see as we go through this, on October 18, I’m sitting down with Mr. Martin going through the cost of concrete, the cost of steel – like, why have costs increased between DG2 and DG3? How can you be confident in a 9 per cent contingency?

MR. LEARMONTH: Yeah.

MR. KENNEDY: I mean, so, anything that related to increased costs I would have wanted to be aware of.

MR. LEARMONTH: Well, you know, I – guess the problem here is that you can only – if you’re relying on Nalcor to provide the information, then it’s not up to you as to what information is provided. I mean, you have to rely on (inaudible) –

MR. KENNEDY: I have no reason to think, Sir, that we’re – that

MR. LEARMONTH: Yes.

MR. KENNEDY: – I wasn’t provided with everything.

MR. LEARMONTH: Yeah.

Okay, P-01181, tab 48?

UNIDENTIFIED MALE SPEAKER: Book 4.

THE COMMISSIONER: Tab 48?

MR. KENNEDY: Tab 48, Sir?

MR. LEARMONTH: Yeah.

THE COMMISSIONER: Yeah, so that would be in an earlier book.

MR. KENNEDY: Okay, I’ve gone to – yeah, okay.

MR. LEARMONTH: Now, on page –

MR. KENNEDY: Okay, I’ve got it up there, Sir (inaudible) –

MR. LEARMONTH: Yeah, page 2 of that report – that’s that email of April 19 from Paul Wilson to Charles Bown. And then Mr. Harrington has something to say about this.

MR. KENNEDY: Okay.

And that is – I do want to see it because there’s an email train, Sir –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – so that would be –

MR. LEARMONTH: – page 2. It starts on page 2.

MR. KENNEDY: Okay.

I don’t have the volume, though, Mr. Learmonth.

THE COMMISSIONER: So it’s in volume 1 and 4.

MR. KENNEDY: Okay, I have it. Okay, one and four – tab –?

THE COMMISSIONER: Tab 41.

MR. KENNEDY: – 41, okay.

Sorry, go ahead, Sir.

MR. LEARMONTH: Yeah, so Mr. Harrington has something to say again. April 20: “My first reaction is they still do not understand. The critical issue for me is the MHI requirement for information to be provided to them. This is wrong, and is an IR in reality MHI should meet with our team and review the data and documentation not have it all sent to them they are in audit mode and not review mode.”

Now, do you agree that the proposed DG3 review was to be an audit?

MR. KENNEDY: I don’t know how you define audit; I don’t know how you define –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – review.

All I know is that this wasn’t simply a matter of someone confirming for us what we already knew. This was meant to be a process of looking at the Decision Gate 3 numbers, comparing the CPWs up to – and bringing out for us the detailed information that we needed to know, Mr. Learmonth, to make a decision on sanction.

So, if – yeah, it would seem to me to be closer to an audit than a review, Sir.

MR. LEARMONTH: Yeah – yeah – yeah.

Okay, and then – next exhibit – I’m not gonna spend much time with it, but it’s –

MR. KENNEDY: I just – I will make one comment, Sir. I'm bothered, you know, I'm bothered by these kinds of emails.

MR. LEARMONTH: You're bothered by them.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Yeah. Yeah.

Because in the context of a so-called independent review –

MR. KENNEDY: Well –

MR. LEARMONTH: – yeah.

MR. KENNEDY: – also the fact that this individual is so definitive of what he thinks should be done. Whereas we've got Brian Crawley, in an earlier email, saying this is government's final call, and that's correct. But I know, Mr. Learmonth, I know you're skeptical, but in this particular –

MR. LEARMONTH: (Inaudible) – okay.

MR. KENNEDY: – case it's not even – there's no attempt to be subtle here.

MR. LEARMONTH: No.

MR. KENNEDY: It's simply, you know, this is not the way it should be done.

MR. LEARMONTH: Yeah.

Anyway, we're getting to – okay. Exhibit 00813, tab 49. And I'm not going to deal with this, but this is another draft. This one by Brian Crawley on April 26. Just refer to it for the record. I don't want to go into it.

Now, the next exhibit is 00743, tab 134.

MR. KENNEDY: That would be in volume 2, Mr. Learmonth?

MR. LEARMONTH: 134? I think it should be in 4.

MR. KENNEDY: I've got an email – I'm looking at a document –

MS. O'BRIEN: That's number – volume 3.

MR. LEARMONTH: Volume 3, sorry.

MR. KENNEDY: Okay. Sorry.

Okay, so volume 3.

MR. LEARMONTH: Yeah. 134, please.

Now, if you –

MR. KENNEDY: I got it, Sir.

MR. LEARMONTH: – if you look at the email, the one towards the – the lower one, this is that email that I referred to you earlier from Paul Wilson to Charles: "Hello Charles, it was a pleasure to meet with you and Walter over the last two days."

And then the top email is April 30, Charles Bown to Paul Wilson. He says: "Paul; I have attached a revised Scope of Services that address the timing and availability of data necessary," et cetera.

Now, if you read this scope – and I'm not going to go through it word for word, but, number one, that Roman numeral xi, the risk analysis, is gone. There's no risk analysis, nothing. There's other language that I could take the time to take you through, but the important one, from my – the perspective of the risk, strategic risk, is gone completely.

Were you aware that this April 30 – the revision to the scope of services had – you know, it had resulted in the removal of the strategic risk?

MR. KENNEDY: No, I don't, no. No, I wasn't.

MR. LEARMONTH: Okay.

Now, once we – again, we have Exhibit P-00814. That's not in your book, but Mr. Williams is aware of it. I mentioned it to him yesterday. So just bring up 00814, please?

So this is another email from Mr. Harrington. April – May 14. So there's a long negotiation process for this scope of work; I think the negotiations are more between Nalcor and government than anyone else, but – I think the

documents indicate that, but anyway, this is from Mr. Harrington to Gilbert Bennett, Brian Crawley and Ed Martin:

“Gilbert

“here are my comments

“I recommend that the wording is put back to as last proposed.

“My reasoning being that we should not be preparing specific documentation just for MHI – the review should be performed across the table with us, using the project documents and data in the format they currently exist If we go with the wording that MHI have proposed in this last go around it will be similar to the last time with us compiling and producing documentation specific to respond to MHI IR's. I would like to avoid that and get back to a review similar to an IPR where the MHI team meet with our team and have a dialogue, not an audit.”

Now, the last word – the last time he referred to not an audit, he said that it should be a review. But what's your reaction to that, “a dialogue”? Is that what you anticipated?

MR. KENNEDY: No.

MR. LEARMONTH: No. So once again, do you think this is inappropriate?

MR. KENNEDY: Totally inappropriate.

MR. LEARMONTH: Okay. And there's just another draft, but anyway.

Would we have a break now?

THE COMMISSIONER: Yes, if this is a good spot, I think we should. We're about an half-hour later than we usually do. So let's take 10 now.

CLERK: All rise.

Recess

THE COMMISSIONER: Okay, Mr. Learmonth.

MR. LEARMONTH: The next exhibit is P-00745, that's tab –

MR. KENNEDY: Excuse me, Commissioner, I think I just turned off the screen or something.

THE COMMISSIONER: Oh, okay.

Just hold on and we'll get that – somebody in the back room will be out now very shortly to fix your screen.

MR. LEARMONTH: It's 00745, tab 135, be in volume 4.

THE COMMISSIONER: So, volume 4, 135.

MR. KENNEDY: Volume 4, okay.

CLERK: Is it back on there now?

MR. KENNEDY: Yes, it is, thank you.

So one – sorry –

MR. LEARMONTH: One hundred and thirty-five.

MR. KENNEDY: In volume 4, Mr. Learmonth?

MR. LEARMONTH: Should be, yes.

MS. O'BRIEN: No, should be the last in volume 3; (inaudible) in volume 2.

THE COMMISSIONER: Right, volume 3.

MR. KENNEDY: Okay.

THE COMMISSIONER: We're actually going to get a table now with the volume number in it, the binder number so we'd be able to find it a little bit easier.

MR. LEARMONTH: I'm about four for 10 today on calling the right binder.

MR. KENNEDY: Okay, I have it, Sir.

MR. LEARMONTH: Yeah. Okay, so this is just another edit.

MR. KENNEDY: Yeah.

MR. LEARMONTH: It seems that they're going back and forth editing but, once again, that Roman numeral xi is gone, so I won't read that. It speaks for itself.

The next is a document, it's 00746, tab 60.

MR. KENNEDY: So that would be the first tab in volume 4?

MR. LEARMONTH: Tab 60. No, that would be in tab 1 or 2.

MS. O'BRIEN: It's going to be in tab 2, or volume 2.

MR. KENNEDY: Volume 2.

MS. O'BRIEN: Going to tab 60

MR. KENNEDY: Tab 60.

Okay, I have it, Sir.

MR. LEARMONTH: Okay, now, this is a letter. Charles Bown, May 16, to Paul Wilson, Letter to Paul Wilson. "I've attached a draft letter to define the understandings between Govt, Nalcor and MHI during the word covered under the contract. Please review and comment."

Now, if you turn over to page 1 – page 2, I should say – this is list that Mr. Bown is sending, and I just ask you to look at paragraph lowercase g) at the bottom of page 2.

"MHI acknowledges that Nalcor staff are simultaneously engaged in their own process of developing new data required for Decision Gate 3 and that such data is required to complete the Services under the contract. The preparation of data by Nalcor will have precedent" – should be precedents – "over the Contract and timelines in the Contract may be adjusted to reflect the availability of data."

So, you know, this speaks for itself, but were you aware that this letter had gone out? I mean, it look – I suggest to you that –

MR. KENNEDY: I have no recollection of it, Sir. Whether or not –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – Mr. Bown showed it to me, I don't know. I have no recollection of this letter, no.

MR. LEARMONTH: So if – this raises another question – if Nalcor didn't have it DG3 documents ready, and it appears they didn't, and if this was to be a DG3 review, why not defer it and say to Nalcor: Look, you get your documents ready and we'll adjourn – we'll postpone this review until we have it. Because there's not much point in doing the review if they don't have the figure. Do you see what I'm saying?

MR. KENNEDY: Yeah, and one of the redacted notes, Mr. Learmonth, that you would actually – one of the notes that was redacted referred to the fact that Mr. Martin, as of April 18, 2012, was still maintaining that we would have the DG numbers at the end of June, mid-July, by the latest, so that was one of the redacted pages.

MR. LEARMONTH: Was that – I know it's not signed and sealed – but was that a fairly firm commitment?

MR. KENNEDY: The – we were always told, Sir, yeah, that the DG3 numbers – 'cause we had planned, going back – and I know we'll come to this, Sir – going back to the PUB, one of the issues was we wanted the – the premier wanted to be in the House of Assembly in June. So in order to be in the House of Assembly in June, we obviously had to have the DG3 numbers. Then there's talk of a special sitting because we're going to have the DG3 numbers later.

So, I can't say it's – anything was every firm, Sir. There was an assurance that things would always be coming, and then they would be delayed, I guess, is the best way to describe it.

MR. LEARMONTH: All right.

Now, the next document is Exhibit P-01522; that's tab 142. That'll be in number 4.

MR. KENNEDY: Okay. Sorry, go head. What tab number, Mr. Learmonth?

MR. LEARMONTH: One hundred and forty-two.

MR. KENNEDY: Okay.

MR. LEARMONTH: Now, this is a Decision Note, Department of Natural Resources.

If you go to page 10, you'll see that you signed it.

MR. KENNEDY: Yes, I would've –

MR. LEARMONTH: Minister of –

MR. KENNEDY: – signed this, yeah.

MR. LEARMONTH: And this is a presentation to Cabinet which resulted in an order-in-council –

MR. KENNEDY: Yup.

MR. LEARMONTH: – which is on page 28; order-in-council dated May 31, 2012 concerning the hiring of the external consultants.

MR. KENNEDY: That would be the process, Sir, yes.

MR. LEARMONTH: Yeah, and it – there's a blacked-out amount. I mean, I know it's in other document said it was 245,000, so I don't know why that's blacked out.

But, anyway, if you look at this, the Scope of Work, and that's Schedule A, it's called – here it's called, yeah, Scope of Work, Schedule A, and this would've been before the Cabinet, isn't that correct?

MR. KENNEDY: Just one second, Sir.

MR. LEARMONTH: This would've been placed before the Cabinet? It's on page 11, Scope of Work.

MR. KENNEDY: If there is – it looks to me, Sir – normally what would happen, there would be a – in the normal course of events there'd be

a Cabinet paper. Normally, decision notes didn't – my recollection – didn't normally go to the Cabinet.

MR. LEARMONTH: That's the question I had – I was gonna ask you, actually.

We've – we see these memorandums and so on –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – that go – this looks to be a different form, so I wonder how it got to Cabinet?

MR. KENNEDY: Yeah, if I could just – perhaps, Mr. Commissioner, if I could just very quickly run you through, Sir, and I'm sure you've probably heard this, but how this would work.

Initially, an official in the department, a direction could come from the premier's office, or as minister I would say, I – can you prepare a briefing note on this particular issue for me so I could have understanding, whether it be to go to the public or to go to the House of Assembly.

That briefing note, Sir, could then work its way into a draft Cabinet document. That draft Cabinet document, then, would go to Cabinet Secretariat. Mr. Thompson was the – would've been responsible for that, and there were different policy committees, Sir. There was Treasury Board, Social Policy and Economic Policy. Normally, there would be an analysis and a critique of what was in the Cabinet paper, various ministers could send – say I have concerns; it would go back.

Eventually, it would work its way to the different departments; everything from Labrador Affairs to Department of Justice to Women's Policy, would review the papers. It would work its way to Cabinet. That's the normal process, Mr. Learmonth.

I see here there is an MC at page 28, so obviously there was a decision of Cabinet.

MR. LEARMONTH: Yeah.

MR. KENNEDY: The process was a bit unusual, but I can't explain to you why it took place like this because normally we would – Cabinet met every Thursday morning, and pretty well every week, every Thursday morning for – it would be three and four hours.

So, I can't tell you, Sir, a decision note – you could have briefing notes, you had information notes, you could have decision notes; you could have decision notes, but eventually, obviously, this came to Cabinet for approval, no question.

MR. LEARMONTH: Yeah. Is it possible that given the rush that this seems to have attracted, or followed, that there was a short circuit of the process?

MR. KENNEDY: I don't know what the rush would be though, Mr. Learmonth, because the – those emails you showed me earlier were going back to April –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and we're now at the end of May.

MR. LEARMONTH: Yeah. Okay, well, anyway, if you look at the Scope of Work on page 11, 12, 13 and 14 – actually, 15 also – once again, I know I've said this a few times, but the risk analysis is gone.

So I take it that all the members of Cabinet who reviewed this document would have been aware that the risk analysis had been removed? Is that a fair comment?

MR. KENNEDY: See, Sir, I don't know that any of us were aware. I wasn't aware that the risk analysis had been removed. That's – there's a process that's taking place: the officials would have worked on the document; the scope of work would have been determined; I would have signed off on the final scope of work, which was quite normal.

I don't think any of us would have considered that risk wasn't being analyzed, because that's one of the whole purposes of doing this exercise, I would –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – think, was to engage in an assessment of risk. That's what we're – members of Cabinet, Mr. Learmonth, would have had the same concerns that I would have had, and as lead minister, remember, I also have an obligation to my colleagues, as lead minister, to ensure that they're getting accurate information, because they have their own departments to run. They're pretty busy people.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And so everyone would want to be assured that the – we're getting accurate numbers and that the best information possible is being brought to Cabinet.

MR. LEARMONTH: Yeah. Well, anyway, it was passed, and then the next document –

MR. KENNEDY: There's no question, Sir, yeah.

MR. LEARMONTH: Yeah. The – so it would have had to have been – this memorandum, I take it, would have had to be – this decision note – would have gone to Cabinet? It would have been – people sitting around the Cabinet would have got this in their package?

MR. KENNEDY: It appears to me, Sir, if there's an MC, then –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – there would have had to go to Cabinet. Whether it came up, whether or not Mr. Bown and Mr. Thompson or the premier's office through Mr. Taylor, I don't know, but it certainly went to Cabinet for approval, and I'm not sure, because it was a sole-source contract over a certain amount; normally, those things would go to Treasury Board, but it did come to Cabinet, yes.

MR. LEARMONTH: Yeah. But are you saying that, to the best of your recollection, no one ever read this and said, well, there's no risk analysis? No member of Cabinet that you're aware of?

MR. KENNEDY: I wasn't aware of it, Mr. –

MR. LEARMONTH: Okay.

MR. KENNEDY: – Learmonth, so if – I’m the one who would be primarily responsible for informing my colleagues of what we’re – they’re being asked to do.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So I don’t think it would be incumbent on any of them to try to read this and determine what’s there and what’s not there. That would be my responsibility, Sir.

MR. LEARMONTH: All right.

Next document is Exhibit 00754 – it’s not in your book.

MR. KENNEDY: Okay.

MR. LEARMONTH: Exhibit 00754. Once again, I sent this to Mr. Williams yesterday.

And this is a – perhaps we can bring that up, 00754?

Yeah, so this is a first draft of the technical portion of the DG3 review report from Mr. Wilson and Mr. Bown. And this is a draft. I’m just – I’m not gonna go through every page, but I first wanna know, did you see this draft?

MR. KENNEDY: I have no recollection, Sir, of seeing any drafts, and when I look at what’s outlined by Mr. Wilson, when you’re in to these kind of technical issues here, there would be no reason for me to see –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – this kind –

MR. LEARMONTH: – but if you look on, say, page 41.

MR. KENNEDY: Okay.

MR. LEARMONTH: Let’s go to page 41.

So you have 2.4.2, Cost Estimate Evaluation.

“Nalcor did not provide MHI with access to the detailed cost elements, nor costing reports defining the Decision Gate 3 estimate and variance from the Decision Gate 2 estimate for

the transmission facilities. However, totals are provided and overall the Decision Gate 3 estimate increased significantly,” et cetera.

Now, do you not agree – do you agree with me that that would be an item of concern, something that would jump out to you if you had read that? That Nalcor did not provide MHI with access to detailed cost elements.

MR. KENNEDY: I thought that was the whole purpose of it. So yeah, it would cause me –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – concern, yeah.

MR. LEARMONTH: It was the whole purpose of the engagement?

MR. KENNEDY: Yes, from government’s perspective, what we wanted to do – as I’ve indicated, Mr. Learmonth, we wanted the best possible information that we can get, and that would include, you know, the cost estimates, what are the real numbers that we will be going to the public with or going into the House of Assembly.

MR. LEARMONTH: And then under the heading Risk Assessment: “Nalcor has identified the key areas of project risk in its project management” –

MR. KENNEDY: Sorry, where is it?

MR. LEARMONTH: Excuse me, page 41 – still on page 41.

MR. KENNEDY: Okay.

MR. LEARMONTH: The bottom paragraph.

“At the current stage of project progress, the majority of major engineering decisions affecting transmission line design and construction as to project scope have been made and costs estimated Nalcor has displayed appropriate controls and signing authority” – I’m going to page 42 now.

MR. KENNEDY: Yeah.

MR. LEARMONTH: “authority managing scope changes with the Transmission Deviation Alerts and the Change Notice With the level of engineering complete to date and the tracking system in place, the probability of major scope changes to the design affecting cost and schedule is assessed as very low. At this stage minor route changes will not affect ... schedule” – well, that’s fine.

Then the paragraph – skip one paragraph and go to the one “At this stage.”

“At this stage, the major risks to be addressed for the transmission line complex remain with contractor cost and labour availability. There are several other high-profile transmission line and generation projects in the design stage in Canada set for construction in the same time frames as Nalcor’s Lower Churchill project. These, along with other natural resource projects could attract skilled labour away the project and create an escalation factor for contractor labour.”

Now, this – the exact – this exact wording was removed – it doesn’t appear in the final report, but – and you say you didn’t see this, did you?

MR. KENNEDY: No, I was aware, Sir. I think as early as the PUB had identified – or MHI had identified in their report for the PUB that there were issues in relation to the transmission line. I thought there was some disagreement. I didn’t understand the technical –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – side of it.

MR. LEARMONTH: Okay.

MR. KENNEDY: No, I wouldn’t have seen this, Sir, no.

MR. LEARMONTH: Okay, and then page 51, third paragraph: “The risk of cost escalation during the construction stage is high considering very competitive labour rates and compensation that will be required to attract qualified contractors and personnel. This escalation risk may not be fully accounted in the Decision Gate 3 estimate.”

Now, that’s not in the final report. Do you have any idea why that was removed?

MR. KENNEDY: No, I don’t, Mr. Learmonth, no.

MR. LEARMONTH: Okay.

And then we go to page 58 in this draft, first paragraph: “It is noted that the overall Muskrat Falls project contingency in the Decision Gate 3 estimate is 6.7%, which in MHI’s experience, is low for this level of estimate. This has been discussed with ... Nalcor project team, and ... Nalcor project team believes ... the current Decision Gate 3 estimate input detail and conservative assumptions justify the chosen contingency amount.

“From an overview of the methodology and detail of the current project estimate, the Muskrat Falls project contingency has been reduced substantially from Decision Gate 2 and may be somewhat low.”

Okay. Once again, you don’t – have no comment on that, ’cause I guess you didn’t see it, is that right?

MR. KENNEDY: No, I didn’t see this, Sir, but I can tell you, I had a concern about the 9 per cent contingency being utilized, that that was low.

MR. LEARMONTH: Yeah.

But just before we complete this section of the questioning, is it fair for me to conclude that, as we got into DG3, that you were assured repeatedly by Nalcor that this – that their estimate was a very high-quality estimate and was – you know, and would be unlikely to lead to cost overruns? Were you assured?

MR. KENNEDY: Yes, absolutely.

MR. LEARMONTH: Consistently, is that right?

MR. KENNEDY: I can take you to my notes if you want.

MR. LEARMONTH: Yeah. But this wasn’t just one –

MR. KENNEDY: No.

MR. LEARMONTH: – isolated – okay. You were always told that these numbers are good?

MR. KENNEDY: The issue of contingency and cost of the project was always a major concern to me because it impacted the ratepayer and the people who are going to have to pay for this. So, Sir, from the beginning – from the first time, within days of being minister, I was looking at cost overruns, identifying potential overruns, and by the time we got to my meetings with Mr. Martin on September 22, October 2, October 18, and the technical DG3 briefing on October 30, 2012, we were always assured that because of the level of engineering that had been done, that this was a high-quality estimate and that it was a good estimate.

MR. LEARMONTH: All right, thank you.

Now, the next document would – that I want you to look at is P-00773, tab 81.

THE COMMISSIONER: Eighty-one, volume 2.

MR. LEARMONTH: Now, this is an email from Paul Wilson to Charles Bown dated September 19: “Hi Charles, here is the MS Word version” and “redline on. I believe this captures all the changes.”

My first comment is it’s unusual, I think, to send something in Word, you know, when you’re preparing an expert report. But anyway, maybe not.

Anyway, have you seen this draft report, Mr. Kennedy?

MR. KENNEDY: I have –

MR. LEARMONTH: Or did you see it at or near the time that it was sent, that being September 19. And then I’ll get – the reason I ask that question is that another document, which I’ll show you, says that you met with Charles and Heather on September 24 –

MR. KENNEDY: That’s right.

MR. LEARMONTH: – and to – after Charles had worked through this and made some edits? Do you remember ever seeing (inaudible)?

MR. KENNEDY: No, I think my note – if I remember correctly, my note of September 24, 2012, we’re going through – I’m meeting with Charles and Heather – Heather is the communications director – and we’re looking at the various reports that are coming in. And if I remember correctly, Sir, without looking at the note, the first note is one and it says: September 24, Charles – MHI report edits to be done by Friday or edits almost completed.

MR. LEARMONTH: Yeah but just look at this report, maybe I’m going to take you through a few. You don’t recall seeing it. Just turn to –

MR. KENNEDY: No, I should make it clear, though – yeah, okay. Sorry, go ahead, Mr. Learmonth.

MR. LEARMONTH: Okay, let’s go to page 14. Now, this is something that –

MR. KENNEDY: That’s the red 14, correct?

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Top right-hand corner.

MR. KENNEDY: Yeah, top right-hand. Okay, I gotcha.

MR. LEARMONTH: Now, this was in some version – we don’t have all the documents from MHI; they didn’t have a very reliable document retaining or retention system.

But, anyway, so this says: “MHI also recommends that Nalcor be cautioned regarding the contingency levels in their estimated costs as there are opportunities for unexpected increases. Nalcor has current contingency levels in their estimate for the Labrador Island HVdc converter stations that are below industry norms and therefore should be re-evaluated. Any additional contingency allocated for the HVdc converter stations at levels following industry norms would not alter the outcome of the

Interconnected Island ... in favour of the Isolated Island”

But did you ever see that? Well, I don’t know if it’s a warning but it’s a caution. Did you ever see that?

MR. KENNEDY: No I didn’t, Sir.

MR. LEARMONTH: Is that something would’ve caught your attention if you had seen it? You know, the fact that it was in there and then taken out?

MR. KENNEDY: As I’ve indicated again, Mr. Learmonth, on numerous occasions, anything that related to an increase in the cost of the project was of concern to me for a number of reasons. The contingency levels or contingency issue was one that I was acutely alert to and kept examining as we moved through this process. So anything that related to a comment like that certainly would have caught my attention.

MR. LEARMONTH: Yes. Okay, now just one – there’s one other paragraph I want you to have a look at. It’s on page 93. And you recall we discussed this P-factor –

MR. KENNEDY: Yes.

MR. LEARMONTH: – earlier?

MR. KENNEDY: Yeah.

MR. LEARMONTH: So if you go to the bottom of page 93, Mr. Kennedy, it says: Capital Cost Projections for Muskrat Falls and Labrador-Island Link.

“Scenarios numbered 5, 6 ... reflect variances of capital costs in the order of magnitude ... According to an Estimate Accuracy Analysis Report” And then I don’t know if it’s deleted: Prepared by Westney on June 4, 2012, right, the engineering detailed design of the Lower Churchill was approximately ...

And then you see where there’s: “To reach a P50 value of probability, a contingency of ...” – do you see that?

MR. KENNEDY: Yes, I do. Yeah.

MR. LEARMONTH: And then on the next page it goes on with this – talking about P50. One sentence says: “A P50 value implies there is an equal 50% probability” et cetera.

MR. KENNEDY: Yeah.

MR. LEARMONTH: You can read it for yourself.

Now, that was taken out. That doesn’t appear.

MR. KENNEDY: Okay.

MR. LEARMONTH: There’s no reference to P-factor, to my knowledge, in the final report. Were you aware of that?

MR. KENNEDY: No, I wasn’t. And even when I look at that first sentence, Mr. Learmonth, it refers to a contingency allowance of 7 per cent. I thought the contingency allowance that we actually – that was included at the end, that I had discussed with Mr. Martin, was 9 per cent.

MR. LEARMONTH: No, well, I think the contingency – I think it’s correct that it was 7 per cent and it came out of 368 million.

MR. KENNEDY: Okay.

MR. LEARMONTH: There may be – I know there are references to, like, 9 or 9.1, but they could be for different components of the project.

MR. KENNEDY: Okay.

MR. LEARMONTH: So that when you blended them all it came out at 7. Do you see what I mean? There could be one contingency for the generating station, another one for –

MR. KENNEDY: That’s not my recollection, Mr. Learmonth.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And, you know, as I’ve indicated on a number of occasions I’ve got extensive notes on these meetings. My understanding was that there was a 9 per cent contingency built in and my discussions with Mr. Martin revolved around is that sufficient.

MR. LEARMONTH: Well, I thought – well, anyway –

MR. KENNEDY: Yeah, okay – I just – I hear what you're saying, Sir.

MR. LEARMONTH: I understood it was 7 per cent at 368 but I stand to be corrected, of course.

Now, so this email – this document that I referred to, P-00773, leads to the next document, which is tab 83, P-01275.

MR. KENNEDY: Yeah, that's the one we talked about earlier.

MR. LEARMONTH: Yeah. So in this – this is a – as I say, Mr. Bown got the –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – report on September 19, and this is on September 23 he's sending you an email saying: Worked through some addition edits in MH3 [sp MHI] DG3 report over the weekend. Now, we're close to final.

Now, I – we'll have to ask Mr. Bown, but I – given the closeness in time I would suggest that that's the September 19 –?

MR. KENNEDY: I don't know, Sir.

MR. LEARMONTH: Sure, okay.

MR. KENNEDY: I would've simply interpreted that as edits that, in my mind, would be more minor, like if you –

MR. LEARMONTH: Yeah. Well, he was –

MR. KENNEDY: More minor suggestions, yeah.

MR. LEARMONTH: Well, we'll have to ask –

MR. KENNEDY: Yeah, sure.

MR. LEARMONTH: – Mr. Bown, but it was sent in Word, so I guess he could edit it as he saw fit, to a certain extent. Anyway, so there's a note in your handwriting: September 24 –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – update from Charles and Heather. Now, I ask you whether, at that September 24 meeting, you reviewed the draft report.

MR. KENNEDY: I have no recollection of that, Sir, no.

MR. LEARMONTH: You have no recollection of that?

MR. KENNEDY: No.

MR. LEARMONTH: Okay. Okay. And then we're pretty well done.

This is Exhibit – well, P-00774, I'm just going to refer to it. This is a clean version with the lines to be – this is another draft, and then we have the final report that was sent and has been filed.

Okay. Okay, now we're going to move on to natural gas.

MR. KENNEDY: Yes, okay.

MR. LEARMONTH: I know you spent a lot of time on this, but –

MR. KENNEDY: Spent a lot of time, Sir, yes.

MR. LEARMONTH: Yes. So tab 98 is the Ziff report. That's Exhibit –

MR. KENNEDY: That's the –

MR. LEARMONTH: – P-00060.

MR. KENNEDY: – same volume, Mr. Learmonth?

MR. LEARMONTH: Tab 98.

MR. KENNEDY: Binder 2, yeah.

MR. LEARMONTH: This is the Ziff report.

MR. KENNEDY: No, it's not volume 2; it's going to be volume 3, maybe?

THE COMMISSIONER: Volume 3.

MR. KENNEDY: Yeah. I'm familiar with the Ziff report, Sir, yeah.

MR. LEARMONTH: Okay, so that's that. And then we have – the next exhibit is P-00064, tab 102, and that's the Wood Mackenzie report, dated –

MR. KENNEDY: Yes, Sir.

MR. LEARMONTH: – November 2012.

MR. KENNEDY: I'm familiar with that, too.

MR. LEARMONTH: And there's a commentary on the presentation of Dr. Stephen Bruneau in this.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And then if we go to Exhibit 01312, it's tab 139 – 139, that would be volume 4.

MS. O'BRIEN: 01312 is volume 3?

MR. KENNEDY: Volume 3 or 4?

MS. O'BRIEN: Volume 3. P-01312 is the – is volume 3, according to the new table there.

MR. LEARMONTH: So volume 3, page –?

MS. O'BRIEN: It's –

MR. KENNEDY: Tab sorry.

MS. O'BRIEN: It's volume 3, tab 139, so it's probably there as tab 39.

MR. LEARMONTH: My numbers are not lining up.

MR. KENNEDY: Yeah, I don't see a 39, Ms. O'Brien.

MR. LEARMONTH: No, 139.

MS. O'BRIEN: It should be 139. I'm looking at my (inaudible).

MR. LEARMONTH: You see that's in tab – volume 4 for – of mine.

THE COMMISSIONER: It is in tab – it is in –

MR. KENNEDY: I'm familiar with this email though, Sir.

THE COMMISSIONER: It's in tab 39, in book 4.

UNIDENTIFIED FEMALE VOICE:
(Inaudible).

MR. KENNEDY: Yeah, I'm familiar with that email.

MR. LEARMONTH: You see, one of the problems of the numbering is that the – when you get to 100, they still put 39 rather than 139 –

MR. KENNEDY: Yes.

MR. LEARMONTH: – that's the problem. But this one is 39 and it is in book 4, I think?

THE COMMISSIONER: Yes.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I don't know if they make tabs up to 200, Mr. –

MR. LEARMONTH: It means we're putting too many documents together, I guess.

But anyway – now this is another – if you look at page 6, 7, 8 and 9 – this is an earlier version of a Wood Mackenzie report.

MR. KENNEDY: Yes, Sir.

MR. LEARMONTH: And, you know, it – this is one where – in this Wood Mackenzie – deal with the pipeline scenario and also with LNG.

MR. KENNEDY: Yes, correct.

MR. LEARMONTH: Yeah.

Now, this report was never made public. The LNG content of it was removed and it never saw the light of day, as far as I know. Do you know why?

MR. KENNEDY: No, Sir. I had numerous meetings with Wood Mackenzie in relation to natural gas – and I’m sure at some point we’ll get into how all that came about but – Wood Mackenzie – and I don’t know how much Mr. Bown or Mr. Martin can fill you in more than I can, Mr. Learmonth. Mr. – Wood Mackenzie are – a worldwide energy advisor. I understand that their head offices are either in Edinburgh or London. They were operated out of New York, Houston, Calgary and they are very well recognized in the industry. So – industry of oil and gas.

And so we went and – I – my first meeting with Wood Mackenzie would have been November 28, 2012, as a result of the – trying to find out about shale gas. I also met with them on January 18, 2012, July 29, 2012, August 31, 2012 and October 10, 2012.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So natural gas, energy markets and the pricing of oil were issues that I discussed with Wood Mackenzie.

MR. LEARMONTH: Yeah. And you discussed liquefied natural gas with them too in your –

MR. KENNEDY: Certainly, yes.

MR. LEARMONTH: Yeah but if you look on page 8, 9 and 10 of the last exhibit I referred to you –

MR. KENNEDY: Yeah (inaudible).

MR. LEARMONTH: – that’s P-01312. The Review of Newfoundland and Labrador’s LNG Viability and Analysis disappears. And then if you look at Wood Mackenzie Conclusions on page 10 of that report, the second paragraph, it’s gone.

MR. KENNEDY: My discussions with Wood Mackenzie, Sir – the discussions I had and the discussion with Ziff – it all – and I know, I’m

sorry, Mr. Learmonth, I’m just trying to put some perspective here. But –

MR. LEARMONTH: Do you want to look – am I explaining myself?

MR. KENNEDY: No, but I just – if I could just take one second, Sir. Commissioner –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – just to give some perspective.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I initially started exploring natural gas myself, as a minister, as result of comments that Cabot Martin – Mr. Martin has raised issues of the shale gas and the effects of shale gas on the electricity markets in the United States. And so that’s what led to the first meeting with – Wood Mackenzie. So then, Sir, we go further and Dr. Bruneau had raised – had raised issues on natural gas. So I’d said to the officials in the department: Find someone to review what he has to say. I’d never heard of Ziff Energy, Sir.

So, there were two issues – my understanding is there were two issues in relation to natural gas: there’s the pipeline and then there would be the liquefied natural gas. They were two separate options: one would be brining natural gas from the Grand Banks, from one of the oil fields to Holyrood; the second would be bringing in liquefied natural gas. So the both issues, to the best of my knowledge, Mr. Learmonth, were explored.

MR. LEARMONTH: Well, yeah. Well – that’s the case, and Ziff did deal with LNG –

MR. KENNEDY: Okay.

MR. LEARMONTH: – in their report. But in the final version of the Wood Mackenzie report – that’s 00064 –

MR. KENNEDY: Yeah.

MR. LEARMONTH: The references – all references to LNG, which are contained in 01312 – are gone.

MR. KENNEDY: I have no explanation for that.

MR. LEARMONTH: And what – increases my – or sustains my curiosity on this that – if you look at the Wood Mackenzie report, you'll see that the comments they made, that they disagreed with –

MR. KENNEDY: They did, yeah. There were – several points of disagreement between Ziff and Wood Mackenzie – yes, there were.

MR. LEARMONTH: But why – and Wood Mackenzie's report, if we look at the last paragraph –

MR. KENNEDY: Sorry, Commissioner.

MR. LEARMONTH: – of the report, that's on page 10 of the last reference document. Look in paragraph 10 – excuse me, page 10, the last paragraph.

MR. KENNEDY: Yeah.

MR. LEARMONTH: "Relative to the use of LNG imports as a fuel, Wood Mackenzie's research would tend to have lower costs than those determined by Ziff for the reasons stated within the report. Looking at the costs of some recently constructed facilities, and possibly evaluating the FSRU technology could lower the costs from Ziff's estimates. That said, we agree that it will be difficult" – to obtain.

So there's a reference there to the – they took a different position on the cost.

MR. KENNEDY: They did – yes.

MR. LEARMONTH: Yeah, lower.

MR. KENNEDY: It was, yeah.

MR. LEARMONTH: And then, if you look at the – there's also – in the second to last paragraph on page 9, they – there's another disagreement with Ziff. Now, the point is this, the changes the changes that MHI – or the differences that MH – that Wood Mackenzie expressed from – with the Ziff report, would have definitely increased the likelihood that LNG was – something that should be pursued,

because the cost of construction and the cost generally would be much lower using the Wood Mackenzie figures.

MR. KENNEDY: I – Mr. Learmonth, I think what I need to do, Sir, is that – and I'm having difficulty finding because of the way tabs are – I isolated my notes yesterday, but I think I have to take you to – this is no surprise to me, what you're saying. I mean, I can show you in my notes where, you know, we made these references, and my understanding was that I thought it was a good thing that Wood Mackenzie and Ziff didn't agree on everything, quite frankly.

I thought –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – (inaudible) so I thought the reports would contain those (inaudible), but I need to see my notes to actually tell you exactly –

MR. LEARMONTH: (Inaudible) –

MR. KENNEDY: – what those differences are.

MR. LEARMONTH: Okay, well we can do that (inaudible), but the point is this: I wanna know, if you can tell me, why the final version of the Wood Mackenzie report, which is P-00064, when we look at it, all the references to liquefied natural gas are gone.

MR. KENNEDY: I'm not aware of that, Sir.

MR. LEARMONTH: And this is – and P-00064 – was the only report that was released to the public.

MR. KENNEDY: It was – the issues between Wood Mackenzie and – the differences of opinion between Wood Mackenzie and Ziff were of absolutely no concern to me, Commissioner. I thought it was actually good, and I remember one of my notes in Wood Mackenzie said you gotta put, you know, your disagreements in because that's, you know, your reputation; it's gotta be what you think.

And I'm surprised – I wasn't aware, Sir, there were any changes to the Wood Mackenzie report.

MR. LEARMONTH: Well, the analysis of LNG, prepared by Wood Mackenzie, was not in the final report. It was taken out completely.

MR. KENNEDY: Again, Sir, I have – you know, I know it was discussed; it was discussed in detail, Commissioner. I have pages and pages of notes on the differences between what Wood – 'cause we went to – one of the – my reasoning, Commissioner – and I apologize, Mr. Learmonth, but I'm trying to put this in some context, Commissioner – my reasoning for exploring natural gas was quite simple. There were issues being raised out there that I thought were very valid. I thought that the issues raised by Mr. Martin were valid; I thought the issues raised by Dr. Bruneau were valid, but I didn't have the expertise to – or within the department to necessarily have that done.

So, I wanted to understand, Commissioner, as best I could whether or not natural gas was a viable option. I came to learn from my meetings with Wood Mackenzie that there were two perspective [sp respective] ways of doing that – one being the pipeline – as suggested I think – I thought Dr. Bruneau's suggestion was the pipeline –

MR. LEARMONTH: Yes.

MR. KENNEDY: – there was also the liquefied natural gas.

MR. LEARMONTH: Right.

MR. KENNEDY: And we had looked at both of those, Commissioner. In [sp on] July 29, 2012 I remember meeting with Wood Mackenzie and having extensive discussions about that, and they had some issues with the – I don't think we had a report or anything from Ziff, but we sort of knew what Ziff were saying.

MR. LEARMONTH: Right.

MR. KENNEDY: And I just wanted to find out who was right there, Commissioner. All I was trying to do at the end of the day –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – is Dr. Bruneau right? Is Ziff? Like, who's right?

So we went to Wood Mackenzie, and I certainly – I remember and I made my notes, and the notes clearly outlined the differences in their opinion. I certainly didn't see any problem with it coming out that there was a couple of points upon which they, Ziff and Wood Mackenzie, disagreed. I quite frankly thought, Sir, that those were out outlined. I thought they were out in the public.

MR. LEARMONTH: But it didn't.

MR. KENNEDY: Well, I – again, I thought they were, Sir.

MR. LEARMONTH: Okay. Well, do you know who would've taken – removed that from the Wood Mackenzie report, the references to LNG?

MR. KENNEDY: No. And on October 10, Commissioner, before the reports were released, I remember I met with Wood Mackenzie again, 'cause I went back and met with PIRA. PIRA – I don't know if you've heard much discussion of PIRA, Commissioner, but they were the oil pricing agency. And oil pricing was, obviously, very important here because the sensitivities in terms of the analysis for Holyrood, the Isolated Option, depended on the price of oil.

So I met with PIRA, met with Wood Mackenzie, and asked them, you know, like, where are you fellas, what's going on here. On my way back, we stopped at the airport in Toronto and I actually met with Ziff. Not, again, Mr. Learmonth, in terms of trying to influence anything. I – all I wanted to know was, like, we're getting ready to go into the House of Assembly, you know, there's supposed to be DG3 numbers; can people please tell me what your – how you see this.

And so I met with both of them on the same day, and I don't remember anything there being of any concern to me, Commissioner. And my notes are extensive. There was nothing that was of any concern to me in terms of what Wood

Mackenzie and Ziff – in terms of how they differed.

MR. LEARMONTH: So you expected their report to be published, released?

MR. KENNEDY: The Wood – when you say the report, Sir, you’re talking about the references to LNG here?

MR. LEARMONTH: Yes.

MR. KENNEDY: Yeah, I – it didn’t cause me any concern. I thought it was, quite frankly.

MR. LEARMONTH: Well, do you have any explanation for the fact that when the Wood Mackenzie report was released –

MR. KENNEDY: No.

MR. LEARMONTH: – all the references to LNG were removed?

MR. KENNEDY: No, I don’t. I don’t.

MR. LEARMONTH: You don’t have any explanation?

MR. KENNEDY: No.

MR. LEARMONTH: Were you aware of that until I mentioned it to you –?

MR. KENNEDY: No, I wouldn’t have been aware of it, Mr. Learmonth, because if I was aware of it I would’ve said there’s no need to be –

MR. LEARMONTH: Right.

MR. KENNEDY: – you know, there’s nothing here. It’s in my notes, everywhere. There’s nothing –

MR. LEARMONTH: Yes.

MR. KENNEDY: – to be secretive about.

MR. LEARMONTH: Yeah.

Well, I think if you look at – there may be an explanation for this. You’re aware that Nalcor,

Jim Keating of Nalcor, was working on this gas issue, were you?

MR. KENNEDY: No. I’m familiar with Mr. Keating. When there was two separate sets of Nalcor executives, Mr. Commissioner, who would come into meet with Cabinet. One would be Mr. Bennett and Mr. Martin and sometimes Mr. Sturge in relation to electricity. On oil and gas, Mr. Keating. So I was familiar with Mr. Keating.

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: I knew that Nalcor had done some kind of natural gas analysis, Sir. I don’t remember ever reading it or seeing it. And I knew – I would assume, yes, that Mr. Keating would’ve been involved. And that’s why I knew who Mr. Keating was. Certainly, I knew –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – he was involved in the oil and gas with Nalcor, yeah.

MR. LEARMONTH: Yeah. Well, let’s look at Exhibit P-01206. That’s tab 138.

MR. KENNEDY: Okay. Yes, I see it, Sir.

MR. LEARMONTH: This is an email from Jim Keating, October 31, 2012, to Wes Foote and Charles Bown:

“yes. WM should say that they were to comment only on the pipeline piece. Rationale for focusing only on pipeline was that we believe that pipeline was the primary contentions” – contentious – “issue here and that pipeline had more local and specific considerations that required requisite level of scrutiny.”

So you can read that for yourself. But Mr. Keating, it appears in this, is saying that, you know: Let’s proceed on the basis that it was outside their scope of work, so take it out.

MR. KENNEDY: That was not my position, Sir. My position I had – when I was looking at natural gas, I was looking at all options. And I knew that the liquefied natural gas was an issue, because I remember, Commissioner – again, you’ll have to excuse my non-technical ability to

describe this – but the liquefied natural gas, my understanding, would be bought by a tanker, there would be –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – you pay so much for per –

MR. LEARMONTH: Right.

MR. KENNEDY: – the MMBtus, or the Henry Hub price. Then it would – you do need a regasification and liquefaction, I think, facilities in order to make it work.

I want both. I mean, that's what the – even though Dr. Bruneau primarily dealt with the pipeline –

MR. LEARMONTH: (Inaudible.)

MR. KENNEDY: – some of the other individuals out there were raising issues with natural gas. I mean, I know that Mr. Martin had raised issues. So I didn't see the need to distinguish between a (inaudible) –

MR. LEARMONTH: No. You welcomed the full –

MR. KENNEDY: Yeah, I wanted everything –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – that's all I am saying to you, Mr. –

MR. LEARMONTH: No, but do you see here that Mr. –

MR. KENNEDY: That wasn't discussed with me.

MR. LEARMONTH: – Mr. Keating is saying: (inaudible) said “they were to comment only on the pipeline piece.” That's not true, is it?

MR. KENNEDY: Not from my perspective, because I remember this meeting in New York –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – so clearly and –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – Wood Mackenzie saying: If we give you a report –

MR. LEARMONTH: Yes.

MR. KENNEDY: – the report – there will be some differences between what –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – Ziff is saying and Dr. Bruneau or – and I said fine –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – I don't care about that.

MR. LEARMONTH: You expected their comments in the report to be released. Well, do you know – is that correct?

MR. KENNEDY: Yes, I did, certainly.

MR. LEARMONTH: Okay. And do you know what authority – I mean, this report was – the Wood Mackenzie and the Ziff reports were commissioned by government –

MR. KENNEDY: That's correct.

MR. LEARMONTH: – not Nalcor.

MR. KENNEDY: Yeah.

MR. LEARMONTH: So what place does Mr. Keating have to make this comment?

MR. KENNEDY: Sir –

MR. LEARMONTH: Can you explain that to me?

MR. KENNEDY: No, all I will say to you: Mr. Foote was very knowledgeable in the (inaudible) –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – he found Ziff. Mr. Bown, Sir, is very – as I keep saying – is very experienced and very – you know, I trusted Charles Bown.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And if there was reason that something is taken out or not in there, you'll have to ask Mr. Bown. But –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – I don't have any recollection, Sir, of –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and I see no – not only no recollection of it, why it was taken out – I have no reason –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – to see it taken out.

MR. LEARMONTH: But this is wrong to say this, that: "WM should say that they were to comment only on the pipeline piece."

MR. KENNEDY: Yeah.

MR. LEARMONTH: You welcomed their comments. This is not correct, is it?

MR. KENNEDY: I reviewed – in my meetings in July 29, 2012, in London – August 31, on my way back from an oil conference in Norway, meeting with Wood Mackenzie, and in my meeting of October 10, I discussed all aspects of natural gas with Wood Mackenzie, Sir.

MR. LEARMONTH: Right. So you don't have any explanation for the fact that it was removed – the LNG discussion was removed? Is that correct? You don't have any explanation for it?

MR. KENNEDY: I don't have any explanation for it.

MR. LEARMONTH: And you don't have any explanation for why Mr. Keating would make this up by saying there wasn't – they weren't supposed to comment –?

MR. KENNEDY: Again, Sir, in my dealings with Jim Keating, I always found him to be a very, you know, very good to deal with. I've –

I'm not going to attribute any ill motive to anyone, Sir.

MR. LEARMONTH: Yeah, well – the next exhibit is – but you were in – were you aware that Jim Keating was involved in contacting Ziff and so on in terms of this engagement?

MR. KENNEDY: Sir, I would've been –

MR. LEARMONTH: (Inaudible) government have made.

MR. KENNEDY: I would've been aware that there would be – that there could be – whether or not Nalcor was involved in the natural gas, I don't remember in terms of the Ziff paper, Sir. I don't remember any particular involvement. But whether or not they would have, I don't know. I – like, I knew with Manitoba Hydro International there had to be involvement because of the numbers.

But I thought with the natural gas – there was an issue, if I remember correctly, Sir, that – I don't know if I read this somewhere here or just heard it – but that there was the issue of the – whether or not we could get gas from Husky, for example. I think Husky was one of the groups.

MR. LEARMONTH: Right.

MR. KENNEDY: And I think that Mr. Keating had been – had some involvement or some consultation on that.

MR. LEARMONTH: Oh, yes. Yeah.

I'll refer you, please, to Exhibit 01196. It's tab 147.

MR. KENNEDY: So 11 –

MR. LEARMONTH: 01196, tab 147. It's volume 4.

MR. KENNEDY: Volume 4, okay, yeah. There's a concordance that's been provided that tells us the binder, Commissioner.

THE COMMISSIONER: Yeah.

MR. KENNEDY: Okay. So volume – and I lost it that quick. Volume 4, okay.

So volume 4; what tab, Sir?

MR. LEARMONTH: 147.

MR. KENNEDY: 147.

MR. LEARMONTH: So this is an email. The first one is April 2. This is just after the government announced the – that Ziff had been retained. Mr. Keating is writing McCloskey who's at Husky in Calgary.

MR. KENNEDY: I'm not sure –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – so Mr. McCloskey is ...?

MR. LEARMONTH: At Husky.

MR. KENNEDY: Oh, Husky. Okay, sorry, gotcha, yeah.

MR. LEARMONTH: So he says: Paul, "I should have added that it's 'all under control.' The province used Ziff to do a report on LNG. We had used PIRA. In a public forum, its better to use a 3rd party to dismiss.

"We will work with Ziff so they understand our NG opportunity or lack thereof."

Were you aware –

MR. KENNEDY: No.

MR. LEARMONTH: – that Mr. Keating was involved in these discussions –

MR. KENNEDY: No.

MR. LEARMONTH: – with Ziff and Husky?

MR. KENNEDY: "... its better to use a 3rd party to dismiss."

MR. LEARMONTH: Yeah.

MR. KENNEDY: There was no indication, Sir. I didn't go into this, Commissioner –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – with a view that Ziff were going to agree with us. I had no idea.

MR. LEARMONTH: Yeah.

But do you think it was appropriate for Nalcor to get – become involved in this?

MR. KENNEDY: No, I don't.

MR. LEARMONTH: No. You agree that they shouldn't have.

MR. KENNEDY: To this extent where you're writing this, you know.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I mean there were certain things, Mr. – and I shouldn't say – let me try to rephrase that a little, Mr. ...

There are certain things that Nalcor had to be involved in. Whether or not they – you know, the contact with Husky, I'm not sure because government, Commissioner – we – I had met with Husky executives, I met with oil executives all the time, so I'm surprised at this. Yeah.

MR. LEARMONTH: Yeah.

And, also, if we go to Exhibit 01200, that's tab 148.

MR. KENNEDY: Is this the same volume, Sir?

THE COMMISSIONER: Yeah.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Okay, got you.

MR. LEARMONTH: And this is shortly after your government had retained Ziff. It's not like it was a long winding process, it's shortly after.

So Keating says, April 12, 2012 to Ed Martin: "Spoke with Ziff 3 hours. Real good.

"Ziff said 'Husky says they are considering using gas for pressure support in the future. That's it. End of story.'

“I pile driven another dozen issues. They most like the one that ‘oil runs out in 2023 or 2028 at latest.’

“End of pipe option.”

Do you have any problem with this?

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: Do you have any problem with this?

MR. KENNEDY: Yes, I do.

MR. LEARMONTH: Why?

MR. KENNEDY: Sir, we hired – the part of the issue here of exploring natural gas, Commissioner, was that there were real issues raised out in the public. I didn’t know which – you know, what – who was right and who was wrong. I didn’t –

MR. LEARMONTH: Mmm.

MR. KENNEDY: One of the issues with Dr. Bruneau, of course, was the availability of gas and the Atlantic Accord; I think it was Section 85. But in any event, I wanted answers to look at this. I wasn’t looking for reports that would simply satisfy Nalcor.

MR. LEARMONTH: Yeah.

MR. KENNEDY: What I was looking for, at the end of the day, Mr. Commissioner, was the best option for the people of the province.

MR. LEARMONTH: Right.

MR. KENNEDY: We needed energy. We – and all I wanted was: Which is the best way to do it?

MR. LEARMONTH: Yeah.

MR. KENNEDY: So I had an open mind when it came to natural gas. So when we hired – when I went to – or I wouldn’t have, I mean Charles would have gone to Wes and said: Find us someone who can do a –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – natural gas view. They hired Ziff. It wasn’t meant to be a report for Nalcor, Sir, it was meant to be a report for us.

MR. LEARMONTH: Well, do you see the level of involvement that Nalcor had?

MR. KENNEDY: I had no idea of that.

MR. LEARMONTH: And you think it’s inappropriate, do you?

MR. KENNEDY: Yes, I do.

MR. LEARMONTH: Okay.

And, also, in answer to that email –

MR. KENNEDY: Except – excuse me, Mr. – except to the extent that the issue of whether or not gas was available – commercially available –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – in terms of – that would’ve been an issue that Nalcor might have some involvement. But to then go –

MR. LEARMONTH: Yeah, but they’re speaking to Ziff for three hours –

MR. KENNEDY: No, that’s not – no.

MR. LEARMONTH: That’s not appropriate, is it?

MR. KENNEDY: No.

MR. LEARMONTH: And then Mr. Martin has replied to this email on P-01200 at the top. So Keating is saying – Mr. Keating is saying: “I pile driven another dozen issues. They most” And then his answer, Mr. Martin: “Bingo. Are they definitely done?”

So based on this, it looks like Nalcor had done their work and the natural gas option that Ziff was supposed to review was over.

MR. KENNEDY: That might have been their view, Sir. It certainly wasn’t mine; I was very open to it.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And I was trying to explore in a –

MR. LEARMONTH: But you never knew about Nalcor?

MR. KENNEDY: No, I didn't know (inaudible). No, I didn't. I didn't.

MR. LEARMONTH: You know, I guess it's the same point that I've made before that you're full – you're very aware of what an independent report is?

MR. KENNEDY: Yeah.

MR. LEARMONTH: And I suggest that interference like this affects the integrity of the independent review. Do you agree with that?

MR. KENNEDY: I do, Mr. Learmonth, but, ultimately, I'm the minister, Sir. I'm the one who was responsible for hiring or involved in hiring these people.

MR. LEARMONTH: Yeah, okay.

Anyway, next exhibit is P-01229, that's tab 129.

MR. KENNEDY: So is that the same volume, Sir?

THE COMMISSIONER: Volume 3.

MR. LEARMONTH: Three.

MR. KENNEDY: Okay, sorry volume 3, which tab?

MR. LEARMONTH: 129, please?

MR. KENNEDY: Okay, 129. Okay.

MR. LEARMONTH: Okay, now this is – well, a note to yourself from Vanessa –

MR. KENNEDY: Okay, sorry, I don't have the same notes here.

THE COMMISSIONER: No, I don't either.

MR. LEARMONTH: 129, Exhibit 01229?

MR. KENNEDY: 129.

THE COMMISSIONER: Tab 29, so it's not tab 30. You don't –

MR. LEARMONTH: Well, tab 29, volume 1, yeah.

MR. KENNEDY: Volume – which, sorry? Which one?

MR. LEARMONTH: Volume 1.

MR. KENNEDY: Volume 1, okay. I know the note, I remember it clearly.

Volume 1, tab – okay, sorry. Go ahead, Sir.

MR. LEARMONTH: Okay, now do you see it?

MR. KENNEDY: Yes, I have it. Yeah.

MR. LEARMONTH: Okay, not this is February –

MR. KENNEDY: Wait now, Sir –

MR. LEARMONTH: – February 13, 2012. So by that time in February –

MR. KENNEDY: Yes, okay.

MR. LEARMONTH: – you retained Ziff. But, anyway, so you're over – you met with Wood Mackenzie, did you?

MR. KENNEDY: The last meeting prior to that would have been January 18, 2012, Sir.

MR. LEARMONTH: Okay. And you appear to have put a lot of reliance on Wood Mackenzie?

MR. KENNEDY: Yeah, but Wood Mackenzie, when we met with them in January, I don't think we were talking about a natural – or it wasn't – the big issue for me at that point, Sir, had been the issue raised by Mr. Martin, Mr. Cabot Martin, as to whether or not shale gas affected the ability of the US markets for export in terms of big blocks of energy being available for exports, Mr. Commissioner.

So in the January 18 meeting we were, again, discussing the energy markets, we would have discussed the price of oil. Shale gas was a big issue at that point because of what it was doing

to the United States in terms of electricity – provision of electricity. And we would have talked about – there could have been a discussion about natural gas. Again, I'd have to go to my notes, if you want me to, Mr. Learmonth, to be specific.

MR. LEARMONTH: No. No, that's all right. Now, the next document is P-01269, tab 75.

MR. KENNEDY: Okay, so wait now, Sir, the note you just – your question, Sir, on the note was (inaudible) I placed reliance on Wood Mackenzie?

MR. LEARMONTH: Yes.

MR. KENNEDY: Yes, certainly, yeah.

MR. LEARMONTH: You would?

MR. KENNEDY: They were – they had a worldwide reputation from what I understood – the same thing when I went to meet with Dr. Mark Schwartz of PIRA. I understood these guys as worldwide experts.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Yeah. Well, I'm not suggesting otherwise.

MR. KENNEDY: Okay.

MR. LEARMONTH: No.

MR. KENNEDY: No, and I didn't take your comments that way.

MR. LEARMONTH: No, no.

Exhibit P-01269, that's tab 75.

MR. KENNEDY: In tab ...?

MR. LEARMONTH: Tab 75.

MR. KENNEDY: That's in which volume, though, Sir?

THE COMMISSIONER: That's in tab 2.

MR. LEARMONTH: Two?

THE COMMISSIONER: Book 2.

MR. KENNEDY: Book 2?

MR. LEARMONTH: Book 2, yeah.

MR. KENNEDY: Oh, sorry. I'm familiar with the note, Sir.

MR. LEARMONTH: Okay, so this a meeting that you had in London, England, I take it, on August 31, 2012?

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: Okay.

And what was the purpose of this meeting to your recollection?

MR. KENNEDY: Yeah, I was on my way back. I think we – again, I could be wrong on this, Sir, but I had been at the – there was an oil conference. There were two major oil conferences that the province went to: one was in Stavanger, Norway, and the second one was in – the big one in Houston, Texas.

I think I was at the oil conference in Stavanger. So then we decided, on the way back, to meet with Wood Mackenzie. And, Sir, if you – but if you just – and I know you're looking at my typed notes. Just, if you go to page 3 of that exhibit, Sir.

MR. LEARMONTH: Okay.

MR. KENNEDY: And you'll see the first page there: Natural gas versus the development of Muskrat Falls, okay? Then, underneath it I've got two separate areas: LNG slash importation. Are the costs outlined by Ziff accurate? These are the questions I'm asking. Any concerns about the Ziff report?

Then there is a discussion of the Henry Hub price, Sir, which at that point could have been 2.50, \$3 versus the delivery price at Holyrood.

Then your next section you'll see, Mr. Commissioner, in my writing, if you go down a little bit, is pipeline from the Grand Banks.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So, I'm going through all of this – the next page, Sir, you'll see the domestic options versus the import options. You go down further on that page 4, Commissioner, you'll see regasification, when we're talking about \$10 per Mcf, and they – right here, it's, you know, the 1 billion to 2 billion way too high.

MR. LEARMONTH: Yeah.

MR. KENNEDY: WoodMac are disagreeing with Ziff, and I had no problem with that.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Then they're talking about building the regasification terminal, and then the cost of – so there was – it was clear to me, Sir, in this meeting, that Wood Mackenzie did not agree with Ziff on everything, and I didn't have a problem with that.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So those are the notes.

So then what I do, Mr. – you'll see, Mr. Commissioner, what I'm doing is I'm writing notes on essentially what's being told to me. I might have some questions, but I'm writing down – even if I don't have a great understanding – I'm writing down what's being told to me, and we go through all of this.

Now, you'll see at page 7 – and I apologize, Mr. Learmonth, but this is really the question I was asking my – you know, I was asking everyone. In page 7, you will see there's at the second – the third asterisk from the bottom, Commissioner: "at what number does natural gas become economically feasible than Muskrat Falls?" I mean, that's –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – the whole issue for me.

Then, I'm talking about Ziff regasification. So, what I do, Sir – go to page 6 – and, again, I apologize for going through this, but – you look at the pipeline report. Now, I'm not sure what I'm referring to, Sir – the last page – page 8 is –

it's page 6 in my notes, but page 8 – there's a pipeline report I'm referring to. I'm not quite sure what the pipeline report I'm referring to is, Sir.

So I'm reviewing all of these issues.

MR. LEARMONTH: Yes.

MR. KENNEDY: I wanna find answers. So I then come back, and what I – my normal practice, now, I will provide a report to the premier as to what I found out.

MR. LEARMONTH: Okay.

MR. KENNEDY: I'm summarizing my notes, essentially, Mr. Learmonth.

MR. LEARMONTH: Yeah, so you're proceeding with an open mind to considering –

MR. KENNEDY: I'm very open on this, Sir, yeah – I can – I thought natural gas – Commissioner, I thought natural gas – of all of them, okay – of –

MR. LEARMONTH: Yeah.

MR. KENNEDY: Natural gas; you had wind; you had 20 – waiting –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – for Churchill; you had Gull. I thought that natural gas – in terms of the options, that natural gas was a real option, yeah.

MR. LEARMONTH: Yeah.

Okay, the last document I'm gonna refer to at this – before we break is 01276, tab 85.

MR. KENNEDY: Yes. Again, what you see – that's the same thing, Mr. Commissioner –

MR. LEARMONTH: So you're – this is another meeting with –

MR. KENNEDY: Yeah, what you'll see is that there – you've got my handwritten notes – four or five pages, or looks to be – no, actually there's a lot of handwritten – there's nine pages of handwritten notes.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And it's all about natural gas. We have a – we have people on the phone, if I remember correctly, Commissioner –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – I'm – Charles Bown was with me; my executive assistant, Tracy Shute; and my communications director Heather MacLean. We've got Bob Fleck and Wade – Bob Fleck is the New England-energy guy. He would have dealt with the energy markets. David Barrowman and Massimo are the two London Wood Mackenzie analysts that we had met with a couple of months before. So they're actually on the phone with us. Then there's a lady by the name of Ann Marie who's dealing with the oil – with the price of oil.

So we're going through – there's a discussion about, again, everything and there – an interesting – and again, I apologize for diverging, Mr. Commissioner, but I don't know if you've heard this, but there's an interesting statistic at the bottom of page 8 – or page 2 of my notes. The US electricity market, Sir: 40 per cent were coal, 30 per cent was gas, 20 per cent was nuclear and only 10 per cent was hydro, and in the UK, there was only 8 per cent hydro.

MR. LEARMONTH: Right.

MR. KENNEDY: So – sorry I digress. I –

MR. LEARMONTH: No, that's fine.

MR. KENNEDY: – get a little bit excited there, Mr. Learmonth –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – about that. And so then I come back, and I summarize my notes again –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – send it to the premier in a typed copy, yeah.

MR. LEARMONTH: Yeah.

So you're meeting with him. So obviously Wood Mackenzie had been asked to comment on LNG, because you're meeting with and discussing it.

MR. KENNEDY: It was a prime topic of discussion, Mr. Learmonth.

MR. LEARMONTH: Yeah. So – and I'm just referring in my own mind back to Mr. Keating's comment on Exhibit 01206, but anyway we've already gone through that.

MR. KENNEDY: And one last point, Mr. Learmonth, I'll tell you is that there were no Nalcor officials. Whenever I met with Wood Mackenzie, other than that January 18 meeting –

MR. LEARMONTH: Yeah, yeah.

MR. KENNEDY: – there were no wood – there were no Nalcor officials present with me, Sir, when I first met – when I met with Wood Mackenzie.

MR. LEARMONTH: Yeah.

MR. KENNEDY: When I met with Wood Mackenzie in July 29, 2012, the premier was present, Commissioner, and the chief of staff was present. When I went back to meet with Nalcor – I met with them in August, and I met with them October –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – these were government officials.

MR. LEARMONTH: Yeah.

MR. KENNEDY: There were no Nalcor officials present then. The only meeting that I had –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – with Wood Mackenzie where Nalcor officials were present was January 18, 2012, where Mr. Martin came back to discuss –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – the issue of energy markets. Sorry.

MR. LEARMONTH: Oh, that's fine. I certainly accept that. But there were no government representatives present when Mr. Keating was dealing with Ziff and Husky either were there?

MR. KENNEDY: Correct, yeah. By the looks of it, yeah.

MR. LEARMONTH: Yeah.

Well, that's the end of that section. So if it's a good time to break, that would be fine for me.

THE COMMISSIONER: All right.

We'll take our afternoon break then and come back at 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: All right. Mr. Learmonth, when you're ready. Mr. Kennedy.

MR. KENNEDY: Commissioner.

MR. LEARMONTH: Mr. Kennedy, just one final question on gas, specifically shale gas. Were any inquiries made or reviews done by government to examine the possibility of a shale gas development?

MR. KENNEDY: The shale gas – Commissioner, the way shale gas arose was in a context of – I think certain public comments made by Cabot Martin, where he had talked about the shale gas – the revolution of the – of what was going on in the United States.

And so when we went to – I met – the first meeting with Wood Mackenzie on November 28, 2012, was specifically about shale gas, Mr. Learmonth. But it was more about how shale gas

would effect the energy markets because, as you remember Commissioner, 40 per cent of Muskrat Falls was for the province, 20 per cent for Emera, and then there was 40 per cent excess.

So the question became: Were there any markets for a block of power, 300 megawatts – 200 megawatts of power? And when I met with Wood Mackenzie, shale gas was talked about, Mr. Learmonth, in terms of how now the natural gas was being more – was used more in the New England and northeastern states for electricity along with wind. And that hydro power – big hydro was not considered to be part of the renewable energy portfolio.

So that's the context in which shale gas was discussed and it was how the energy markets were changing in the United States as a result of shale gas.

MR. LEARMONTH: Okay.

MR. KENNEDY: There was no exploration about whether or not shale gas existed in Newfoundland and Labrador. My recollection, Mr. Learmonth, is that there were significant shale gas deposits in New Brunswick.

MR. LEARMONTH: All right, thank you. How would that effect our exports?

MR. KENNEDY: Yeah, well that was the issue because part of the issue, Commissioner, in terms of – as I talked about earlier today, we were looking at rates but we were also looking at rate mitigation. Even at the 14.3 cents a kilowatt hour, there were going to be excess monies from the sale of power.

So the – if I remember correctly – there was a 300 megawatt recall block, and there was a 225 twinkle block from the Upper Churchill. Then we had – if we had – I guess it would be 1 terawatt of power to export, was there a market for it? Because Quebec was trying to export large amounts of hydro into the United States, and there was no real market.

So with the change in the – shale gas was bringing about in New England, along with wind, there was no real market. I was quite surprised when I was told by Wood Mackenzie,

that there was no real market for big blocks of power. So that caused me certainly, some – a consternation and confusion, Mr. Learmonth. And I came back and I met with Mr. Martin, and I said like: What’s going on?

My understanding then is that the spot markets are on – and I don’t understand all this, Mr. Learmonth. But there are spot markets, which energy is sold on the spot markets every day, and the energy could be sold depending on the peak – air conditioning, for example, used in north eastern United States, or it could be the cold winter. But there was always a market for energy.

So when we went back and met with Wood Mackenzie on January 18, Mr. Martin was present and that was part of that discussion.

MR. LEARMONTH: All right.

MR. KENNEDY: 2012. January 18, 2012. Sorry.

MR. LEARMONTH: Okay. Thank you. Now I’d like to go to tab 3, Exhibit P-01168. Do you have that before you, Mr. Kennedy?

MR. KENNEDY: No. So where would I find that?

MR. LEARMONTH: 01168. Tab 3.

MR. KENNEDY: Tab 3. Volume?

MR. LEARMONTH: 1.

MR. KENNEDY: Okay, I have that, Sir.

MR. LEARMONTH: Now, this is an email February 3, 2011, Charles Bown to Richard Wardle. Who’s Richard Wardle?

MR. KENNEDY: I don’t know, Sir.

MR. LEARMONTH: Okay. Anyway, this is draft shareholder letter of expectation and it says, he – Mr. Bown says, “Dick; I’d appreciate your review. As noted in the title, it’s a letter of expectations from the Shareholder to Nalcor and is a new element in our corporate governance activities. This document is particularly important at this time as Nalcor is engaged in is

planning activities and is also preparing its Annual Report for Transparency... We have also prepared a Shareholder Handbook that is in final draft.”

Then it says, “My objective would be to have Robert” – I take it that would be Robert Thompson probably (inaudible).

MR. KENNEDY: I – that would be my assumption, Sir.

MR. LEARMONTH: Okay. Now, whatever became of this shareholder’s letter of expectation which is on page 2, 3, 4, 5 and 6 of the exhibit?

MR. KENNEDY: I don’t ever remember seeing this or it being discussed with me, Mr. Learmonth.

MR. LEARMONTH: Yeah. But it was an initiative of your department, was it not?

MR. KENNEDY: It looks to be, yeah. I see Minister Skinner or former Minister Skinner’s name there certainly, yeah.

MR. LEARMONTH: Yeah. So you’ve never – you have nothing to say about this document?

MR. KENNEDY: No, I have nothing to add. I’ve never seen it.

MR. LEARMONTH: Yeah, okay. So – well, I guess it’s obvious then, you don’t know what happened to it?

MR. KENNEDY: No.

MR. LEARMONTH: Because it was never signed as far as we know.

MR. KENNEDY: No.

MR. LEARMONTH: You don’t have any information on it? Okay.

Tab 4, Exhibit 01210. This is a note, April 9, 2011. Before we get into it, you’re a prolific note-taker, are you?

MR. KENNEDY: Yes, I am.

MR. LEARMONTH: It appears that you document all important things or many important things.

MR. KENNEDY: I try to, Mr. Learmonth, yes.

MR. LEARMONTH: So if you're going to a meeting, you're usually taking notes?

MR. KENNEDY: (Inaudible) – But –

MR. LEARMONTH: Not always but usually?

MR. KENNEDY: No. As I explained earlier today, Commissioner, it's a leftover from my days as a trial lawyer. And this started in government when I was in Justice and from – right through 'til I ended, that I would make notes of what was going on in meetings.

I made them, Commissioner, because it allowed me to refresh my memory when there'd be – the next time there would be another meeting. But also, it was a way of documenting for myself what exactly was going on. I – in this – in the Natural Resources portfolio alone, I don't know how many notes – pages of notes – there's probably hundreds of handwritten – pages of handwritten notes. So to answer your question, Mr. Learmonth, I tried to write down what I perceived as being important. There – I would at times attribute the comments to – to individuals if they made them.

And there were essentially two sets of notes – one where I would write down what people were saying, and a second set of notes you'll see like: Muskrat Falls to-do list, issues and questions – those would be my notes to myself or the questions I was asking myself or issues I had to look into.

MR. LEARMONTH: All right.

Now at tab 4, Exhibit 01210. This is April 9, 2011. What is this a record of?

MR. KENNEDY: This would have been – it appears to me – I'm in – at that point, in April 2011, I'm the Minister of Health. So this would either have been a Cabinet meeting, a presentation by Nalcor, or a – it could potentially be notes I made to myself, Sir, having reviewed documents – although I don't

know why I would be reviewing extensive documents at that point, considering the fact that I was the Minister of Health.

MR. LEARMONTH: Okay.

Tab 6, Exhibit 00807. This is a decision/direction note dated May 10, 2011.

MR. KENNEDY: Yes.

MR. LEARMONTH: And it's signed – prepared by Paul Myrden, Department of Finance. Approved by Terry Paddon and Charles Bown. And also the ministers – Minister Marshall and Minister Skinner. Are you familiar with this document?

MR. KENNEDY: I'm only familiar, Sir, in terms of – I know it's come out at the Inquiry. I would never have seen this document. I – excuse me, I have no recollection of having seen that document at any time while I was in government.

MR. LEARMONTH: Okay. Well, you've read it now, have you?

MR. KENNEDY: I've looked at it, Sir, yes.

MR. LEARMONTH: So – I mean, it speaks for itself, but you have absolutely no recollection of what happened to it or why it wasn't implemented, because we know it wasn't.

MR. KENNEDY: No, it – it goes back – let me put it this way, Mr. Learmonth, I don't know what happened with and I have no recollection of discussing it, but it is signed by – I know who Paul Myrden is, and it is signed by the two ministers.

MR. LEARMONTH: Yeah. So that – that'd be a fairly persuasive document, wouldn't it?

MR. KENNEDY: Oh, if Ministers Skinner and Marshall signed, certainly, yes.

MR. LEARMONTH: Yeah. And you weren't consulted on this document, either before it was prepared or after it was prepared? Because –

MR. KENNEDY: No, I –

MR. LEARMONTH: – we understand it was sent to the premier.

MR. KENNEDY: Yeah, it could have been. I was in the – I was in the Health department at that point, Sir, and we had – it was a fairly busy place on a daily basis, as the Minister of Health.

MR. LEARMONTH: Okay, well you can't shed any light on that then.

MR. KENNEDY: Not at all, Sir, no.

MR. LEARMONTH: Okay. I just would point out on page 2, at that bottom of page 2, it says: "In addition to the above, Nalcor is also planning to undertake additional due diligence as follows: Completion of a project cost analysis by Independent Project Analysis Inc., an international organization that specializes in the review of large scale projects."

That report was never prepared.

MR. KENNEDY: Not something I ever saw, no.

MR. LEARMONTH: No, there was never any engagement of Independent Project Analysis Inc. for DG3.

Tab 7 is a record of – tab 7, Exhibit 01212, dated October 27, 2011.

What is this a record of, Mr. Kennedy?

MR. KENNEDY: Sir, if you look at the back page, page 2, it's the seating arrangement in the House of Assembly. So I don't know if we're in the House of Assembly and I'm making notes to myself. That's what it looks to be and for some reason I've got names crossed out. So I was making notes everywhere; so I'm sitting there – by October 13, I think – I became – excuse me, the election was October 9 or 11.

I became minister in October 28. October 13 I read the Environmental Assessment report and made notes on that. October 17, I reviewed the Navigant report. So I was starting to get an idea of what was going on with the project. So then, on October 27, it looks like I'm making notes to myself and it looks to me, although I can't be certain of this, that I'm actually sitting in the

House of Assembly, as I'm taking a piece of their paper and writing out pros and cons, just trying to figure out in my mind – because that's the way I was approaching this, Mr. Learmonth, I was trying to determine what my task was as the minister – where we were trying to go. So I was trying to understand the Muskrat Falls. So if you're going to look at the pros you also have to look at the cons; and then below that, there is a number of questions.

MR. LEARMONTH: All right.

Now tab 8, Exhibit 01213.

This is – I think you were appointed to Natural Resources – as Natural Resources minister in October 28, 2011. This is November 2, 2011, it's a news release and you're quoted as saying: "We have to do a better job in terms of making our, getting our message out there," Jerome said and then you go on two paragraphs lower, "The questions being raised are valid. The issues are valid, and they're certainly ones that we've addressed and will continue to address."

Was this a shift in, sort of a public relations initiative? 'Cause you say we have to do a better job in terms of making – getting our message out there.

MR. KENNEDY: There seemed to me, Mr. Learmonth – you remember, we had gone to an election in the summer of – or the fall of 2011 – summer 2011 – and there were confusing messages out there. Unfortunately, I might have been a little bit idealistic and more – in this interview than – thinking that I could clear some of it up. It – my goal was to try to address the issues that were being raised, and to clarify for the people of the province what exactly was going on.

MR. LEARMONTH: Okay. So you tried to improve the message to the public – the communications and so on?

MR. KENNEDY: Well, we were trying to make sure we were telling people – trying to be as transparent – and it might sound a bit odd, Mr. Learmonth, in regard of what – the kinds of materials we've gone through today. But I was trying to be transparent –

MR. LEARMONTH: Uh-huh. Yeah.

MR. KENNEDY: – and open to the people of the province.

MR. LEARMONTH: Okay.

Now Exhibit at 9– tab 9 – Exhibit 01214. This is an email from you to Diana Dalton. Who is Diana Dalton?

MR. KENNEDY: Sir. Wait now, Sir. What –? Okay. Yes.

MR. LEARMONTH: Tab 9.

MR. KENNEDY: Uh –

THE COMMISSIONER: (Inaudible.)

MR. KENNEDY: That’s not mine, no Sir.

THE COMMISSIONER: That’s not ours either.

MR. LEARMONTH: Oh to Jerome Kennedy. Sorry. I’m sorry about that.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Yeah. Okay. I’m sorry about that.

MR. KENNEDY: Appears that’s Mr. Bown met with Maureen Greene.

MR. LEARMONTH: Yes. Okay. You’re – I stand corrected.

Okay. So Mr. Bown had met with Maureen Greene on November 24. Were you aware of these meetings with Maureen Greene?

MR. KENNEDY: Sir, I was aware, and I became aware shortly after becoming Minister that there were issues – the PUB had issues with the way information was being delivered by Nalcor – especially with the timelines that were imposed upon them.

So there were meetings, and that note from Mr. Bown, actually, corresponds with what I have as my first note in relation to a PUB meeting. So there were issues – we were trying to define the

issues. I knew Mr. Wells had problems. And he had valid concerns from what I could see – from the letters that I reviewed.

MR. LEARMONTH: All right. And in paragraph one – number 1 – there’s a – well, it starts 1, 2, 3, 4, 5 and then “Aside from the schedule a number of issues were identified.”

Do you see that? Halfway down the page.

MR. KENNEDY: Yes I do. Yeah.

MR. LEARMONTH: Okay. The Consumer Advocate “plans to have his expert (Knight Pieshold) prepare a report for release.”

Is it correct that you instructed the Commission – the Consumer Advocate – that he should not obtain a report? That he would have Knight Piesold for advice but –

MR. KENNEDY: I think that was the letter, Sir, that –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – that went to Mr. –

MR. LEARMONTH: Was there a reason why you didn’t want the Consumer Advocate to have a report prepared by Knight Piesold?

MR. KENNEDY: I think, Sir, it had to do – and in the letter itself – I think it had to do with time frames but Mr. Learmonth, this – it might be helpful, Sir, if I could – and to put this in perspective, if I could refer you to – or if I could refer to – excuse me, Sir –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – not refer you to – if I could refer to my first note in relation to the Public Utilities Board, ’cause a couple of key points come out during that –

MR. LEARMONTH: Okay, well if you can refer –

MR. KENNEDY: Yeah, so it would be tab 45 in binder 4.

CLERK: P-01525.

MR. LEARMONTH: One (inaudible) –

MR. KENNEDY: Yes, it would be 01525, sorry.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And page 1.

MR. LEARMONTH: All right.

MR. KENNEDY: And this is the first note I have, Sir, of a meeting in relation to the Public Utilities Board. And I think that Mr. Bown's meeting with Ms. Greene stems from this meeting itself. And at that meeting, Sir, you'll see there's – Robert Thompson, Don Burrage, Diana Dalton, Brian Taylor, Charles Bown and myself.

And we were looking at various roles that people would be playing here, because Mr. – the chair of the PUB had expressed certain concerns, but meanwhile Nalcor were telling us that they had provided the information. And so, I was stuck in a situation that – and we were stuck, as a government, as a minister, and like, I don't know who's saying what. So my advice to the premier was that we retain a senior counsel from – a senior lawyer from downtown to assist in this matter, and to see if things could be moved along. That was one issue.

Then –

MR. LEARMONTH: That was Mr. O'Reilly (inaudible) –?

MR. KENNEDY: That was Tom O'Reilly, Sir, yeah.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yeah.

And then there was – and one of the reasons that – and Mr. Burrage was present because we were acutely aware of the issues with the PUB; that we had to be careful how we approached it. So the – Mr. Bown met with Ms. Greene as a result, I think, of this meeting to see if he could facilitate, or how we could improve the flow of information.

So that was the first meeting with the PUB. If you go over, Sir, to – and this becomes a more important one, I think – if you go over to December 5 at page 6 –

MR. LEARMONTH: Page 6, all right.

MR. KENNEDY: Yeah, and again, there's a couple of pages of notes, and there's a reference there – so Robert would be Robert Thompson, Gilbert Bennett, Tom O'Reilly, Don Burrage, Charles Bown, Brian Taylor and myself.

And then Mr. Bown summarizes his conversations with Ms. Greene – that the PUB were looking for an extension. Then, if you go down a little bit further, Sir, under the blacked out part – which I don't think that's important – I checked my note, I don't think that's important – Robert, the premier wanted the PUB report out while HOA was open.

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: So that was one point, Sir, that was very important.

Then you'll see I've got an asterisk by the name Gilbert – “wanting to be on site in mid-Feb/12 – 16 weeks needed to make the road; imperative that we be on the site in July; if do not start with power house at the end of 2012, then first power is in trouble.” That's the note. “March may be doable; June causes big problems.”

Then my note says, I expressed “concern about too much work being done w/o PUB report.”

So you can see that at this point, in terms of the PUB, it's crystalizing that – well, we want to have this matter dealt with in the House of Assembly. That was the premier's wish, if we could, obviously. And then the – Nalcor were basically outlining the timelines that they saw as important.

MR. LEARMONTH: Yeah, so once again I'll just make the point that Nalcor's incurring expenses, they're working on the project and it isn't even close to sanction.

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: Yeah. Is that a bit of an unusual situation? I mean, I know this point about they had to get in there early in order to achieve first power date. But it seems unusual to commit a large amount of money, spend a lot of money, build roads, if the project hasn't even been sanctioned.

MR. KENNEDY: The way Mr. Martin explained that to me, Sir – and I think that's in the meeting of October 18, 2012 – I could be wrong on that. But I think it's when him and I are meeting and going over the costs, that Mr. Martin says: This is why it's much better to spend money upfront to determine whether or not – how far to determine – to better determine the costs.

So that was his explanation to me as to why you spend money upfront at the DG2 stage, to determine then where you're going with (inaudible) – DG3 gives you much higher level of certainty. I can go into that note if you want, but that's my recollection of it.

MR. LEARMONTH: Yeah, but you're still spending money on a project –

MR. KENNEDY: There's money being spent, yeah.

MR. LEARMONTH: – you don't even know it's gonna be sanctioned.

MR. KENNEDY: That is correct, yes.

MR. LEARMONTH: Yeah. Well anyway, that's what happened –

MR. KENNEDY: And that's – I think somewhere in one of these notes, I make the point like: How much money should we be spending without the PUB report?

MR. LEARMONTH: Right. Yeah.

The – at the end of this Exhibit 01214, tab 9 – and the last paragraph Bown writes: "PUB was advised not to send a letter seeking an extension to their current deadline of Dec 31 without first consulting with NR."

On what basis would he communicate that to –?

MR. KENNEDY: I have no idea, Sir.

MR. LEARMONTH: Yeah.

MR. KENNEDY: You'll have to ask Mr. Bown that. I don't –

MR. LEARMONTH: I mean, you know, if they wanna ask for an extension I would think it's up to them, but anyway.

MR. KENNEDY: That's fair.

MR. LEARMONTH: We can ask that of Mr. Bown.

Tab 10 – now here we have a letter that – tab 10, P-00045 – you write this letter –

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: – concerning a communication from Mr. Wells, dated September 22, that he cannot meet the deadline. And so then you give an extension to March 31.

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: Yeah. Was there any discussion with Mr. Wells? Because we know at some point they requested an extension to June 30.

MR. KENNEDY: That's correct, yeah.

MR. LEARMONTH: Yeah. But you weren't prepared to give that.

MR. KENNEDY: No, that's correct.

MR. LEARMONTH: Yeah.

And the reason was that the – you wanted to get it into the House of Assembly by June?

MR. KENNEDY: There were a number of reasons, Sir. Again, you remember, like, these meetings are taking place, there's different officials present and there's a number of people and discussions are had. And one of the issues, Sir, was the House of Assembly. The second was Nalcor's timelines. The third, though, was that the – there was a feeling among some people that Nalcor – or, excuse me, that the PUB

had six months and now another three months would be appropriate, and then there was the other issue that MHI had been hired to do an independent –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – report.

MR. LEARMONTH: Yeah. However, given the fact that there was a long delay in Nalcor providing documents – their submission wasn't filed, I think, until November 11 or thereabouts, 2011 – much later than had been expected. I suggest to you that the amount of time that the public utility board was spending on this was not unusual.

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: For a review of this magnitude, I suggest to you that it wasn't unusual to request an extension to June 30.

MR. KENNEDY: Mr. Learmonth, the – if I could – I don't disagree with you, Sir. Again, it's a – Commissioner, as I've said on a number of occasions, I've looked at this, you know, in my own mind so often – are there things we could've done differently? I came into portfolio, Sir, and the – a lot of the dealings with – the relationships with the PUB had already – were well –

MR. LEARMONTH: Yes.

MR. KENNEDY: – were well in place.

MR. LEARMONTH: Yes.

MR. KENNEDY: By the time I met – or – and I know you'll get to that – I subsequently meet with Mr. Wells – is the chair. Mr. Wells' position was not unreasonable, Sir, in terms of – as the chair of the PUB – that we're not getting the information from Nalcor. Now, whether or not – I'm not judging, I'm not saying one was right or one was wrong. It's just – we had two different versions of events and he's saying: I don't have the information required. But we're being driven by timelines that ultimately turn out to be artificial.

MR. LEARMONTH: Yeah. You recognize that now, yeah.

MR. KENNEDY: I recognize that now, Mr. Learmonth. I guess, Commissioner, you know, that's one of the benefits of hindsight. But I'm putting myself in the context of what took place at the time, Commissioner –

MR. LEARMONTH: Yes.

MR. KENNEDY: – everything that's going on and trying to determine was the decision reasonable at the time.

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: So I know this is a thorny area, Mr. Learmonth, and it's one where looking back on it now, I mean, it's a pretty easy answer for me.

MR. LEARMONTH: Yeah. All right.

Tab – oh, so that's tab 11. That's a request – tab 11 is a request –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – for an extension. It's Exhibit P-00046. Mr. Wells requests, or he says that "Unfortunately, I must advise that it is not possible for this review to be completed any earlier than the end of June."

But anyway, we've already –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – we've already covered that. And that wasn't (inaudible) – that request was not granted.

Now, in tab 12, this is a letter that you had with – a letter you sent to Thomas Johnson, the Consumer Advocate, in response to his letter of December 15. 00583.

MR. KENNEDY: Yes, I see it.

MR. LEARMONTH: And you state on page 2 of the exhibit in the last sentence of the first paragraph: "It was not contemplated that the

Consumer Advocate would complete its own independent analysis of the project.”

Now, why not? Wouldn't it be normal for the Consumer Advocate to complete an independent analysis of the project?

MR. KENNEDY: My understanding, Sir, the role of the Consumer Advocate is to protect the ratepayer, and so, in normal circumstances, one would think that, yeah, that statement would be accurate, yeah.

MR. LEARMONTH: Yeah. But in order to have a full review, don't you think it would be reasonable for the Consumer Advocate to want to get his own –

MR. KENNEDY: Yes.

MR. LEARMONTH: – advice?

MR. KENNEDY: Yeah.

MR. LEARMONTH: And that wasn't granted?

MR. KENNEDY: No, it wasn't, Sir.

MR. LEARMONTH: Yeah. And the reason for that, once again, was the schedule that you –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – felt you were under?

MR. KENNEDY: In – I met with the Consumer Advocate, Sir, on January 3. I –

MR. LEARMONTH: Yeah. That – by the way, that's at tab – sorry to interrupt you, but that's at tab – page 1 of Exhibit 01215, tab 14.

MR. KENNEDY: Yeah.

MR. LEARMONTH: That's the meeting.

MR. KENNEDY: Yes. I met with the Consumer Advocate to see what I could do. I was coming in late to this, Mr. Learmonth, in terms of the PUB, the – and I was trying to facilitate movement of this, Commissioner. So I met with Mr. Johnson and – whom I know – and, you know, I know is very diligent in the role that he was playing here as Consumer

Advocate. And said well, what can I do or how can I help you out here? Is there anything I can do to facilitate?

And you'll see from the notes there that Mr. Johnson outlined the things that he'd like to do. And one thing he requested, as a Consumer Advocate, that there be – I think he requested; I'm not sure of this – that there be guidelines provided to him as to his role for the upcoming PUB hearing.

And the letter to Mr. Johnson, Sir, again, Mr. Learmonth – I think as you've earlier indicated – it said in light of time deadlines, we referenced the time deadlines.

MR. LEARMONTH: All right. And in that same exhibit, that's 01215, if you could just turn to page 73?

MR. KENNEDY: Zero-two-one-one-five ...?

THE COMMISSIONER: Tab 14.

MR. LEARMONTH: Tab 14. 01215.

MR. KENNEDY: Yes, I got it, Sir.

MR. LEARMONTH: Okay. You've got – page 73. So is this typed – who prepared this task or ...?

MR. KENNEDY: The way this – the way I – no, this is prepared by me.

MR. LEARMONTH: It says “Speaking Notes.” Like –

MR. KENNEDY: No, no this is prepared by me. The way things would work, Mr. Learmonth, and it depends which speech. If this is a – what I'd refer to as a political speech, if I'm speaking –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – to a group –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – at a board – excuse me, could be a district association, then I would prepare my own notes, I would have them typed.

But basically I prepared – anything you see here, I prepared. The – I would have been given speaking notes perhaps by the communications people, and then I would have put it together and had it typed myself.

This looks to me – because I use bullets a lot – that this looks to me that it would have been prepared by me and would have been the basis – or the conclusion of some of the things that I had – or preliminary conclusions on some of the things that I had already reviewed.

MR. LEARMONTH: Yeah.

Now, on page 73, under the heading Cost Overruns.

MR. KENNEDY: Yes.

MR. LEARMONTH: Saying – and by the way, this was – the first – page 48 indicates these were speaking notes for you – Greater Corner Brook Board of Trade; February 10, 2012. That's what it appears to be.

MR. KENNEDY: Yeah, it would be.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And even though it is referred to as speaking notes, it would be my – you know, I'm the one responsible for whatever's in there. It wouldn't have been the communications director or anyone in my department putting any of that in there.

MR. LEARMONTH: Oh.

Now, the cost overruns you say: "More than \$1.0B built" –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – "into the \$5B figure"?

MR. KENNEDY: It –

MR. LEARMONTH: Where did you get that information?

MR. KENNEDY: Yeah, it's – Sir, if I – it seems to me the way that I determined that – my initial meeting with Mr. Bown on – and the

notes there somewhere, it's a short note on November 2 – I think it was November 2, 2011 – we break down to 14.3 cents. And so I think there was – in the 14.3 cents, there was a 15 per cent contingency which would be 750 million.

MR. LEARMONTH: Okay.

MR. KENNEDY: Now, whether or not the escalation costs – I'm not sure how that figures out, Sir, but someone would have given me that figure; that's not a figure that I would have come up with. Like, I would have taken the figure and put it into my speech.

MR. LEARMONTH: All right.

Now, just going back to page 4 of this exhibit. This is a reference to a meeting with Andy Wells on January 4, 2012.

MR. KENNEDY: So what page are you at now, Sir?

MR. LEARMONTH: Page 4.

MR. KENNEDY: Of –?

MR. LEARMONTH: The same exhibit.

MR. KENNEDY: Okay, I'm –

MR. LEARMONTH: 01215.

MR. KENNEDY: 01215.

MR. LEARMONTH: Yeah, tab 14, yeah.

MR. KENNEDY: Yes, okay. Got you, Sir, yes.

MR. LEARMONTH: Okay.

Okay. So the purpose of this meeting with Andy Wells was –?

MR. KENNEDY: The purpose of the meeting, Sir, it appeared to me the chair of the Public Utility Board had some very – he was raising legitimate issues that he was – in his own way – some of his terminology was a bit harsh perhaps

–

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – but he was very clear in terms of the way he saw the failure of Nalcor to provide information. So it was simply, like, what can I do to help you. It was very – I think – I’m not sure if Mr. Bown was present at that meeting. It was a very amicable meeting. The chair outlined his concerns, and his concerns, if you go through them, they were – they’re valid concerns.

MR. LEARMONTH: Yeah.

Now, what about the point, which actually was one of the reasons that the – for the PUB’s decision. The point being that, with DG2 numbers, that represents only, as it turns out, 5 per cent of the engineering. So one might question that how is it reasonable to expect any body to approve a project when only 5 per cent of the work – engineering work – has been done?

MR. KENNEDY: Yeah. That 5 per cent – I went back – when I went through my notes, Mr. Learmonth, because I think you had used that at the – your interview with me. I found that reference to a 5 per cent in my later notes in October.

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: I knew it was – obviously, I knew this was a screening process –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – Commissioner. I knew the DG2 was simply a screening process to determine which options to go forward with. Again, it’s a valid point.

MR. LEARMONTH: Yeah. Because – well actually just to clarify that. I think, in the decision of the Public Utilities Board, they referred to 5 to 10 per cent.

MR. KENNEDY: Okay.

MR. LEARMONTH: But we’ve since learned from the project management team that it was 5 per cent.

MR. KENNEDY: My note in October – one of my notes in October, 2012 refers to 5 per cent in

terms of a meeting with Nalcor. It could have been the technical briefing on October 30. It could have been one of the meetings on September 22 or October 2, but there’s reference to 5 per cent of the engineering. No question.

MR. LEARMONTH: So you recognize that point, do you?

MR. KENNEDY: Yes, I do.

MR. LEARMONTH: And you don’t dismiss it? You may not agree with it, but you don’t dismiss it as being unreasonable?

MR. KENNEDY: Mr. Learmonth, if you look at my meeting with Mr. Wells, there’s two asterisks I have there and one of them is DG2 –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – versus DG3 –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – possibility of providing current info to the PUB, so that – when I put an asterisk by something that means it’s – that’s my way of telling me – and circle it – that’s an important point.

MR. LEARMONTH: All right. Thank you.

Now, just turning over to page 89 of this same Exhibit. It’s a March 29, 2012, meeting with Ed. I take it –

MR. KENNEDY: Yes.

MR. LEARMONTH: – that’s – actually, that’s one day before the PUB released its decision, I think. But anyway –

MR. KENNEDY: It is. Yes, I don’t – I think that was coincidental. I don’t know that, Sir –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – but I –

MR. LEARMONTH: But anyway, so you’re talking about cost, and he says 6.2, 2010, DG2 – well, that would be inclusive of the Maritime

Link – and then 6.2, 2012, DG2, and then is that 6.8?

MR. KENNEDY: 6.8. Yeah.

MR. LEARMONTH: Was that – we haven't seen that figure before, or I haven't.

MR. KENNEDY: I think that, again –

MR. LEARMONTH: At that point.

MR. KENNEDY: I saw that, Mr. Learmonth, and I tried to figure out what it was, myself. And I think what it is, is that, by now, the cost – they know further costs, or they've identified further cost. I'm not sure, and that's – because you'll see, after my note, I say 6.8 billion, 2012, I got current? So it would seem to me since the DG2 numbers, they've done some more work and they now know that the figure 6.8 – that's the only, Sir, – and then there's reference of some escalation and all the contingency is gone, which be – which is 15 per cent.

MR. LEARMONTH: Yes. So that's all gone?

MR. KENNEDY: That's all gone.

MR. LEARMONTH: That's what he told you?

MR. KENNEDY: Yeah.

MR. LEARMONTH: Yeah. Okay, I gonna have – I have – I'm going to jump back on to the same Exhibit to page 6, because that was a – that's a record of a meeting you had with Andy Wells and Maureen Greene on January 5 (inaudible) ago.

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: That's just one day after you met with Andy Wells?

MR. KENNEDY: Yes.

MR. LEARMONTH: So why would you have – would you request a second meeting (inaudible)?

MR. KENNEDY: I don't know, Sir. I don't know if I requested, or who requested a meeting, but I think it came as a result of – Mr. Well's

wanting to bring Ms. Greene. And I'd never met Ms. Greene. I knew who she was, but I never, I never met her, so I think it came like he can – she can tell me more about the request for information. And so you'll see the meeting starts out on January 5, with reference to the RFIs being filed, emulation Nalcor submissions – and there's supposed to be progress reports filed – they're filed – things are filed late. And you'll see two aspects – don't know when they'll get the other 39. It's significant to the MHI Report.

So, this is another meeting, again, this is an informational meeting. Ms. Greene has now outlined, it appears to me, from my notes, that Ms. Greene has outlined the problems that they are having with the specific problems about obtaining information from Nalcor from PUB's perspective.

MR. LEARMONTH: Yeah. Did you leave the meeting feeling that there was some justification for the concern?

MR. KENNEDY: Sir, if you turn the page, you'll see what I did, the next – page 8. The next day, I have a telephone conversation with Ed Martin – point number 1: where – I'm talking to REF – “RFI re: systems integration studies” and then I said in my last note: “All RFI's will be filed next week” – that will be Mr. Martin telling me that – then, “asked Ed if it could be put in writing to the PUB.

MR. LEARMONTH: Okay.

MR. KENNEDY: And then he goes on to say he couldn't comment, couldn't commit, but would get back to me after he consulted with his people. So I obviously took it serious, Sir, in terms of what the points being made by Ms. Greene. I just didn't dismiss any of it, like that – Ms. Greene and Mr. Wells made valid points.

MR. LEARMONTH: Okay. Page 83 of this Exhibit. Umm, third paragraph under the heading “Natural Gas”.

MR. KENNEDY: Yeah.

MR. LEARMONTH: You say, “I have met with industry representatives who have explored and continue to explore developing our offshore natural gas. I am told that there are no plans to

develop natural gas in the short term as it is not practical or feasible. Now, ladies and gentleman, oil companies are in the business of making money... Do you honestly think that they would not be developing natural gas today if it could be done?"

We had a lot of discussion – this –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – earlier in the Inquiry. So when you say you met with industry representatives, do you – I don't find any notes or records of –

MR. KENNEDY: No, I don't either.

MR. LEARMONTH: – any such meetings.

MR. KENNEDY: Industry representatives to me would be Husky or the oil companies. I don't have any recollection of meeting with them, talking about that. I was meeting with them on a regular basis, 'cause we were still discussing, I think, the Hebron, the – we were looking at where the modules were going to be built, things like that. But I don't have any notes of that, Sir, no.

MR. LEARMONTH: So you don't recollect those meetings?

MR. KENNEDY: I do not recollect, Sir, having a specific conversation. I know I met with Husky executives on a number of occasions, but no, I don't have any specific recollection of having that –

MR. LEARMONTH: (Inaudible.)

MR. KENNEDY: I don't – no, I don't, Sir, I don't have a recollection of that.

MR. LEARMONTH: Okay. Now, the next page – I'd like you to turn to in this Exhibit is page 84. And this is a – well I suppose a – it's called an – yeah, open letter to Premier Dunderdale.

MR. KENNEDY: Yeah.

MR. LEARMONTH: February 21, 2012 by former Premier Brian Peckford.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And you received this, did you?

MR. KENNEDY: It appears to have been forwarded to me, Sir, yes.

MR. LEARMONTH: Yeah. Did you answer this letter?

MR. KENNEDY: The letter wasn't addressed to me, so I didn't answer it, no.

MR. LEARMONTH: No. Now he says on page 85, third to last paragraph, "There is deep concern in some quarters of the real likelihood of major cost overruns and the impact this could have on the financial integrity of the Province. Almost all major projects these days seem to have significant cost control problems due to labor issues and material supply. I suspect this project will be no different given the competition for skills resulting from the high level of construction activity present and projected in the Province."

And then the next paragraph, "Premier, as a consequence of the above, there is an unease abroad; everyone wants to believe this is the best way to proceed, but some are unsure that the level of certainty necessary for a project of this size to proceed has been established."

"I recommend to you, therefore, that the Province establish a panel of experts to review all the work that has been done and to specifically address the natural gas options and test their viability and cost against the Lower Churchill Project as presently defined."

Now, this seems to be, you know, strikes – he's a man of experience and concern for the province – this strikes me as being a reasonable suggestion, to establish a panel of experts to review all the work. Was any consideration given to implementing this suggestion?

MR. KENNEDY: There were two things that jumped out at me about this letter, Sir. The first was his comment that he didn't think the PUB had the –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – expertise to evaluate the project. The top paragraph there at page 85 –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – he indicated he didn’t think that the – he referred to them as a regulatory book – body, and he said that – he submitted that, it was never “the intent of any legislation dealing with the PUB” to make it out to a chief reference body on a project of this nature, in short, so – (inaudible), excuse me. So that jumped out at me – that he was saying that he didn’t think the PUB had the expertise to do it.

The second thing that did jump out at me, Sir, was not this – the point that you made, because that’s one obviously is a significant concern, but he goes on and in “Number three” says: “This is NALCOR’s baby and I suspect, given the culture of its predecessor, or should I say its subsidiary, there pervades a bias for hydro power.”

I remember reading that and that jumping out at me.

The panel of experts, Sir, I – and I know we had this discussion during the interview, and there was some question of oversight, and I subsequently saw the – and I know we’ll probably get to that, so I apologize, Mr. Learmonth – the – how government saw – there was a briefing note, I think, prepared in May 2012 in terms of how oversight of the project could proceed.

So, again, I don’t dispute that what the former premier says is a valid point, a valid concern.

MR. LEARMONTH: But there was no follow-up on it; it was not implemented in any way, was it? The panel of experts?

MR. KENNEDY: Not that I’m aware of, Sir, no, but – no, that’s –

MR. LEARMONTH: All right.

MR. KENNEDY: – no is the answer, I guess, yeah.

MR. LEARMONTH: Okay.

Tab 16, which is Exhibit P-01106. This is a letter – well, communications between Dawn Dalley at Nalcor – I believe she’s in public relations, is that correct? Or was at the time?

MR. KENNEDY: Yes, that’s my understanding, Sir.

MR. LEARMONTH: And Robert Thompson.

So, is this usual – that there would be a draft letter sent – Dawn Dalley drafts a letter and then sends it to government for approval? Is that a normal situation?

MR. KENNEDY: I think what’s happened, Sir, is by this point I have – I’ve indicated to you that there were some – rough areas, or rough times that we had with Nalcor in the early days. And eventually it seemed to go to the other extent where they were sending everything to us for our approval.

I saw no reason for that to come to – to us. I mean, this relate, I think, to Mr. Wells’ public comments, or his comments in *The Telegram* –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and it seemed to deal with Nalcor but they did send it to us. I have no idea who was scratching what out; I certainly –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – had no involvement. I think I made one comment on the letter.

MR. LEARMONTH: In terms of the PUB reference, generally, did you have any concerns that government and Nalcor seemed to be acting jointly, in concert, in presenting this case to the Public Utilities Board, as opposed to a situation that one might expect whereby government sends the reference and then leaves it all up to Nalcor to make the presentation?

MR. KENNEDY: This is a prime example, Commissioner, where in hindsight – at the time, if you look at it in the context of what we were doing at the time, I don’t think anyone thought of it that way. There was – it was simply trying to get things done. But I can see, Mr. Learmonth, looking at it now – like we’ve done

a number of things earlier today – your suggestion, Sir, is not – it makes a lot of sense.

MR. LEARMONTH: All right.

Tab 18 – that's 01218 – is a record of a meeting with Wade Locke.

MR. KENNEDY: That's correct, Sir, yeah.

MR. LEARMONTH: This was six or seven days, I think, before he made his public presentation.

MR. KENNEDY: I was doing a lot of work, Sir. A lot of meetings in early January 2012.

MR. LEARMONTH: Yeah. So what was the purpose of this meeting with Wade Locke? First, who called the meeting? Did he call you and come in and –?

MR. KENNEDY: No, I think I would've perhaps suggested to Charles that, you know, I'd like to speak to Dr. Locke. I had – that's my – Mr. Bown will confirm, but that's probably the most likely.

I was familiar with Dr. Locke from previous work he had done for government, and all I was trying to do – it's sort of a typical example, Commissioner, is that sometimes we get criticized – politicians – for not, you know, asking enough questions and other times, like, we're asking too many, but all I'm trying to do from Dr. Locke is get his perspective.

Mr. Vardy's paper had – I had read Mr. Vardy's paper, I think, within a week of being appointed minister – that was the Action Canada paper – and there were certain very valid issues raised in that letter, which I didn't feel that I had, certainly, Commissioner, the knowledge or the expertise to judge.

So all I wanted to do was Mr. – I knew there was a presentation – ask Mr. Locke – or Dr. Locke – to come in and tell me what you think of it all. It was just another source of knowledge for me, Mr. Learmonth, in trying to find out – because, Commissioner, by this point in time, natural gas is really percolating in my mind; it's really becoming an issue as to whether or not that is a viable alternative.

So I just wanted to get Dr. Locke's perspective, Mr. Learmonth; there's really nothing more than that.

MR. LEARMONTH: All right.

On page 7 of that same exhibit, it says – the middle of page 7, says: Overruns, and then it's one – read that – what that says.

MR. KENNEDY: Yeah, what it says in there, Sir – and this is again, I've repeated this – this is not the same – this is a different document. This is a – my notes preparing for a December 18 – I don't even know who *The Energy Show* is, but I'm preparing for an interview with *The Energy Show*, the document you're referring to there, and these are notes where I'm summarizing, Commissioner, the steps I've taken to date. I'm outlining – and if you look at it, I've actually, Commissioner – and I'm sure at some point we'll get to this – but I'm – in the front of that page 5, I've now got – I'm trying to determine, there's three – we're looking at the rates, how are the rates going to go up.

Then, Sir, you'll look at – there's three profiles of ratepayers in the province, and then I'm looking at the need of the power. So basically do we need the power? And that's – I'm outlining there those issues. I'm looking at Holyrood, Sir, benefits to Newfoundland and Labrador, and then, Sir, the comment – the question you raised, Mr. Learmonth, at page 7. That says: overruns – 1 billion built in to present case cost of 14.3 cents. That's not consistent with my recollection, so – my recollection, when I first met with Mr. Bown, and he can outline this, says that 15 per cent was built in. Now, 15 per cent is not a billion.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So either my math is wrong, Sir, or there's another –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – factor being there. But someone would have had to give me the number.

MR. LEARMONTH: All right.

Page 14 of this document. You put it – “Power rates will double,” then you say “Lie.”

MR. KENNEDY: Yeah.

MR. LEARMONTH: That’s fairly strong language.

MR. KENNEDY: Yeah. That came – Mr. Learmonth, I made hundreds of pages of notes. I tried not to editorialize, but every now and then, something – my outspoken way would slip into my notes –

MR. LEARMONTH: Yeah.

MR. KENNEDY: And, power rates will double, that came from the House of Assembly in the spring of 2011, where there was two mantras that the Opposition had: one, power rates will double, and Nova Scotia getting free power. So, that’s a bit harsh to use the word lie, Sir, I don’t think that that an appropriate way to describe whatever it was.

MR. LEARMONTH: Yeah.

MR. KENNEDY: But there’s not many instances – there’s a few instances like that in my notes, not too many.

MR. LEARMONTH: No.

MR. KENNEDY: False is probably – or misleading is probably a better word.

MR. LEARMONTH: Okay.

MR. KENNEDY: Now, is there a difference ...

MR. LEARMONTH: Anyway, you wrote it and –

MR. KENNEDY: I wrote it, Sir. That’s my writing, yes. And in big bold letters.

MR. LEARMONTH: And page 18 of this document, once again – and midway down the page you put: “What is involved in 14.34 address” is that “address overruns”?

MR. KENNEDY: Yeah. What – that note says, Sir, this is now – I think we move now into a presentation to caucus in November 21.

MR. LEARMONTH: All right.

MR. KENNEDY: And there’s a number of issues I’m addressing with caucus, because we’re trying to keep the caucus members informed. They’re obviously concerned; their constituents are concerned. And so then what – “Why Muskrat is the best alternative” is the heading. What is involved in the 14.3 cents? It addresses overruns. No question, Sir, in my mind that that’s – I was told that the 14.3 cents, which subsequently became 16.4. It addresses overruns.

MR. LEARMONTH: Okay.

MR. KENNEDY: That was my understanding from day one.

MR. LEARMONTH: All right.

Page 24, of the exhibit 01218. Now, you refer a couple of times to the EA report.

MR. KENNEDY: Yes, I do.

MR. LEARMONTH: Do you mean the Joint Review Panel –?

MR. KENNEDY: Yes the joint –

MR. LEARMONTH: That’s what it is.

MR. KENNEDY: That’s the Joint Review Panel.

MR. LEARMONTH: You’ve referred to that as the EA report twice.

MR. KENNEDY: Yeah, I called it the environmental assessment report, because the joint –

MR. LEARMONTH: Okay, but that’s the JRP –

MR. KENNEDY: It’s the JRP report, Sir.

MR. LEARMONTH: Yeah.

So this is October 13, 2011. Did you review the Joint Review Panel report?

MR. KENNEDY: Yes. At this point, Commissioner, the election was only, like, either two or four days earlier, so I must have known I was going into Natural Resources. I wouldn't be reading the – that report if I wasn't, so I must have known I was switching portfolios.

And so the first thing I did, Sir, I read that report, and you'll see that those are my notes at pages – I'm summarizing, again, from my position; then, at page 2, you'll see I'm summarizing Nalcor's position, and these would be notes taken from my reading of the project – or, excuse me, of the report.

MR. LEARMONTH: Okay.

MR. KENNEDY: And then at page 3, you'll see I – I'm now starting to crystalize in my mind the key issues: does Newfoundland and Labrador need the power, is Muskrat Falls the least-cost alternative.

MR. LEARMONTH: Okay. We'll deal with the JRP report later on, but I just –

MR. KENNEDY: But those are my notes, yes.

MR. LEARMONTH: Yeah. Tab 19.

This is a – that's Exhibit 01219. "Information Note; Department of Natural Resources." Heather Maclean to you. C. D. Howe report and – she refers to the C. D. Howe report by economist James Feehan.

MR. KENNEDY: Yep.

MR. LEARMONTH: At the top you say "Who prepared this? So much unnecessary info." That's a comment on the fact the report was prepared, not –

MR. KENNEDY: Yeah – no, that –

MR. LEARMONTH: – Dr. Feehan's?

MR. KENNEDY: No, that report – that's the report – the information provided by our department.

MR. LEARMONTH: Yes, not –

MR. KENNEDY: Yeah.

MR. LEARMONTH: You're not talking about Dr. Feehan's?

MR. KENNEDY: Professor Feehan – I was familiar with Professor Feehan from – I read his paper on the Upper Churchill. I forget exactly what it was called, but I think it was him and Melvin Baker. So I – so basically a report came out, I asked for some information on it to see if I could try to understand it. I wasn't commenting on Professor Feehan's report, no.

MR. LEARMONTH: No, I didn't think so. I just wanted clarify that.

And tab 20. This is – *On Point*, January 14, 2012. I don't think you liked this interview too much. You made some comment about it later, which is fair enough, but you're referring on page 3 to the PUB report: "They've been at this since June," Kennedy said in an interview, even though PUB chair Andy Wells said the regulator's review of Muskrat Falls has been stymied because Nalcor has not turned over ...

"Kennedy said the PUB will get ... documentation it needs in time to reach the deadline."

Now, this was just following your meeting with Andy Wells, right, when you –

MR. KENNEDY: Correct.

MR. LEARMONTH: – felt that there was some justification to the position the PUB was taking?

MR. KENNEDY: January 4 and 5, yeah, that's correct.

MR. LEARMONTH: Yeah, 01220. Yeah.

MR. KENNEDY: But the intervening event, Mr. Learmonth, had been the chair's public comments.

MR. LEARMONTH: Yes. There were some comments where I think you said it was a tortuous process or something like that?

MR. KENNEDY: Yeah, and –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – fragile relationships, Sir, were further fractured as a result of the comments.

MR. LEARMONTH: Well, that's a diplomatic way to put it.

MR. KENNEDY: Not known for that all the time, Sir.

MR. LEARMONTH: Yeah.

Now, I'd like you to turn to tab 23, which is Exhibit 00395.

MR. KENNEDY: Yes.

MR. LEARMONTH: This is – at the bottom of page 1 of the exhibit. It is an email from Thomas Clift to Robert Thompson dated January 26, 2011. And then the email up above it is another email from Thomas Clift to Robert Thompson dated January 31, 2012.

Now, referring to the earlier one, the one at the bottom of the page January 26, this is a – this email sent by Mr. Clift, a director of Nalcor, points out a number of problems that he perceives in the way the board is composed and structured and the fact that there's no pay and so on.

He also says under – in paragraph 1 – number 1: "Our Board would benefit greatly from the addition of individuals with large-scale engineering project experience, international project experience, labour relations experience and additional finance or accounting experience."

Now this has come up quite a bit in the Inquiry that – how are the board of directors supposed to supervise and give directions and discharge their fiduciary duties for a project like that – like this – when they have no experience at it?

You know, there's no one in there who has any experience in it at all. With the result being that although they are all very fine, capable people, they're limited in the degree of due diligence they can do by the fact that they don't have any training.

Did you perceive that when you were minister of Natural Resources as a short coming?

MR. KENNEDY: I don't ever remember – I've never seen this email, Sir, I – just a quick glance at it indicates to me some of the concerns are valid. But I can tell you a context in which boards – the board governance had arisen that caused concern – In a previous portfolio, Commissioner, as minister of Health – we were having all – we were having our boards that were for the four eastern – for the four health authorities and they were all unpaid volunteer positions –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and we were asking these people to oversee the – health authorities with budgets of over, you know, \$3 billion the Health Department and the – I think Eastern Health over a billion dollars.

So the point is certainly valid, Mr. Learmonth, but this was a government-wide issue in terms of how do you pay people, how do you retain people to be on boards. I mean, what Mr. Clift's point there certainly – it's a valid point but unfortunately I don't think you're going to get people to – the kind of people he's talking about to sit on boards when we didn't have – there was no authority at that point in government to pay people to sit on boards that I'm aware of.

MR. LEARMONTH: Yeah.

But, you know, if the board of directors is going to do a proper job, it's difficult to understand how they can do it unless they have someone with this type of experience. So, you know, I realize that there's a cost factor to it –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – but may well be money well spent.

And just, further to that, no one in government, as I understand it, had any experience with megaprojects. Is that correct?

MR. KENNEDY: Yes.

MR. LEARMONTH: And the board – the project management team and executive had very little experience in hydroelectric projects; they were from the oil industry. So one could suggest that this was, you know, a perfect storm, that people were involved in making big, important decisions without the requisite background.

Do you recognize the validity to some extent (inaudible)?

MR. KENNEDY: I recognize the validity, Sir, but there were certain – some very good people who sat on that Nalcor board –

MR. LEARMONTH: Yes.

MR. KENNEDY: – for example, the former Liberal Minister of Finance was the chair of the Nalcor board at one point; the current Liberal Minister of Transportation is a – was on the Nalcor board. The people who testified at this Inquiry are certainly well-qualified in their –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – in their jobs, and –

MR. LEARMONTH: Well, I emphasize, I'm not directing any criticism –

MR. KENNEDY: Okay, so –

MR. LEARMONTH: – directly or indirectly at the capabilities of the people who were –

MR. KENNEDY: Okay, yes.

MR. LEARMONTH: – on the board in their own field –

MR. KENNEDY: So in theory, you're right Sir, yes.

MR. LEARMONTH: – in their own field. I'm just saying that they were – they didn't have experience with megaprojects, and that in itself would –

MR. KENNEDY: Okay.

MR. LEARMONTH: – present a problem. I'm not suggesting that they were not capable people. Quite the contrary, actually.

MR. KENNEDY: No, I will agree with you, with that caveat, Sir, that the people there were certainly qualified and appeared to me to be trying their best.

MR. LEARMONTH: Yeah.

Now, just before we leave Mr. Clift, I'd like you to turn to – and this is in volume – binder 2 – and it's tab 84, Exhibit P-00401.

MR. KENNEDY: Sorry, binder 2?

MR. LEARMONTH: Yeah. Tab 84.

MR. KENNEDY: Okay, I've got it Sir, yeah.

MR. LEARMONTH: Now this is from Mr. Clift to Robert Thompson, but you were minister at the time, were you not? September 26?

MR. KENNEDY: Yes I was, Sir, yeah.

MR. LEARMONTH: Did you ever – do you recall ever having seen this email and the attachment?

MR. KENNEDY: No I don't, Sir.

MR. LEARMONTH: Yeah. Well anyway – so Thomas B. Clift is chair of the board of – board governance committee of Nalcor; he's writing on September 26, 2012. And if you look at pages 3, 4, and 5 –

UNIDENTIFIED MALE SPEAKER: Mr. Learmonth, I don't think the clerk knows what exhibit that is.

MR. LEARMONTH: Exhibit 00401 – 00401.

Have you seen this letter before?

MR. KENNEDY: I – I –

MR. LEARMONTH: At page 3, 4, 5?

MR. KENNEDY: – I think it came up, Sir, some point during the Inquiry. But no, I

wouldn't – I never saw the member – this letter while I was in government.

MR. LEARMONTH: Wouldn't that normally be something that you'd receive because you were the – you know, copied on because you were the minister?

MR. KENNEDY: (Inaudible), Sir –

UNIDENTIFIED MALE SPEAKER:
(Inaudible).

MR. KENNEDY: I was, Sir, but I don't remember. Now Mr. Thompson, to be fair, he reviewed – that he basically – if something came in, I was generally made aware of it and Mr. Thompson was very diligent in that respect. I don't remember seeing this letter, but also too, Sir, some appointments were made out of the premier's office, so this could've been an issue dealt more – I don't know that, but all I can tell you I never saw it.

And if Mr. Thompson – it'd be very unlikely from my knowledge of Mr. Thompson, that he would simply have not – like – put this – put this letter in a drawer somewhere. That he would've brought this home as attention.

MR. LEARMONTH: Well I think we have some evidence from Thomas Marshall that when he was minister of Natural Resources, that it was run up to the premiers office but nothing was done about it. Do you know anything about that?

MR. KENNEDY: No, I don't, Sir.

MR. LEARMONTH: About the issue of directors and appointing directors, and so on?

MR. KENNEDY: No, this issue – and there was a point in time when there were a number of directors appointed while I was there, but this whole issue of board governance and the importance of Mr. Clift's letters, Commissioner, are not ones that I'd ever seen or had any knowledge or discussion – knowledge of or discussion in.

MR. LEARMONTH: Okay, tab 24, Exhibit 01223.

MR. KENNEDY: Okay, so tab –?

MR. LEARMONTH: 24.

THE COMMISSIONER: (Inaudible.)

MR. KENNEDY: Is that binder 1 – or do you know?

MR. LEARMONTH: It's binder 1 – yeah.

MR. KENNEDY: Okay, so tab 24?

MR. LEARMONTH: Yes.

MR. KENNEDY: Yes, I have that, Sir – yeah.

MR. LEARMONTH: Okay, now this is key messages response to Tom Adams blog, Manitoba Hydro, natural gas –

MR. KENNEDY: Yeah.

MR. LEARMONTH: Can you just tell me what this document is? It's from Heather Maclean to you and others.

MR. KENNEDY: I had no idea. So Tom Adams is a name that popped up at some point as being a critic. My understanding of the project – but my understanding here is that you see, "FYI - PO has requested messages on the following" – that would be the premier's office.

MR. LEARMONTH: All right.

MR. KENNEDY: I wouldn't have paid much attention to that, Sir. In fact, if I remember correctly, somewhere along the line, isn't there a letter written by Gilbert Bennett – in response to Mr. Adam's blog?

MR. LEARMONTH: I don't –

MR. KENNEDY: I thought I read it somewhere, maybe I could be wrong.

MR. LEARMONTH: I don't see – but anyway, so the text of this document at one, two, three – was that prepared by Heather Maclean? So that you (inaudible) –

MR. KENNEDY: Yeah, well the way it would be prepared, so it would be prepared by Heather in conjunction with whoever was responsible, for example, in the department. So you would go

to one of these – could go to one of these assistant deputy ministers, could go to Mr. Bown who could go to one of the assistant deputy ministers. And find information that was required. Heather could either prepare it on her own or in conjunction with executive members in the department.

MR. LEARMONTH: On page 2 there's a few paragraphs on natural gas. Would this be in line with your thinking on natural gas? Would this be a correct statement of your position?

MR. KENNEDY: Let me read it, Sir. This is – the date of this is January 31, 2012?

MR. LEARMONTH: That's right.

MR. KENNEDY: By January 31, 2012, Commissioner, I don't think I had really started to form any opinion on natural gas. It was – I was dealing with the shale gas, as I said. But I'll review this and see what it says.

No, I – this wouldn't have been familiar with me. Natural gas became an issue for me, Mr. Learmonth, after – ah, Commissioner – after Dr. Bruneau's paper. And I think Mr. – I think Cabot Martin might've raised the issue of natural gas too. And when these gentlemen were raising the issue, that's when it became an issue for me and I started exploring it.

So I don't have any recollection. I don't think I would've had any real knowledge of liquefied natural gas by January 31, 2012.

MR. LEARMONTH: So that wouldn't be representative of your view on it?

MR. KENNEDY: No, my views later – you will see my views as they moved along, Mr. Learmonth, were – that there was – there were certainly issues that we had to explore with natural gas.

MR. LEARMONTH: Okay.

Next will be tab 27, Exhibit 01227, please. This is a – do you have it?

MR. KENNEDY: Yes I do, Sir.

MR. LEARMONTH: Okay. Now, at the second-to-last paragraph on page 1, you're quoted as follows:

“Nature Resources Minister Jerome Kennedy says” –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – “he doesn't understand how much more proof the Opposition parties need. Kennedy says natural gas as an option would mean the province is again reliant on”

–

MR. KENNEDY: Yup.

MR. LEARMONTH: – “He says gas right”

So this, you know – it was after that that you retained Gulf and Wood Mackenzie, so what –?

MR. KENNEDY: I'm acting, Sir, on information that's given to me, which would have to, at that point, come from Nalcor. I had no personal knowledge. By the time – February 9, 2012, Commissioner, I don't think I have any real knowledge of natural gas in terms of the – either the importation of natural gas or the liquefied natural gas option. So this would've been a comment made based on information that was provided to me by Nalcor.

MR. LEARMONTH: Yeah, okay. So –

MR. KENNEDY: Oh, excuse me. It would've been provided to me by Mr. Bown, most likely. Nalcor probably would've provided it to Mr. Bown.

MR. LEARMONTH: Yes.

The – but you didn't – you subsequently delved into it deeper and you had some –

MR. KENNEDY: Yeah. Yeah, I – certainly, I – that comment there did not preclude me, Sir, from taking the steps that I subsequently took to try to determine if natural gas was a viable option.

MR. LEARMONTH: Okay.

The – I just wanted to ask you a few questions about – are you familiar with the concept of integrated resource planning and CDM, as measures to conserve energy?

MR. KENNEDY: I –

MR. LEARMONTH: Conservation and –

MR. KENNEDY: Yeah, I –

MR. LEARMONTH: – supply [sp demand] management –

MR. KENNEDY: I think that that was – I’ve read – I thought – either papers by Professor Feehan or became aware –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – that I think he was one of the proponents of that issue.

MR. LEARMONTH: Yeah. Now the – despite a recommendation from the Board of Public Utilities and despite a report called Marbek Resource Consultants Report in January 31, 2008, and despite a – we’ll say commitment the province gave in response to a recommendation of the Joint Review Panel, it appears from our investigation that very little, if any, initiatives were taken to implement conservation and demand management.

Would your department be in a position to direct – would have – would your department have been in a position when you were minister to insist that these initiatives be pursued by Newfoundland and Labrador Hydro?

MR. KENNEDY: There had to be discussions. I’m not sure, Commissioner, if we would be in a position to insist. But it seemed to me to be logical and reasonable suggestions that could happen and perhaps should have been explored. So there could have been discussions, certainly.

MR. LEARMONTH: Because integrating any reasonable amount of CDM reduces the load forecast, because you’re conserving energy and therefore you’re displacing the need for additional capacity. And for some reason in this province we haven’t done that.

And I know that Philip Raphals, an energy consultant who’s testified here said at one point that –

MR. T. WILLIAMS: Mr. Commissioner, if I could – and I don’t mean to interrupt Mr. Learmonth’s flow, but I know there was evidence called. And I remember it was my examination. And I could stand to be corrected, whether it was with Mr. Penney or Mr. Vardy – but one of the witnesses – that I listed out a litany of initiatives that government had brought forward. There was five or six – could be more that I put to them.

So I know the area we’re going down. But, you know, Mr. Learmonth’s suggestion is that there was nothing done by government in this – he said – he’s – capsule of what the evidence to date was. So I don’t know if it’s a true or a fair recollection of that evidence. I just thought I’d bring it to his attention. Because that’s the way that the question has been focused or framed.

MR. LEARMONTH: Well I believe I said very little, if any – very little, if any. So I do acknowledge there was some on the technological factor side of it that was done. But –

THE COMMISSIONER: No, I think the point Mr. Williams was making, that he had raised at some point in time – and I forget which witness it is too, so I’d have to go back and look – but that there were some programs that were in place related to some sort of plans to cut down demand.

But that’s so long ago I can’t recall exactly what it was to be honest, Mr. Marshall [sp Commissioner gives incorrect name – unclear who he is addressing] but I’ll go back and look at it, but anyway, so there – some things were likely done – your question is, is that – whether it’s not very much or whatever the scenario is, it’s not integrated resource (inaudible).

MR. LEARMONTH: Yes.

THE COMMISSIONER: Okay, so –

MR. LEARMONTH: Yeah.

THE COMMISSIONER: – I think you can ask your question.

MR. LEARMONTH: Do you know why integrated resource planning was not pursued by Newfoundland and Labrador Hydro?

MR. KENNEDY: No, I don't – I don't (inaudible).

MR. LEARMONTH: You don't seem to be too familiar with the subject, is that (inaudible) –?

MR. KENNEDY: No, I'm not actually, other than I think it was – I'm not even sure – I think it was Professor Feehan who was raising the issue, but I'm not too familiar with it, Mr. Learmonth, and again, at that point in the context of what we were doing – but there was a lot going on in relation to Muskrat Falls and we – there were a number of options that were being raised, or issues that were being raised and being explored.

MR. LEARMONTH: Yeah.

MR. KENNEDY: That's not one, Sir, that I – was at the top of my list, no.

MR. LEARMONTH: But in terms of the CPW analysis, you see that – I think you'll agree that if there's conservation and demand management, that will drive down the need for fuel at Holyrood because the requisite power will be reduced; the demand – the requirement for the power will go down, which could have an effect on the CPW analysis.

MR. KENNEDY: That makes sense –

MR. LEARMONTH: Do you agree?

MR. KENNEDY: – yes.

MR. LEARMONTH: Yeah, okay.

Well anyway, you – I won't pursue it with you any further.

Tab 33, Mr. Kennedy, which is Exhibit 01233.

MR. KENNEDY: That's the one we went through earlier?

MR. LEARMONTH: No, this is "Brian Peckford Letter to Government – Criticizing

PUB Process" – yeah, but there's just one thing I wanted to refer – this is your handwriting, is it?

MR. KENNEDY: Okay. Yes.

MR. LEARMONTH: In the end – at – in the bottom of the page, it says, "the 'old boys' club" –

MR. KENNEDY: Where is that, Sir?

MR. LEARMONTH: Page 4, Exhibit 30 – 01233, tab 33.

MR. KENNEDY: Yes, I can't –

MR. LEARMONTH: Okay, do you know what that is a reference to?

MR. KENNEDY: I – as I'd indicated to you earlier, Mr. Learmonth, like, I made hundreds of pages of notes, and a lot of times I, you know, I tried to avoid editorializing as much as I could, but every now and then something would slip in and –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – "the 'old boys' club" – I'm not sure what I'm referring to at that point, but obviously it was in relation to the Brian Peckford letter, certainly.

MR. LEARMONTH: Okay.

Well anyway, we'll leave it at that.

MR. KENNEDY: But it's – like, at the top of the page there's a circle – a word there "irony" – I have no idea what that means.

MR. LEARMONTH: Okay.

Well, they're just your own notes, so we won't put too much weight on them.

Now, tab 37, which is Exhibit P-01237.

MR. KENNEDY: Yes.

MR. LEARMONTH: Now, this is an April 1, 2012 meeting re PUB report. I mentioned earlier that the PUB report was received on March 30 –

MR. KENNEDY: Yes.

MR. LEARMONTH: – at 10 p.m., that being a Friday night. So this is a Sunday meeting shortly after the PUB report was received. And present are – can you just read out the names of the people –?

MR. KENNEDY: Yeah, present are Robert – would be Robert Thompson; the premier; Brian, who would be Brian Taylor; Glenda Power would be director of communications; Ed would be Ed Martin; Charles would be Charles Bown and myself.

MR. LEARMONTH: Okay. Apart of this record of the meeting on page 1 or Exhibit 01237, do you have any independent recollection of why the meeting was called on this Sunday morning?

MR. KENNEDY: I don't know if it's a Sunday morning, Sir. It's a Sunday, but it wasn't unusual to meet. We've had Cabinet meetings on Sundays. For me, it wasn't unusual to meet on Sundays or Saturdays, for that matter. But I think you're right, Mr. Learmonth, I mean, logically, there's – the PUB report comes out –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and a couple days later, Sir, we're meeting. So it's obviously felt to be of significance that there needs to be a meeting. No question about that.

When I look at the people present, I mean the premier is in on a Sunday, you know. I was always there on a Saturday and Sunday, if I wasn't in my district, so it didn't matter to me. But, yeah, it's – there's – I think the PUB report certainly –

MR. LEARMONTH: So why would Nalcor representatives be there, can you tell me that?

MR. KENNEDY: See this, again, Commissioner, I hate to sound like a broken record, but looking back on it now. But at the time, when we were dealing with – in the context of what we were doing, Ed Martin was the individual who had the knowledge of this project. I mean, Ed's knowledge was

phenomenal in terms of what he knew about this project, it appeared to me, Sir.

So in terms of a meeting taking place – we're now looking at the DG3 numbers 'cause how are we going to get to the House of Assembly? And if you look at number 4 – or number 2 first says a – we're going to release the report immediately in the morning. That's the first thing, Commissioner, number 1, the circled number 1: release the report immediately in the morning. There was consensus on that.

Then number 2 was the full and open debate in the House of Assembly, PUB report, for the DG3 numbers we need a complete package. Now, I don't know what that means by that, Mr. Learmonth, a complete package. The June time frame, the MHI review.

MR. LEARMONTH: Okay. So the MHI review was discussed at this meeting?

MR. KENNEDY: Yeah, it says: We decided to hire same experts as PUB went to. That's what my note says.

MR. LEARMONTH: Okay.

MR. KENNEDY: So it says: we. I don't think it's any one person, Commissioner.

I mean, any time you see a bunch of us at a meeting, there's usually a consensus. It's like when Cabinet makes a decision, it's the decision of all of us, even though I can assure you, Mr. Commissioner, there's very – there's a lot of descent and a lot of strife in that room as we're having those discussions as to how public money is going to be spent or how policy decision – but once we make the decision, it's a decision of Cabinet.

The same thing here, once we make the decision, it's our decision.

MR. LEARMONTH: Okay.

So at that point it had been decided that MHI was going to be retained, is that right?

MR. KENNEDY: Yeah, and I – don't – I can't tell you who suggested it, where it came from, but it says we.

MR. LEARMONTH: Okay. So you can't give me any elaboration on –

MR. KENNEDY: No, and I certainly had no – as I told you earlier today, Sir, I had no – I remember when I objected to things, even if I at times could have been outvoted, but in this particular case I had no problem with the – I don't remember having any problem with MHI being hired. It made sense to me in the context of what we were doing at that point in time.

MR. LEARMONTH: All right.

Page 39 of this Exhibit 01237. It said July 12, 2012 –

MR. KENNEDY: Okay, one second – one second, Sir.

Page 39 – that's July 2, Sir, yeah.

MR. LEARMONTH: Yeah. It's talking about a meeting with Professor Bullan [sp Bulkin]?

MR. KENNEDY: Yup.

MR. LEARMONTH: What was that?

MR. KENNEDY: Sir, on August 29, I think – if I remember correctly, I think the premier might have been on her way to Beaumont-Hamel. I'm not sure. And we were scheduling meetings in London; we met with Wood Mackenzie on July 29. It was the Canada Day weekend – if I again – if I remember correctly – I know we met with the ambassador – the Canadian ambassador. And then, on July 2, myself and Charles, and Tracy – would be my executive assistant – and Brian Taylor – met with Professor Bernard Bulkin.

And the reason that this meeting is so important and stands out in my mind, Sir. Up until this point, I was not sold on the Maritime Link. At this point I was still, like (inaudible) the Maritime Link. Do we need the Maritime Link? And when I say I wasn't sold, Commissioner, I wasn't against it, I was just analyzing in my own mind the Link.

And we met with Professor Bulkin, and I remember – one of the reasons I remember, and I apologize, Mr. Learmonth, if I'm talking too much, but where my parents-in-law lived on the

Norfolk coast, Commissioner, there would be these big wind farms, and you could see them, the offshore wind farms. And I was asking Professor Bulkin, what are you fellows doing with wind?

And what came out of this, Sir, was what he referred to as the wind had to be integrated into the system. So therefore, in the United Kingdom – I think they only had 8 per cent hydro, if I remember correctly – that they got hydro from Norway, they got nuclear from France. And because it was all linked up, it allowed them to have an integrated system which now allowed for the wind, Commissioner, to – be utilized.

So Professor Bulkin – at that point is when the Maritime Link – it went – it was almost like – you know, I can remember a light going on in my head, Mr. Learmonth, where I went: Wow, this is – this makes sense to me. And the other point, Commissioner, that it struck me, that Professor Bulkin said was that – you develop as much hydro as you can. Because we've got all of these places that don't have hydro. Norway had hydro; natural gas was coming from – could have been Qatar, or Russia – and France had nuclear.

So that's who that is, Mr. Learmonth, that's the nature of that meeting.

And – the other thing, I think, he told me at that point Sir – Commissioner, was that I – again, I think this is correct – energy at that point in London was around 18 cents a kilowatt hour, if I remember correctly.

And so we were meeting with him just to look at how things were being done in the United Kingdom.

MR. LEARMONTH: All right.

The – page 47 of Exhibit 01237.

MR. KENNEDY: Sorry, page –?

MR. LEARMONTH: 47. It says August 3, 2012 meeting re Muskrat Falls. Can you just read out who was present?

MR. KENNEDY: Yeah.

The August 3 meeting, Sir, that's Charles –

MR. LEARMONTH: Mmm.

MR. KENNEDY: – Charles Bown –

MR. LEARMONTH: Yes.

MR. KENNEDY: – Ed M, Ed Martin; Dawn, Dalley I guess; Brian C would have to be Brian Crawley; Lynette would have been the premier's chief of – or deputy chief of staff; Ed W would have been Ed Williams; Lynn would have been the – Lynn Hammond would have been the premier's director of communications; Brian T was the – Brian Taylor, chief of Staff; and myself.

MR. LEARMONTH: Okay, and what was the purpose of this meeting?

MR. KENNEDY: I think this, Sir, I think this is the DG3 alignment – where the numbers are decked with the DG3 numbers and we got our first glance at the numbers.

MR. LEARMONTH: Yeah.

MR. KENNEDY: If I remember correctly.

MR. LEARMONTH: Okay so there is a deck like that, so that's what this is –

MR. KENNEDY: There is – I think, Sir, there is a deck and this is – these are my notes of the meeting. So even though there was a deck – and I think actually the deck that you have, Commissioner, has my handwritten notes on it. If I remember correctly. I think there's a circle – where I circled certain things.

MR. LEARMONTH: Now at the bottom – towards the bottom –

MR. KENNEDY: Yes.

MR. LEARMONTH: – there's a reference to – it says West Nav, I take it that's Westney is it?

MR. KENNEDY: It appears to be, Sir, but that's how, Commissioner, how little familiarity I have. I didn't even know who to spell their name and I don't make many spelling errors. And so, West Nav, it says, a company out of

Houston. It says risk analysis. It says have been working on for five years. Internal reports. EPCM engineering procurement 250 million – I'm not sure what that means, Sir. And total SNC contract 300 to 500. SNC I would assume is SNC-Lavalin.

MR. LEARMONTH: Yes.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And internal reports, what did you –

MR. KENNEDY: I'm just writing down, Sir, what's being told and that would have either to – that would either have to be Ed Martin – I'm just write – I'm making a note. When I make these notes I write down what's told to me or what I'm hearing without trying to editorialize too much or without, Commissioner, subjectively interpreting what's being said. I'm simply writing down what's – it meant nothing to me. I would've been asking questions.

MR. LEARMONTH: Okay.

Page – well, page 51 of that exhibit. This is a – August 23, 2012, third party endorsements.

MR. KENNEDY: Yeah.

MR. LEARMONTH: So that would be a list of people that you would hope would endorse the project or ...?

MR. KENNEDY: A lot of these people, Sir, had endorsed the project, but unfortunately not a lot of them are coming forward in the last period of time. But we had – Sir, there was a lot of support for Muskrat Falls back in 2011. There was a –

MR. LEARMONTH: Yes.

MR. KENNEDY: – you know, a lot of individuals that we've – an election had been ran based on Muskrat Falls. So these were individuals who had either supported the project or who had – who we were going to talk to as to whether or not they could make public comments.

MR. LEARMONTH: Just one on page 52 – list one – is that Grand River ...?

MR. KENNEDY: No, that's Grand River Ironsands, Sir, they were an iron ore company.

MR. LEARMONTH: Oh, all right. Okay.

No, I thought – 'cause the Grand Riverkeepers.

MR. KENNEDY: I don't think they –

MR. LEARMONTH: No, I don't think they would be –

MR. KENNEDY: – were around when I was there.

MR. LEARMONTH: – happy to be on this list, but anyway.

MR. KENNEDY: No. They were –

MR. LEARMONTH: Okay.

MR. KENNEDY: – it's the Grand River – I don't even remember who they are today, Sir, but the Grand River Ironsands would've been an iron ore company.

MR. LEARMONTH: All right. Now, tab 39.

MR. KENNEDY: Yes.

MR. LEARMONTH: This is a – “Provincial Government Responds to Release of PUB Report” on April 2, 2012. So the second paragraph: “Our government has been intent from the outset on ensuring the proposed development of Muskrat Falls is subject to scrutiny and analysis prior to any decision on sanction”

So what's the purpose of this? Is it just a reaction to the release of the PUB report?

MR. KENNEDY: Yeah, there are oftentimes where, Mr. Learmonth, there be news releases sent out by – could be by the Executive Council or could be come from the department in relation to issues. You will see (inaudible) if you go into the website you will see there is news releases.

MR. LEARMONTH: Yeah.

Tab 40, Exhibit 00529 is a – I guess it's a memorandum to Cabinet – “Legislative Amendments Required to Advance the Implementation of the Muskrat Falls Project.”

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: And if you go to page 5 of that Exhibit 00529 – Ratepayer Revenue Stream.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Now, this was a – by the way, this was a presentation – I think, you signed this.

MR. KENNEDY: Yes, I did, Sir.

MR. LEARMONTH: Yeah, you signed –

MR. KENNEDY: It looks to me like to be a Cabinet paper.

MR. LEARMONTH: It's dated April 2, 2012.

So I guess – am I correct that – if we look at page 5 – that right from this early date that the arrangement was gonna be that the ratepayers were gonna be stuck with the entire cost of Muskrat Falls regardless of how much that was? If you look at page 5 –

MR. KENNEDY: I see page 5, Sir. Yeah.

MR. LEARMONTH: Yeah. Was that the plan from the outset?

MR. KENNEDY: Well Sir, I, you know, I don't know if you – gonna be stuck whatever the cost. I mean, the cost was – from our perspective, well defined and we were given assurances by Nalcor as to the cost. So we knew the cost or what we thought the cost was going to be. But you're right in terms of the way it would be set up, the ratepayer – the stream of revenue will come from the ratepayer.

But also, Sir, and – you know, at some point I'm assuming someone will ask me questions about this – but the issue of the ratepayer and the rate mitigation was always, Commissioner, I can tell

you, on politician's minds, and it was something I spent a lot time on. So that we knew there was going to be excess energy or there was excess energy – yes, that's the proper term – which would be sold. So the plan will be for that money to back into the – to reduce ratepayers – what ratepayers were paying. Even though we didn't know the amount, how much that will be, Sir – there were doing various figures put on it, Mr. Learmonth. But yes, you're right in terms of your basic comment.

MR. LEARMONTH: Yes.

Okay, tab – and there are other legislative amendments in any event –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – but that speaks for itself, and we've gone through that with other witnesses, so I won't bother now.

Tab 43, Exhibit 00728. This is your reaction to the PUB report.

MR. KENNEDY: Yes, Sir.

MR. LEARMONTH: And at paragraph two:

“At the same time, Kennedy – this week's guest on On Point ... blamed the Public Utilities Board ... for failing to do its work properly, on the heels of the PUB reporting this week it was not given sufficient material from Crown-owned Nalcor to make an adequate decision

“Asked if the PUB report came back to bite the government, Kennedy replied, ‘I think it came back to bite them.’

“Kennedy chided the PUB for not understanding what it been asked to do, including working with cost estimates that it knew would not be final projections.

“‘It just showed a lack of respect for the process on their part, a failure to comply with their statutory mandate,’ ...”

Now, what – can you give me some clarification for why you would make these comments?

MR. KENNEDY: First (inaudible) – looking back at it, Commissioner, I'll admit they're inappropriate. They're not the kind of things – the kinds of comments that should be made. But unfortunately, Mr. Learmonth, in the political arena –

MR. LEARMONTH: Yes.

MR. KENNEDY: – things are said, there's hyperbole, there's adversarial comments that, you know, I – they're not appropriate; that's what I will say there.

The point I was trying to make and could've made in much better language, Commissioner, was that the PUB were asked to do a policy review, which is within their mandate. I think, if I understand correctly, the PUB can do their – they make their decisions as a quasi-judicial body, but they can also do policy reviews or act as an investigative body. And that's what I should've said, Commissioner. I am not going to stand here before you today and – to justify those comments.

MR. LEARMONTH: Okay, that's fine.

Tab 45 is Exhibit –

THE COMMISSIONER: Just wondering before we get to that, should we – I just noticed the time there now is 25 to 3.

Do you want to take a break now or do you wanna – is this a good spot, or do you have a good spot coming?

MR. LEARMONTH: It's no worse than any other spot, so ...

THE COMMISSIONER: Let's do it now, then. Ten minutes.

MR. LEARMONTH: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Mr. Learmonth?

MR. LEARMONTH: Tab 45. That's Exhibit 01243.

MR. KENNEDY: Do you know which – sorry, which binder ...?

THE COMMISSIONER: Binder 2.

MR. LEARMONTH: Number 1. Tab – binder 1.

MR. KENNEDY: Forty – no, 40 –

MR. LEARMONTH: Or no – we're – no, binder 1, yeah.

THE COMMISSIONER: Ours is gonna be tab –

MS. O'BRIEN: Mine's binder 2.

THE COMMISSIONER: Binder 2.

MR. LEARMONTH: In mine, it's binder 1. 01243?

MR. KENNEDY: Yes, I have it, Sir.

MR. LEARMONTH: Okay.

Now, this is an email from Robert Thompson to you, April 12 – Draft Preliminary Cabinet Agenda. Then you say: "I cannot see this taking longer And without the DG3 numbers it doesn't make a lot of sense to me," et cetera.

So was there a little bit of concern here that you just weren't getting the DG3 numbers and –

MR. KENNEDY: I was a little frustrated here, Sir. You see by this email – I'm saying: Look, I don't want any more updates. We need the numbers. You know, there's nothing to update us on, the Emera and the loan guarantee, so you know, what's the purpose of this is basically what I'm saying.

MR. LEARMONTH: Yes.

MR. KENNEDY: But to be fair to Nalcor, this was part of what they were doing. They would be regular updates to Cabinet, Commissioner,

and it seemed like a lot but they were definitely every couple of months for sure.

MR. LEARMONTH: Right, tab 46 is an email from Robert Thompson to you and others dated April 13, 2012, and it's a schedule PDF (inaudible), excuse me, attached is a deck (inaudible) other email. And, "Here are the items to be included for HoA" – that's House of Assembly, right?

MR. KENNEDY: Yeah.

MR. LEARMONTH: And the first item is, "updated Interconnected Opex and Capex" – and – "escalation estimate" – and – "contingency estimate."

MR. KENNEDY: Yeah.

MR. LEARMONTH: Did you get a contingency estimate at this time?

MR. KENNEDY: I was always aware of the contingencies, Mr. Learmonth. Whether or not it was contained in this one, I don't know, Sir.

MR. LEARMONTH: Okay.

MR. KENNEDY: I was aware, for example, of the PIRA forecast, the contingency estimates, things like that.

MR. LEARMONTH: Yeah, and then the next page of this Exhibit 01244, page 2, there's a reference to, "Monday, April 16 in order to maintain the May 1 schedule." This is the schedule that we talked about earlier about road building? See the second last paragraph, "If the government's resolve" –

MR. KENNEDY: Yeah, you see though the – sorry are you – what page are you at, Sir? Oh yes – okay. Yeah, then if you look at that – I was looking at the chart, I'm sorry Mr. Learmonth. But the chart you'll actually see was still planning to be in the House of Assembly, which now has gone from June, and we're now looking at the last week, I think, of July – being in the House of Assembly on the sanction to date.

MR. LEARMONTH: So they're still telling you that that's achievable, is it – are they?

MR. KENNEDY: Probably, that's what (inaudible) you'll see, Sir, that as of April 12, they're still – when you look at the chart at page 3 of 01244, there's the House debate – it's still listed there in July of 2012.

MR. LEARMONTH: And tab 47, this is, I guess a preparation that – excuse me, I should give you the number. 01245, tab 47 – this is a –

MR. KENNEDY: Yeah.

MR. LEARMONTH: Your department would've prepared this for the anticipated House of Assembly hearing on Muskrat Falls?

MR. KENNEDY: Yes, it's – it got my name on it, Sir. April 23 – yeah, we still think we're going into the House of Assembly in the summer of 2012, with the sanction issue.

MR. LEARMONTH: Then tab 50, which is Exhibit 01246, April 26 announcement. The "Premier Kathy Dunderdale says any debate in the House of Assembly on Muskrat Falls will... this fall."

MR. KENNEDY: Yeah.

MR. LEARMONTH: So I guess at this point, it became obvious that the – much of the DG3 numbers would not be available and you just decided to –

MR. KENNEDY: That's what it appears to be, Sir. Yes.

MR. LEARMONTH: Yeah.

At tab 54 – now – actually, before we do that, I just wanted to mention one thing about – concerning SNC-Lavalin. Now, we've had evidence that, you know, that February 1, 2011, SNC-Lavalin was hired as the EPCM –

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: – contractor, and shortly after that the roles changed whereby at some point the – there was an integrated project management team put in place of SNC-Lavalin. And their – SNC-Lavalin's role changed from an EPCM contractor whereby they, sort of, run the

show to one, where they were just part of an integrated team.

Were you aware of those changes in the in the structure when you were minister?

MR. KENNEDY: No, Sir. What I would have been – the thing that jumps out at me about SNC-Lavalin – and I – the time frames are still unclear although you supposedly pointed them out to me at the interview – but jumps out at me, Commissioner, was the allegations of fraud –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – that had been made against SNC-Lavalin. I don't – I think they were in Europe, the allegations. And so then in the House of Assembly, I remember we had to address those issues. Why have you hired SNC-Lavalin? There's challenges or there's issues of fraud. I thought that took place in 2012, but I think documents that were shown to me in – at the interview was actually in 2013.

MR. LEARMONTH: Well actually, in tab 54, page 4 – that's Exhibit 01250 – there's a – "SNC-Lavalin – Arrest of Former Executive VP Key Messages."

MR. KENNEDY: Sorry, where is that, Mr. Learmonth?

MR. LEARMONTH: Tab 54.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Exhibit 01250, page 4.

MR. KENNEDY: Okay yeah, sorry, I see it, yeah. Okay.

MR. LEARMONTH: So were you kept abreast about the changes –?

MR. KENNEDY: No, I didn't know anything about that change in the team, no.

MR. LEARMONTH: You never –

MR. KENNEDY: No.

MR. LEARMONTH: – found out anything about that?

MR. KENNEDY: I didn't even know SNC-Lavalin's roles here other than that they were there at the project. I mean I – as I told you earlier today, I mean Mr. Harrington has testified at this Inquiry I never even met with him. He was never present at a meeting I was at.

MR. LEARMONTH: So you didn't know anything about the changing of the role –

MR. KENNEDY: No.

MR. LEARMONTH: – of SNC-Lavalin?

MR. KENNEDY: No.

MR. LEARMONTH: Well –

MR. KENNEDY: I – I knew there was issues with SNC-Lavalin, Sir, but I never – the term you would use, no, that's never come to my attention. I was aware that there – that – and I – and some of this I might have heard after, Mr. Learmonth, that there was some, there were problems between Nalcor and SNC.

MR. LEARMONTH: But it was never reported to you?

MR. KENNEDY: No, no.

MR. LEARMONTH: Is that correct?

MR. KENNEDY: No.

MR. LEARMONTH: No. Okay.

Tab 62, please?

MR. KENNEDY: Mm-hmm. Yeah.

MR. LEARMONTH: This is a May 31, 2012 – excuse me, it's Exhibit 01257.

MR. KENNEDY: Yeah.

MR. LEARMONTH: It's a document entitled Accountability Oversight for the Muskrat Falls Project / Labrador-Island Transmission Link, et cetera.

MR. KENNEDY: Yeah.

MR. LEARMONTH: It's prepared by Paul Parsons of your – of Department of Natural Resources –

MR. KENNEDY: Correct, yes.

MR. LEARMONTH: – I believe. And it – you know, sets out a – the background, current status, and it has recommendations for appointment of, among other things, an independent engineer. Deals with oversight of –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – Nalcor. Whatever became of this recommendation?

MR. KENNEDY: I don't know, Mr. Learmonth. I mean, Ms. O'Brien had asked me that question at the interview, and I couldn't – when I read this email, I – or excuse me, I read this report – it's a direction note.

So, direction note would've been – the – individual, Mr. Parsons, wouldn't have prepared this of his own accord. So either the instructions would've come from me to Mr. Bown or from the premier's office, we need a direction note.

So – and a direction – you saw that earlier today. We've seen, Commissioner, terms like information note, briefing note, direction note. I don't think there was any real difference.

So this then jumped out at me – 'cause that was one of the issues for me – was the whole issue of: Once we get beyond sanction, now the money's being spent, how do you keep control of the money being spent? We felt at that point that – we thought – excuse me – I shouldn't say we felt. We thought that we were – there was sufficient oversight in terms of what was going on with the sanction decision, Mr. Commissioner.

But there were issues that we were looking at exploring later on, and this note clearly outlines some of the alternatives that were being looked at, yeah.

MR. LEARMONTH: But it just disappeared? You don't –

MR. KENNEDY: I – I have – I can usually remember a lot of – especially with reference to my notes, but I had no recollection of this note until I read it, and I – 'cause it was a discussion that had taken place on a number of occasions. 'Cause Ms. O'Brien asked me: Did I discuss it; do I remember having discussions with anyone?

MR. LEARMONTH: Mmm.

MR. KENNEDY: And so it's when I read this that – I know it's there. It was a topic. It was a topic that was of concern to me, but I can't tell you what happened to that after. It's – I don't even see the – like, there should be in the TRIM system at Natural Resources, Mr. Learmonth. My understanding is that anything that's signed goes into the TRIM system and should be able to be retrieved.

MR. LEARMONTH: Yes.

MR. KENNEDY: So I mean, this is not even signed.

MR. LEARMONTH: But you do recall there being discussion around –

MR. KENNEDY: Oh, there was discussions and oversight. That was a big –

MR. LEARMONTH: But nothing ever happened to those discussions? Or nothing was –

MR. KENNEDY: If – again, if I recollect – appropriately – or accurately is the better word, Commissioner – I think that Minister Marshall later – I think I was gone by government – gone from government – he might have been premier at the time – I think he brought in a – an oversight committee –

MR. LEARMONTH: Yes.

MR. KENNEDY: – that sort of stems from this – this note is the genesis, I thought, of how that committee came into place.

MR. LEARMONTH: Okay, so that could have been – the oversight committee could have been based on, to some degree, this recommendation?

MR. KENNEDY: I – you have to ask the – I don't know what –

MR. LEARMONTH: Okay.

MR. KENNEDY: – former Premier Marshall said, but yeah, that's –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – that's my recollection, yeah.

MR. LEARMONTH: Now if we go to tab 65, Exhibit 01260.

MR. KENNEDY: Yeah.

MR. LEARMONTH: I wanted you to turn to page – 01260, page 17 and 18. This has to do with post-August 31, 2041.

MR. KENNEDY: Okay, sorry, Sir – let me just – I'm looking at the document – okay, got you, Sir. Yep.

MR. LEARMONTH: Now – we know that this project was based on – the Muskrat Falls Project used a – we've tried to get power supply for 50 years to 2067 or thereabouts.

Now, do you know why consideration wasn't given to the year 2041 when the Quebec – Hydro-Québec contract expired rather than going out to 2067? In other words, why wasn't there a plan that said: Look we have to deal with this up until 2041 and not beyond, because our options open up in 2041 as a result of the expiration of the Hydro-Québec contract?

Did you give any consideration to that?

MR. KENNEDY: There's a couple of ways, Sir – the 50 years out – my understanding is that that was the economic modelling that was being used that I had no understanding or input into how – why that figure was – you know, that 50 years was being used.

The 2041 – was an – obviously was an important date for the province. It was an important date for us. But I can't tell you – no, Mr. Learmonth, I have no answer as to why. I didn't consider, like, we should be just looking at 2041. Those were issues that were left to Nalcor and officials in terms of the economic modelling and types of things they were using there.

MR. LEARMONTH: To your knowledge, were any initiatives made to see whether some kind of an arrangement could be worked out for the delivery of power by Hydro-Québec?

MR. KENNEDY: In my notes there's not – it's actually quite interesting – I think I – every now and then, Mr. Learmonth, I would – if I'm sitting at my desk, I would turn on the TV or the computer and watch a little bit of the Inquiry.

And I remember one day you were asking someone about the issue of power from Quebec. And I – again, that's not something I remember. And when I went back to my notes, Commissioner, I could point them out to you if you want, but a couple of times in my notes as we get towards – October, especially, I'm asking that question like: Can we buy power from Quebec? Is there, you know, is there any reason that we can't get power from Quebec? Even though it would be somewhat unpalatable perhaps to us as politicians. We certainly had to look at the issue of whether not Quebec would sell us power cheaper than we need it for – than what we could get from Muskrat Falls.

So, what I told – my understanding, Sir, was that – from Nalcor was that the – again from Nalcor, Mr. Bown, that there was no deal – that Quebec were not really open to discussion.

MR. LEARMONTH: All right. So, you didn't go any further with that possibility?

MR. KENNEDY: I'm just – I'm just trying to recollect some – I can't remember my notes, Mr. Learmonth.

I know on a number of occasions, I queried as to that possibility because it had been an issue that was raised by some member of the public, that it had been raised. It might have been in one of the articles I had read. Could be a – could be Mr. Vardy's article or various articles he wrote, could have been one of the letters to the editor that people wrote. But I – I explored to that extent and that's what the advice – I also knew though, Mr. Learmonth, that the – of the issues that were going on in Quebec in terms of the Régie and trying to – I can't remember all the initials FERC, the federal energy, whatever that stands for – oat – OATT, trying to get access to Quebec.

MR. LEARMONTH: Right.

MR. KENNEDY: So I knew there were issues that there were still ongoing issues with Quebec, yes.

MR. LEARMONTH: Tab 68 is an Exhibit P-01263. Now are these, this, this is a – looking on page 2, export and markets. Are these drafts of documents that eventually ended up being part of the – is it power to the people or whatever they –

MR. KENNEDY: I don't – see what happened, I remember if you go back – 'cause I'd forgot all about this, Mr. Learmonth, until I'd seen these documents again. But if you go back to Exhibit P-01260 and there we have combined – it looks to be combined initially in July of 2012. The officials were writing papers and getting these papers together. It looked like the demand and rates paper were combined. And, I think, when I reviewed them, I said: Well look, shouldn't we have a separate – shouldn't these be separate papers? Because the issue of demand, Commissioner, the way we looked at, again, do we need the power. If we don't need the power, why are we doing anything?

So that was a separate paper. So why we do this, Mr. Learmonth? I think I made the suggestion – someone made the – my notes anyway, my writing – that perhaps we should have two papers. And there were two papers prepared.

We were looking at all kinds, all avenues. The export markets was an important issue, Commissioner, because it would go to – from my perspective – rate mitigation. If there was any money that came from the sale of excess power out of Muskrat Falls, then it should go to mitigate rates.

So we were looking at export, but it – I don't think that became a paper, Mr. Learmonth. I'm not aware. I had officials working on various things, and I think there were a couple of them, from what you've shown me here, that did not actually make – did not become separate papers.

MR. LEARMONTH: Okay.

MR. KENNEDY: From what I can see.

MR. LEARMONTH: But who would have been preparing these documents? Would it have been a collaborative effort of Natural Resources, Justice and so on?

MR. KENNEDY: I think, yeah. If you look at – there's some point, and I forget – it might have been that September 24 note you referred to earlier today, Mr. Learmonth, but we had names of each official. Like, the electricity rates would have been done by a gentleman by the name of Walter Parsons. Paul Scott was an ADM there who would have been working on a separate paper. Mr. Bown would have been overseeing anything. But I was – anything that was going out of the department, I was certainly aware of and, to a certain extent, intricately involved.

MR. LEARMONTH: Okay.

Tab 72, Exhibit 00926.

This is the DG3 –

MR. KENNEDY: Yes.

MR. LEARMONTH: – Alignment Session.

MR. KENNEDY: Yes, we referred to it –

MR. LEARMONTH: That's the one you referred to –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – earlier.

MR. KENNEDY: Yes. And that's my writing.

MR. LEARMONTH: Yes, I was going to say.

MR. KENNEDY: Yeah, that's my writing on pages – again, what would happen, Commissioner, is that the presentation would be there; this would have been my copy, and you'll see those are my notes.

MR. LEARMONTH: And there's no reference to any strategic risk or management –

MR. KENNEDY: No. What's on – if you go to page 4 –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – Mr. Learmonth, what you'll see there – again, and I'm just writing down what's being told to me – I've got 8 per cent contingency. So my mind is always alert to the issue of contingency, of overruns, extra costs.

MR. LEARMONTH: Okay.

MR. KENNEDY: And so I've got 8 per cent contingency written there. And then you'll see that – the different numbers that are – and then there's a 10 to 12 plus contingency. That relates to Emera I think.

So no, there's no reference that I can see, Sir, anywhere to a strategic reserve or any other kind of reserve, Commissioner. It's just simply my contingency, overrun, extra costs for the project.

MR. LEARMONTH: Yeah. Well, I suppose it doesn't matter what name you put to it; it's dollars, right?

MR. KENNEDY: Didn't matter to me, Sir.

MR. LEARMONTH: So if you put it in –

MR. KENNEDY: The only –

MR. LEARMONTH: – one category –

MR. KENNEDY: The only thing I was interested in –

MR. LEARMONTH: How much money.

MR. KENNEDY: – what is the cost to the project that I am going to the people of the province with, when I'm going to be going into the house of – I'm going into the House of Assembly arguing or looking to sanction a project based on a certain amount; I want that amount, Sir, to be as accurate as possible.

MR. LEARMONTH: Yes. Now – and in this document, too – we've gone through this with other witnesses. I know I spent a lot of time, but this – on issues and messaging.

Now, this is a document prepared by Nalcor for Cabinet, I take it, or for senior members of government. And it's come up a few times. Like, why is Nalcor advising government on, like,

how to construct the House of Assembly debate and things like that? Do you have any idea?

MR. KENNEDY: Sir, I hardly listen to my – or not hardly – I listen to my own communications people with a certain – with a grain of salt in terms of what messaging I was going to put out there in the House of Assembly. I can assure you I wasn't listening to Nalcor.

MR. LEARMONTH: But did you think it was appropriate for them to intervene in – on those areas?

MR. KENNEDY: I wouldn't – I don't even know what it's doing there. It – you know. I do know, Sir, that there was some – at some point, there was an attempt to coordinate communications and things and –

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: – but, you know, it just – like the terms that are in here, they're not terms that are – I would use. I mean, basically, if you look at – and there's a lot of materials being provided to you, Mr. Learmonth, of –

MR. LEARMONTH: Right.

MR. KENNEDY: – materials I referred to in the House of Assembly. I would take the messaging given to be by my communications directors, or from everyone else, briefing notes, and I would compile that into my own notes.

MR. LEARMONTH: Yes.

MR. KENNEDY: So I would, you know – this issue that from Nalcor – I have no idea what that's about. But it's not something that I would've paid attention to.

MR. LEARMONTH: If you go to page 31, House of Assembly debate, it seems Nalcor is advising you on if "Caucus will be divided into 6 groups and briefed on their role" – I mean –

MR. KENNEDY: That doesn't make sense, Sir, no.

MR. LEARMONTH: No.

MR. KENNEDY: That – there would've had to have been government communications people involved in that.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I mean, there's no way Nalcor would be advising us as to how to present something to the House of Assembly.

MR. LEARMONTH: But they are in this document –

MR. KENNEDY: That's what it looks like, but I –

MR. LEARMONTH: – (inaudible) on the surface.

MR. KENNEDY: Yeah, I can assure you, Sir, there was no one from Nalcor going to tell us, as a government, how to handle the House of Assembly.

MR. LEARMONTH: Yeah, and then also, there's this term you may have heard of: the "Hit squad."

MR. KENNEDY: Yeah, that's –

MR. LEARMONTH: Like, what – does that have a meaning like in –

MR. KENNEDY: I've never heard that – I never saw that note 'til I heard it here, Commissioner.

MR. LEARMONTH: Yeah.

MR. KENNEDY: It's something that – most – you know, other than my editorializing on our notes, very seldom would you see a communications professional in government. I mean, you would not see – we would not be using terms like that. They'd be instructed not to.

Same thing with the – the political messaging, Commissioner, was something that we had to make a determination as I stood up in that House of Assembly, and – no, I don't – hit squad, that's – no, I don't know what that means.

MR. LEARMONTH: Yeah – no, I thought it might be a term that like, I mean, we know it's not like a hit squad, like, but I thought it might have some meaning in government as –

MR. KENNEDY: No, it's not a term that I had ever utilized, Sir, and I utilized different terms –

MR. LEARMONTH: Yes.

MR. KENNEDY: – at times, unfortunately. But no, hit squad is not one that would've meant anything to me. It's not a term I would've used, I mean, we're in the House of Assembly; we're debating; there's gonna be – debates tough and the House of Assembly, Sir, is not a –

MR. LEARMONTH: But you –

MR. KENNEDY: – not a place for the faint of heart.

MR. LEARMONTH: Yeah, you read that document, so would you have made any comment to Nalcor about those contents?

MR. KENNEDY: But – yeah, what's interesting there though, Mr. Learmonth – you say that – I – my notes are on the first part, and then normally something like that it's – you know, you would get me crossing it out or –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – putting Xs through it or big question marks –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – or something like that. I just – it looks like I ignored it.

MR. LEARMONTH: Yes, okay.

Tab 78 is a report on the federal loan –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – guarantee.

It's an information note. It's prepared by Paul Scott and Charles Bown, and there's – approved by, I guess, Minister Kennedy – September 10, 2012.

What role, if any, did you have in the negotiations for the federal loan guarantee?

MR. KENNEDY: There were a number of issues, Sir, that were handled entirely out of the premier's office or with Nalcor. The federal loan guarantee was one of them, as was the negotiations with Emera.

The – I think that Mr. Bown would have been on a committee for the federal loan guarantee, but, as a minister, I had no involvement in terms of the negotiation – the actual negotiation of the federal loan guarantee.

This note, if I remember correctly, is being prepared because now there would be – the protocol, Commissioner, would be from minister to minister. So I'm either getting ready to have a call with minister Joe Oliver – I know we met at one point, and this – I'm not sure if this is the meeting where we met in PEI when there was a federal-provincial-territorial-ministers-of-resources meeting.

So that – my only involvement, Sir, would have been, when it was required, minister to minister in terms of the federal and provincial governments. Other than that, I had no involvement in the negotiation of the federal loan guarantee.

MR. LEARMONTH: All right.

Next, please turn to tab 80, which is Exhibit 01274. And –

MR. KENNEDY: Yeah.

MR. LEARMONTH: 01274. This is a meeting. Can you just identify the people –

MR. KENNEDY: It's a –

MR. LEARMONTH: – who are in attendance –

MR. KENNEDY: It's a –

MR. LEARMONTH: – on page 1?

MR. KENNEDY: Yeah, it's a big meeting, Sir.

MR. LEARMONTH: Yeah.

MR. KENNEDY: It's Ed Martin, Brian Crawley, Gilbert Bennett – I think this is what we're referring to as a Muskrat Falls – there was a group of us who were getting together now as we were reaching the final stages. It's Ed Martin, Brian Crawley, Gilbert Bennett, Charles Bown, JPK is myself, Ed Williams, premier, Robert Thompson, Brian Taylor, Lynn Hammond, Dawn Dalley and Heather MacLean.

MR. LEARMONTH: Yeah.

And on page 1 there, you've got CP – 2.4 – this – is that a total of 6.8? I didn't actually add it up.

MR. KENNEDY: Yeah, the bottom line there – the number at the bottom, Sir, and I don't remember what all the numbers mean, but the number at the bottom there is 6.8 billion.

MR. LEARMONTH: But where did that come from? We heard –

MR. KENNEDY: I would –

MR. LEARMONTH: – 6.2

MR. KENNEDY: – have been writing down, Sir, what was being said. What – I mean, you look at it; there's a Muskrat Falls versus Isolated Island – net benefit –

MR. LEARMONTH: Okay.

MR. KENNEDY: – analysis. The net benefit to the province, Sir, and I'm not sure –

MR. LEARMONTH: All right.

MR. KENNEDY: – how they would – it's not –

MR. LEARMONTH: (Inaudible.)

MR. KENNEDY: – the CPW.

MR. LEARMONTH: I see.

MR. KENNEDY: You're looking at economic terms. You look at, for example, carbon pricing there – 0.6 –

MR. LEARMONTH: Yes.

MR. KENNEDY: – 0.6 billion.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Export value, there's a billion –

MR. LEARMONTH: Okay.

MR. KENNEDY: – dollars attached to the export value.

“Treasury – 0.1” – I'm not sure what that means, Sir –

MR. LEARMONTH: Yeah.

MR. KENNEDY: “Dividends – 1.2” – these would be dividends going back to – well, it seemed a little bit strange to me, but it's the way, I guess, corporations work is that the – Nalcor would get a return on equity, or if there was export – excess energy sold it would go to Nalcor – back to the province as a dividend.

“Income,” “CPW Induced” – I'm not sure what that means, Sir, and then “CPW.” So, that is a net benefit analysis, Mr. Learmonth –

MR. LEARMONTH: Right.

MR. KENNEDY: – to the best of my understanding.

MR. LEARMONTH: Okay.

And then on page 2, there is a number of references to DG2 and –

MR. KENNEDY: Yes.

MR. LEARMONTH: – DG3. And in the third reference to DG3 I notice there – it's a 6.2 and then there's a P50 –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – and then P90.

MR. KENNEDY: Yeah.

MR. LEARMONTH: That's the reference I referred to earlier this morning. Do you know – can you give us any guidance on what was intended by – or why you wrote these P50 and P90 down, or ...?

MR. KENNEDY: Yeah, this is – what we’re talking about now, this is a – we’re now – and I think this is the one, if you look at it – if I could just ask you to go back to the previous page –

MR. LEARMONTH: Yes.

MR. KENNEDY: – because you questioned me on this, Mr. Learmonth, and I did go back and look –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – at it after our interview.

MR. LEARMONTH: Yes.

MR. KENNEDY: But we’re talking about the – under the 6.8 billion, 2012 –

MR. LEARMONTH: Right.

MR. KENNEDY: – we’re now breaking things down. You’ll see the third hyphen there: JPK raises issue of predicting price of oil 50 years out. Because I’m saying, like, we can – we’re meeting with these people, Commissioner, in New York and the price of oil is fluctuating so much it almost seems to be difficult to predict it for, you know, a period of years, let alone 50 years. So I was asking that question.

And then, I’m asking about the DG3 and Ed says: We only have the full information now. That would be Ed Martin telling me: DG3, we only have the full information now. So that’s – do you remember earlier, Mr. Learmonth –

MR. LEARMONTH: Mmm?

MR. KENNEDY: – I talked about whether or not the information had come in –

MR. LEARMONTH: I do.

MR. KENNEDY: – between August 3 and September 19.

MR. LEARMONTH: I do.

MR. KENNEDY: So now we’re moving into the next page, we’re looking at the capital cost. They’re distinguishing, Commissioner, the DG2 capital cost, which was the decision to do the

engineering – in, again, simple terms for me to understand – versus the detailed capital cost. And under that we know the costs. That’s what we’re being told: We know the costs.

So then you’ll see – this is again, Commissioner – and I can almost see myself saying this – yeah, I can just almost see myself saying: So what’s the real cost of Muskrat Falls? You know, that’s basically the way I would put it. And then I’m saying: Is it 8 or 9 billion? What is it? We need the real cost.

Now, we’re getting into: DG3 is 6.2 for Newfoundland – 6.2. No reference to P-factors. And these numbers meant nothing to me but they gave me a range, Mr. Learmonth, for Emera of 1.35 to 1.56 whether you use a P50 or a P90. They meant nothing to me. There was a range. And so that the total was 7.6 to 7.8 because I’m saying: Tell me the real cost.

So that’s where you go down a little bit further.

MR. LEARMONTH: Mm-hmm.

MR. KENNEDY: The cost of the project is 7.6 to 7.8: 6.2 to Newfoundland and Labrador, 1.4, 1.6.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So that’s what that’s about, Sir, is that I’m trying to figure out what is the cost of this project.

MR. LEARMONTH: So the P50, P90 was in reference to Emera?

MR. KENNEDY: In reference to Emera.

MR. LEARMONTH: Because we’ve never seen a P90 for –

MR. KENNEDY: No. It meant nothing to me.

MR. LEARMONTH: And –

MR. KENNEDY: I’m writing down what I’m told.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And it’s totally in reference –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – to Emera.

MR. LEARMONTH: But we know that those figures were used in Nova Scotia, I (inaudible).

MR. KENNEDY: Oh, I don't know that, Sir.

MR. LEARMONTH: But we have never heard of a P90 being thrown around by Emera, as far as I know, anyway.

MR. KENNEDY: Okay. I – that's –

MR. LEARMONTH: That's –

MR. KENNEDY: – the only reference in my notes.

MR. LEARMONTH: Well, anyway, that's just, like –

MR. KENNEDY: I know nothing else. I can't ...

MR. LEARMONTH: Okay, the next at tab 82 – and this is that analysis of – tab 82, it's Exhibit 00832.

MR. KENNEDY: One second.

MR. LEARMONTH: And this is that report that I first showed you at your interview, the analysis of potential management reserve. This is the one that you say –.

MR. KENNEDY: Yes.

MR. LEARMONTH: – you never saw.

MR. KENNEDY: Yes. That's okay. Yeah.

MR. LEARMONTH: And just for your reference, if you look on page 7 of that exhibit, that's where the 497 million is.

MR. KENNEDY: Yeah.

MR. LEARMONTH: Well, you've seen – you've reviewed it and I'm not going to take you through it.

MR. KENNEDY: That's the first time I'd seen that report, Sir.

MR. LEARMONTH: Yes, the next Exhibit 01282, at tab 91.

MR. KENNEDY: Okay, I think we got to go to the next volume.

MR. LEARMONTH: No, not in mine.

THE COMMISSIONER: Yeah, in ours we do.

MR. KENNEDY: The next binder – it's going to be the next binder, I think (inaudible).

MR. LEARMONTH: My binders are different from everyone else's, I guess.

MR. KENNEDY: So what the – what tab number is it, Sir?

MR. LEARMONTH: Ninety-one.

MR. KENNEDY: And what's the exhibit number?

MR. LEARMONTH: 01282.

MR. KENNEDY: I'm a little bit lost, Sir.

THE COMMISSIONER: It's right at the beginning of the book. It's – so book number 3.

MR. KENNEDY: Yes, I got it – 01281. I have it, Sir. Yes.

MR. LEARMONTH: Okay.

Now, this is a speech, I guess, you're making, is it? On page 1 you say: "I am pleased to join Premier Dunderdale"

MR. KENNEDY: Yeah, this is the release of the MHI report on October 30, 2012.

MR. LEARMONTH: Yeah.

MR. KENNEDY: What we did, Mr. Learmonth, there – these reports were released on various time frames –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – over the next week or so. And this is the actual release of the Decision Gate 3 and you'll see that these – if you look at these, these are notes that are prepared for me as opposed to bullets and things crossed out. It looks to me like these are the speaking notes that would have been provided to me.

MR. LEARMONTH: They would have been provided for you?

MR. KENNEDY: Yes.

MR. LEARMONTH: Because, once again – I don't want to dwell on it much more, but on page 5: "Our government is confident in the project engineering completed to date, the rigorous evaluation" –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – "being done and the cost estimates presented to us."

So, at this point, you believe that the MHI report dealt with all risks, including strategic risk?

MR. KENNEDY: We had this date – the date of this, Sir, is October 30 – October 29. October 22 I met with Mr. Martin and we reviewed in great detail why the costs had gone up from DG2 to DG3. How can you be confident in the 8 or 9 per cent – or equity, excuse me – 8 or 9 per cent contingency.

And then the day after this is the technical briefing of the DG3 numbers.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So when we say that, yeah, our government is confident, we're confident based on the information that's been provided to us.

MR. LEARMONTH: Okay.

MR. KENNEDY: But I always found somewhat – this was somewhat stilted language, Mr. Learmonth, whenever I had to read something. I got in less trouble when I read from the page, but it was – it's really just the notes that are prepared for me. This was probably two

to three minutes, Commissioner, by the looks of this. Two ...

MR. LEARMONTH: Just turn to tab 110, Exhibit 01290.

MR. KENNEDY: Yes, I have that, Sir. Yeah.

MR. LEARMONTH: Yeah. Now, what is this? It's a record of a meeting, or ...?

MR. KENNEDY: No, this is – again, Sir, it's – in the previous page – the previous tabs here, there's – you'll see my writing, I'm reading everything. These are my notes for – you know, on the MHI load forecast. I'm actually reading the report, at pages 16 to 23 of the report, and I'm making notes as I'm trying to understand exactly what it is that MHI is saying.

So I'm reading the report and as I'm reading the report, at page – and, again, I think if you went to the MHI report, you'll find at page 16, that that's – I'm summarizing in two lines, Commissioner, what I've read in that page. And that's – I'm doing this for my own purposes because I know I'm going into the House of Assembly. So by preparing this report – in fact, I think the previous two days before that, November 4, I think I had prepared four sets of notes on different aspects of the project.

And so I'm reading the report trying to understand for myself exactly what's going on. I find the best way to do it, Mr. Learmonth, for me – some ministers like to be briefed by officials. I like to read. I like to read the report and try to figure it out myself.

MR. LEARMONTH: Okay. And then you've done a breakdown of the costs on page 7. And I also note on page 8 that –

MR. KENNEDY: Okay, one second, Sir.

MR. LEARMONTH: Page 8.

MR. KENNEDY: Okay.

MR. LEARMONTH: You're referring to a: Schedule – First Power in 2017. So as early as –

MR. KENNEDY: Sorry, where – I'm a little bit lost. What page are you at, Sir?

MR. LEARMONTH: Eight.

MR. KENNEDY: Eight – the red 8?

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yeah.

What this is – this is the technical briefing that – I can't remember the technical briefing, but this is the technical briefing and there would be a deck, okay? Because, you see, the page numbers indicate to me, Commissioner, that Nalcor has given us one of their presentation decks and that in those presentation decks – and this appears to be a lengthy one – they're now dealing – this is a technical briefing presented by Nalcor on the DG3 numbers.

Unfortunately, I can't tell you, Sir, if it was given to Cabinet or if it was provided – it's likely, having regard to the content, it could've either just been a bunch of us, Commissioner, in the room – it could've been the premier, myself, Mr. Bown, he might be able to help out there – or it could've actually been Cabinet.

But this is now they're breaking down and this is where, Mr. Learmonth, if you look at page 7 – at page 5 of that document?

MR. LEARMONTH: Yes.

MR. KENNEDY: The engineering work for MF – Muskrat Falls – “from 5% in DG2 to currently over 50%.”

So that's where I got the 5 per cent number. That's the first time I remember, Commissioner, seeing the 5 per cent number.

MR. LEARMONTH: Right. Okay.

MR. KENNEDY: And then you look at the next pages, I'm talking about the difference – the changes in the DG2 versus DG3. And then if you go to pages 8 and 9, Commissioner, just down a little bit further – the “DG3 costs as a result of” – the second hyphen – “greater determination” – no, you got to go back – got to go up a little bit.

Page 8 and 9 – no, you got to go back further, sorry.

Page 7 – okay. Now this is important, Commissioner, from – I think – a little bit more. Yeah.

See that second hyphen under pages 8 and 9 [sp pp 8-9 note on page 7 of Exhibit], Commissioner? “Greater definition and design improvements of engineering over 50% complete.” So they're now telling us we can – we've got a much better grasp of this project.

If you go down a little bit further, Commissioner, you'll see now page 10 [sp p 10 note on page 7 of Exhibit], “cost estimate chart.” Now I don't have that chart, but if you have the presentation, the chart should be there. It's outlined where the increases have come from: HVDC transmission; the Muskrat Falls structures; the engineering project management; site services; HVAC transmission. So they're breaking down – they seem to me, Mr. Learmonth, the Nalcor people seem to me to have a very good grasp on what's taking place. They're breaking down for us, Commissioner, the cost between DG2 and DG3.

MR. LEARMONTH: But they're not telling you everything, are they?

MR. KENNEDY: The things that – what I – if you go down – just – to make your point, Mr. – right there. Contingency and escalation – that second hyphen – it says 730 million. Contingency to me –

MR. LEARMONTH: And escalation.

MR. KENNEDY: – and escalation –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – is 730 – which is to me –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – the expected overrun or what –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – we put into the project because of potential –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – risk or increased cost.

MR. LEARMONTH: Those are the figures of 368 plus the escalation from DG2 to DG3.

MR. KENNEDY: That's the number that I have there, Sir. Then at page 18 –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and again, I don't know what the actual deck says –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – but I say “Estimate confidence” – so they're obviously – in their deck, Commissioner, they have outlined they're confident in their estimate. Then p. 19 – page 19 – “Schedule – first power in 2017.”

MR. LEARMONTH: Yeah.

MR. KENNEDY: “Rates will begin to be impacted in 2017.” So this is October 30, 2012, and the indications to us are that we know the costs, we're certain as to – we've got a – certain degree of certainty as a result of all the work we've done and first power will be in 2017.

MR. LEARMONTH: Yeah.

That's what you were told, I guess.

MR. KENNEDY: Someone told us.

MR. LEARMONTH: Yep.

Now, tab 112 is Exhibit 01292. “Minister rebranded”.

What is this about – “Natural Resources Minister Jerome Kennedy seemed comfortable ... facing reporters ... In the past, he says, he and other members of the Dunderdale government may have been too chippy and reactive about dealing with concerns about ... answering every single concern”

Was this a change – a November 7, 2012, change in your communication strategy for the Muskrat Falls Project?

MR. KENNEDY: Mr. Learmonth, politics didn't bring out the best in me. It was a very difficult job and my temperament was such that it didn't take a whole lot to get me excited. There were times I was too aggressive and adversarial. So I'll be the first to admit it in the House of Assembly and outside the House of Assembly.

So there were times I – everyone would they – they'd try to make me smile, for example, when I go in front of the camera there – you know, try to relax. But it wasn't my nature. So there were times that – yeah, I said things I shouldn't have said, Commissioner. There were times that I made comments I shouldn't have made.

So I think this – if I remember correctly, I'm sitting in with the editorial board of *The Telegram* and they hadn't been particular nice to me over the previous year or two, Commissioner. And I'm sitting back and I'm relaxed and I'm answering questions and I'm – and, you know, I'm – and I'm saying: Well, perhaps I should change a little. But that's their interpretation of it.

It was just – on reflection, Mr. Learmonth, I realize that the approach I had taken wasn't always the best. Whether that was dealing with the unions in Finance, whether or not that was, you know, dealing with strikes in – or potential strikes in Health. It's – so I wasn't setting out to rebrand myself. I didn't think that I was capable of being rebranded. It was simply – I was trying to acknowledge that, look: People have raised valid points here; we've tried to address them.

MR. LEARMONTH: All right. Thank you.

Tab 114 is Exhibit 01294. Now, this is a November 9 release –

MR. KENNEDY: Yeah.

MR. LEARMONTH: Was this the – a compilation of all the research papers that had been presented or prepared for – to educate the public?

MR. KENNEDY: Yeah. And what they were – and you've seen my actual notes on some of the reports, I'm saying, like, can we put this in

English, you know, like, can we make this simpler – some of the legal stuff.

So we – the issue of 2041 was an issue we tried to address, Sir. The issue then of Gull Island – the legal options was actually quite a fascinating exercise, Mr. Commissioner, in terms of 92A and whether or not we could recall power from the – from Quebec. That's something I had actually started working on when I was in the Justice department: I had met with the retired Justice La Forest, of the Supreme Court of Canada, on a couple of occasions on that.

The Good Faith and Regulatory Proceedings – unfortunately, the Good Faith commission was the one that we – that was just heard by the Supreme Court of Canada; that Justice Rowe dissented in. And so – we were trying to put these papers out there to show the public, Mr. Learmonth, that we were exploring all options.

So they weren't meant to be legal – in-depth legal analysis. They were meant to be –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – an indication to the public that we were looking at and had considered everything.

MR. LEARMONTH: Thank you. Tab 116.

Now this is a – I had to read this a few times and then get clarification on it. On page 2 – it's Exhibit 01296.

MR. KENNEDY: Okay.

MR. LEARMONTH: And you see on page 2, it's original message from Charles Bown to Jerome Kennedy, "Subject: Liberal Angles." And then he's listing down, "Province can't afford" -

MR. KENNEDY: Sorry, where, Liberal?

MR. LEARMONTH: Liberal angles.

MR. KENNEDY: I don't know, I don't see that, sorry.

MR. LEARMONTH: On page 2 of that –

MR. KENNEDY: Okay, yes, I see that, yeah.

MR. LEARMONTH: So, "Province can't afford equity," "The take or pay" –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – et cetera, "demand is lower," "MF power is very expensive. The delivered cost to Soldiers Pond is 20.8 cents and that will be higher"

"There's no certainty that power will be available for mining companies."

"There's no certainty of sufficient power from MF because HQ can veto or scuttle the WMA."

But I understand now – just for clarification – this was a list of questions. Mr. Bown was not expressing his own point of view.

MR. KENNEDY: No. This appeared to be –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – a list of issues raised by –

MR. LEARMONTH: Yeah. And that coincides with – or corresponds with page 1 –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – where it looks like – No. I think someone reading it for the first time would say –

MR. KENNEDY: No.

MR. LEARMONTH: – this is quite the dramatic (inaudible).

MR. KENNEDY: No. That appeared to be from a meeting – it appears to be – that Mr. – that now-Premier Ball, along with his communications people and assistants, had met with Mr. Martin –

MR. LEARMONTH: Yes.

MR. KENNEDY: – Ms. Dalley and Charles. And these were the issues that the Liberals raised.

MR. LEARMONTH: Yes. And tab 118, which is Exhibit 01298.

MR. KENNEDY: Yes.

MR. LEARMONTH: This is the announcement – the premier and the prime minister announce an agreement on loan guarantee. So you were the Minister of Natural Resources at that time?

MR. KENNEDY: That's correct, yeah.

MR. LEARMONTH: So you were mentioned in this press release. But you didn't take an active role in the (inaudible).

MR. KENNEDY: No, my understanding is that the loan guarantee – I think, Commissioner, Mr. Bown was certainly on it – there was a committee. I don't know if Mr. Taylor from the premier's office was directly involved as a negotiator, but he was certainly involved. And I think Mr. Martin was the primary negotiator.

MR. LEARMONTH: Right.

MR. KENNEDY: To the best of my knowledge.

MR. LEARMONTH: Sorry. Tab 120. This is the news release December 5. NL legislature votes to approve Muskrat Falls. So that's self-explanatory. That was following a debate, was it? Of some kind?

MR. KENNEDY: Sorry?

MR. LEARMONTH: That was following a debate when –

MR. KENNEDY: Yeah, there was a debate, there was a lengthy debate, Mr. Learmonth, in the House of Assembly. It seems like – again, it's a long time ago, but my recollection I was on my feet for almost two or three days answering questions, Commissioner. We were really trying to give information to the people of the province and to the opposition, answer questions.

And that's my recollection. It went on for two or three days and eventually we – there was a vote then on the –

MR. LEARMONTH: Yeah.

Tab 121 is 00067: Sanction Decision –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – on the Muskrat Falls. So this is – you're the minister of Natural Resources.

MR. KENNEDY: I am, Sir, yes.

MR. LEARMONTH: And you're bringing this forward to Cabinet.

MR. KENNEDY: This is actually a Cabinet paper. I remember – someone's deleted the heading but I remember this being a Cabinet paper.

MR. LEARMONTH: Yeah.

MR. KENNEDY: Yeah.

MR. LEARMONTH: And you say on page – it's self-explanatory, but you – it's a review of the situation. On page 10, you say, under Financial Considerations: "DG3 estimates the total capital cost of ... \$6.2 billion. This estimate includes MF" et cetera. "The \$6.2B represents the total cost to the Province and Nalcor and excludes interest during construction and financing"

Now, just to repeat probably what you've said before, you wouldn't have put that in a document to Cabinet if you didn't have a hundred per cent certainty that it was true. Am I right?

MR. KENNEDY: Nor would the officials, Sir, nor would Mr. Bown or Mr. Thompson have allowed that to go into the document if we didn't have total confidence in it.

MR. LEARMONTH: Yeah.

I just note that on – and it was approved by – yeah. On page 22, this is a, like – is this just like an autographed copy of the sanction decision?

MR. KENNEDY: Sorry, what is that? Page ...?

MR. LEARMONTH: Page 22 of Exhibit 00067

MR. KENNEDY: I don't know what that is. It looks like all the – that appears to me, Sir, to be the Members of Cabinet.

MR. LEARMONTH: Yeah, to signing once –

MR. KENNEDY: Everyone seemed to sign it, yeah.

MR. LEARMONTH: Yeah.

Tab 122 is Exhibit 01301. It's a December 17 meeting in the premier's office. Can you just go through that note and describe what the purpose or –

MR. KENNEDY: Yeah, this one is – I've read that recently. I'd forgotten about that, Mr. Learmonth. But when I read it, it caused me a little bit of concern because my understanding always of the federal loan guarantee, that it was a – meant to be a regional – that Muskrat Falls – the federal government would give a loan guarantee because it was a federal project; in other words, that Nova Scotia and Newfoundland and Labrador were involved. So, in this particular note, at that point I don't think – again, I'm not sure Mr. Learmonth, but I don't think the UARB had approved the project in Nova Scotia.

MR. LEARMONTH: No.

MR. KENNEDY: So I think there was some issues. And what happens now – we've sanctioned, what happens if Nova Scotia doesn't approve the project? And I think that that's what this was – what this – that's what this was about is was the federal loan guarantee available if Nova Scotia decided not to sanction?

MR. LEARMONTH: Okay.

Now, we had a closed or in camera session on water management so I'm not going to stray from the confidentiality of that, but I just wanted to ask you that before sanction were you aware, like, as early as June 2012, that Hydro-Québec had communicated to the province that Hydro-Québec was not accepting this continuous energy argument that Nalcor had come up with?

MR. KENNEDY: Water rights, Commissioner, again, I don't know how much – please –

MR. LEARMONTH: Don't –

MR. KENNEDY: – if I say too much.

MR. LEARMONTH: Don't – I don't want you to go into detail but I just want to know –

MR. KENNEDY: No.

MR. LEARMONTH: – were you aware that in June –

MR. KENNEDY: I think I got to go back a little bit further, Commissioner. This would have been an issue that would have been discussed – I was aware of – that had come up in – it could have been 2010, 2011. And my understanding was that it had been studied, there had been opinions obtained.

And, in fact, I remember – I don't know if – actually, you know, something just came to my mind, Mr. Learmonth. I don't know if you fellows have even seen this document, but there – I can – I probably shouldn't say it now but there was a document prepared by a lawyer downtown, I thought, on this issue.

MR. LEARMONTH: Okay, well –

MR. KENNEDY: Just totally gratuitously.

THE COMMISSIONER: We've seen a lot of documents.

MR. LEARMONTH: Mmm.

THE COMMISSIONER: And I don't want to say too much about what we did see because they're confidential exhibits –

MR. KENNEDY: Okay.

THE COMMISSIONER: – that were entered on Friday last week. But I can assure you we saw a lot of documents.

MR. KENNEDY: Okay.

So I wasn't – I was aware that there were issues I guess is the best way to put it. And I know

there were issues raised by one of our colleagues who's present in the room, in around October 2012 which I, again, immediately called Mr. Martin and said: Can you come in and explain this to me? Is this an issue or not? So the issue was explored. I was told that everything was fine, Mr. Learmonth.

MR. LEARMONTH: Okay.

Now, the Newfoundland and Labrador Benefits Strategy whereby – which required the – all the engineering to be done here in St. John's, people from SNC-Lavalin had to be – you know, they were paid to live here and they had their expenses and that, which obviously added to the cost of the project.

Now, the Independent Project assessment had said that it would add cost and risk to the project to have all these people, like, to pay for their expenses and that. Was that a factor that was taken into account by the government, the added cost of this requirement?

MR. KENNEDY: I don't know about the added – I do know, Sir, it was a very – Cabinet Members were very adamant that what can be done in the Province of Newfoundland and Labrador, and particularly in Labrador, be done in Labrador. I remember that the New Dawn Agreement particularly ensured that there be positions for the Innu. So it was pretty strong opinions that as much as could be done in this province be done there, but I don't remember, Sir, it being considered –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – to be an added cost.

MR. LEARMONTH: Added risk. So – but that's a political decision, obviously, that –

MR. KENNEDY: That would have been political.

MR. LEARMONTH: Yes on – yeah.

Well, Mr. Kennedy, I'd like to thank you very much. I – that concludes my questions.

MR. KENNEDY: Thank you, Sir.

THE COMMISSIONER: All right, so it's 4:30 here now; it's been a long day. We'll begin cross-examination tomorrow, Mr. Kennedy.

So we'll start off with the province tomorrow and last will be the former provincial government officials as per our usual protocol. So we're adjourned 'til tomorrow morning at – I'm going to say 9:30 because I – hopefully, we will finish Mr. Kennedy tomorrow.

All right?

CLERK: All rise.

This Commission of Inquiry is concluded for the day.