



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 51

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

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CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Morning.

Good morning.

Mr. Kennedy, you remain under oath at this time.

MR. LEARMONTH: Commissioner, I have some exhibits to enter if I could?

THE COMMISSIONER: Okay, just give me one second.

CLERK: Oh –

THE COMMISSIONER: All right.

MR. LEARMONTH: It's – they're 01527 to 01530, please.

THE COMMISSIONER: All right.

Province of Newfoundland and Labrador?

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

THE COMMISSIONER: Okay.

Nalcor Energy?

MR. SIMMONS: Thank you, Commissioner, and good morning, Mr. Kennedy.

MR. KENNEDY: Good morning, Mr. Simmons.

MR. SIMMONS: We know each other, but I'm Dan Simmons. I'm here for Nalcor Energy, as you know.

I'm going to start with just some general background questions on the relationship between Nalcor Energy and government, 'cause we know that Nalcor is a corporation created by

the *Energy Corporation Act*. It has a board of directors and, as you would probably know, the board members and the chair are appointed by the Lieutenant Governor in Council, so that's – Cabinet makes that appointment.

And were you also aware that the CEO is appointed by the Lieutenant Governor in Council, as well?

MR. KENNEDY: I'm not sure if I would have been aware of the actual mechanics, Mr. Simmons, but I knew that the CEO would have been hired by government in some form or another.

MR. SIMMONS: Right.

So, the – so Nalcor, as a separate corporation, was at some distance from government in that it wasn't a government department; it had its own board of directors and its own internal structure, but a CEO and I'll – you can accept that the act says that the Lieutenant Governor in Council appoints the CEO.

UNIDENTIFIED MALE SPEAKER: Okay, that's fine.

MR. SIMMONS: So you had come to your position in Natural Justice [sp Natural Resources] from Health, and you'd spent, I think, about 3 years or so as Minister of Health?

MR. KENNEDY: I was in Health for two years, Sir.

MR. SIMMONS: Two years. Okay.

And in Health there are health authorities – Eastern Health being the largest one – and those health authorities also operate in a kind of autonomous – at some length from the Department of Health, do they?

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

MR. SIMMONS: Yeah.

And the health authorities have their own boards of directors?

MR. KENNEDY: Yes, they do – yes.

MR. SIMMONS: Right?

Those boards would be appointed by government probably in a similar way to the board of Nalcor Energy, would they?

MR. KENNEDY: Yeah, I think that's fair, Sir – yeah.

MR. SIMMONS: Okay.

So, what can you tell us, for comparison purposes, about what the role of the Department of Health, and the Minister of Health in particular, was in overseeing the operations or directing the activities of the health boards while you were minister?

MR. KENNEDY: Yeah, the – I found it to be a little bit of a different relationship, Mr. Simmons, or Commissioner –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – than Nalcor.

The – by the time I became the minister of Natural Resources I knew this anyway, Sir. There was a relationship – almost a direct relationship to the premier's office, that appeared to me, Sir –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – with Nalcor. Whereas if a CEO, Commissioner, of one of the health authorities – and for example, Ms. Kaminski was there at Eastern Health – she would come to me as minister, and then go to the premier's office. I'm not aware of a CEO of one of the health authorities, for example, ever going directly to the premier's office. That wasn't the protocol that's in place.

MR. SIMMONS: Okay, so in the health authorities then – the CEO of Eastern Health, for example – where would the division be between the things that the CEO would look to that organization's own board of directors for guidance on versus going to the minister of Health for guidance on?

MR. KENNEDY: In the minister – in the Department of Health, Commissioner, we did

have certain specialized individuals. For example, the associate deputy minister of Health was a former practicing physician; the director of the MCP was a physician, so there were actual people in the Health Department with specialties in health services.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: So the operational side of the health authorities was meant to be ran by the CEO, and I think – I guess in theory, at least at the direction of the board of directors.

MR. SIMMONS: In theory?

MR. KENNEDY: Yes.

MR. SIMMONS: Yes, okay. So in practice, how did it work?

MR. KENNEDY: Well, again, I think Mr. Learmonth, Commissioner, raised one of the issues yesterday that we ran into as government as a whole, was we were appointing people to boards without any remuneration really, I think, Commissioner – or there might have been some, but it was very little – and we were asking them to spend a lot of their time, so I don't know in practice, if the board would have been as involved in the oversight capacity –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – as we would in the corporate world, Mr. Simmons, for example, where we know that boards would be significantly involved. In fact, again I – not only in theory I suppose, but in practice, the CEO should report to the board or the board in the health authorities, for example.

MR. SIMMONS: Mm-hmm. Okay. And we'll come to Nalcor in a moment.

But if I were CEO of a health authority, how would I know when I go to my board about something and when there's an expectation that I would have gone to you as the minister of Health in those two years that you held that position?

MR. KENNEDY: It was always a difficult issue, Mr. Simmons; and again, Commissioner,

what we would try to break it down. Operational issues would be here's your budget – or Eastern Health – here's your budget; now you run your operations.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: But inevitably, in Health, for example, Mr. Simmons, there would be policy decisions that would spill over into – operations and policy would get intertwined, and it would work its way up to the minister's office. For example, I indicated yesterday Commissioner, and I might have been exaggerating a little, but the Department of Health was one. If there wasn't a crisis a day –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – there was pretty well a crisis that – you know, there were issues we had to deal with all the time, and of course, when you're dealing with people's lives on a daily basis, Commissioner, who – issues would be raised and specific issues – specific cases would be raised in the House of Assembly, and inevitably, the minister's office would get drawn into –

MR. SIMMONS: Hmm.

MR. KENNEDY: – whatever controversy was raging at the time.

MR. SIMMONS: Okay.

So I could see controversies that have a public – that happen in public, and there's an expectation from the public that there be government involvement and a government response, but you mentioned policy matters. Was there an expectation in the Department of Health that the health authorities would bring policy matters up to the department and up to the minister?

MR. KENNEDY: I think, again, there's a line when operations – you're running your department – or excuse me, Eastern Health, for example –

MR. SIMMONS: Mmm.

MR. KENNEDY: – or it could be Central or Western or Labrador – they're running their

operation, and they're – they've got a budget; they're hiring people. We wouldn't get into who they should hire, for example. You have all your different departments; you had the various unions that were involved. I think there was at least three unions working over in the, for example, in the health care system, Commissioner.

The policy decisions would oftentimes relate to, well, the funding of certain drugs, the – issues like for long-term care, personal-care homes. So wider policy issues that had, though, implications for the operational side of the –

MR. SIMMONS: Mmm.

MR. KENNEDY: – business.

MR. SIMMONS: So for the health authorities, then, was there any kind of documentary guidance available to them, and available to the Department of Health, to help define where these – what – how autonomous they were compared to when they needed to involve the department and the minister?

MR. KENNEDY: I don't – I can't say, for example, Commissioner, that – with certainty – that there was no policy guidelines, but I don't remember. Health was reactive.

MR. SIMMONS: Mmm. Well, you were there two years.

MR. KENNEDY: Yeah. I didn't see – I don't remember seeing any policy guidelines, but Health was very reactive. We dealt –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: In the Department of Health, we dealt with situations as they arose. We had big budgets that we had to deal with, and we had the four regional health authorities to deal with.

MR. SIMMONS: Mm-hmm. So is there – so is it possible then that the degree – the expectations for when health authorities would come to the government and the minister with issues might vary depending on who the minister was and what the minister's personal expectations were?

MR. KENNEDY: I absolutely agree with you there, Sir.

MR. SIMMONS: Okay. So then you moved to Natural Resources?

MR. KENNEDY: Yes, I did.

MR. SIMMONS: And a significant piece of the Natural Resources portfolio was Nalcor Energy?

MR. KENNEDY: That's correct, Sir.

MR. SIMMONS: Because not only for the Lower Churchill Project, but for the oil and gas interests and so on as well, which were, I think, major initiatives for the government that you were part of?

MR. KENNEDY: That's correct, Sir.

MR. SIMMONS: Yeah, 'cause not only for the Lower Churchill Project, but for the oil and gas interests and so on as well, which were, I think, major initiatives for the government that you were part of?

MR. KENNEDY: That's correct, Sir.

MR. SIMMONS: Right. Okay. So, when you went into Natural Resources, what did you expect to find, if anything, that would help define for you what the respective roles were of Nalcor, the things it could do autonomously and independently, and the things that were expected to come up to the department in one level or another?

MR. KENNEDY: That's actually a very interesting issue, Mr. Simmons, because what I'd always seen when I first – and I think we go back to my notes. It could be 2008 or '09, I had my first notes at a meeting with Nalcor, and it was always in the premier's office. There would be – Nalcor would present to Cabinet. They're the only entity, for example, that I remember coming in presenting to Cabinet, you know, on a regular basis. I don't know if I remember anyone else coming to Cabinet.

I'm not saying the health authorities weren't in at times, but Nalcor seemed to have – there was a – because of the importance of what was going on, there seemed to be a different relationship.

And I did try to find – in relation to your question, I apologize for not answering, but I'm looking for this note, Sir. There is note – if I could just – one second, Mr. Simmons.

MR. SIMMONS: Well, if you can't find it, maybe we can come back –

MR. KENNEDY: Okay, there is a note –

MR. SIMMONS: – (inaudible).

MR. KENNEDY: – where – and I thought it was in December of 2012 –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – where I had – yes, if we go to December 12, 2011, which would be in tab – my tab 145.

MR. SIMMONS: Okay, well, let's – so, that's December 12, 2011?

MR. KENNEDY: If you –

MR. SIMMONS: Okay.

MR. KENNEDY: – want me to –

MR. SIMMONS: Well –

MR. KENNEDY: – answer your question –

MR. SIMMONS: No –

MR. KENNEDY: – Sir.

MR. SIMMONS: Well, you can tell me what your answer is. We won't go to the note if necessary.

MR. KENNEDY: Well, I'd –

MR. SIMMONS: Unless necessary.

MR. KENNEDY: – like to go to the note, Commissioner. It tells me – it relates to issues I was looking for, for Nalcor, in relation to governance and the financial structure of the corporation.

MR. SIMMONS: Sure. Well, go with – well, you –

MR. KENNEDY: I don't –

MR. SIMMONS: – go ahead.

MR. KENNEDY: I mean, that's –

MR. SIMMONS: You do that.

MR. KENNEDY: – my recollection.

MR. SIMMONS: I have no objection.

THE COMMISSIONER: Okay.

MR. SIMMONS: Sure.

THE COMMISSIONER: So, let's bring that up, then. Did you have the tab number on that?

MR. KENNEDY: Yeah, it would be tab 145 in the books that I would've had prepared. So, my guess, Commissioner, that would be volume 4.

MR. SIMMONS: 01525 – P-01525.

THE COMMISSIONER: 01525?

MR. SIMMONS: What – the list?

MR. KENNEDY: It's December 12, at page 9, Commissioner. The red page 9, and – I don't know – I apologize, Mr. Simmons, if this doesn't answer your question, but what I'm trying to determine here is the setup of Nalcor. Like, what –

MR. SIMMONS: Yep, that's relevant –

MR. KENNEDY: – is the –

MR. SIMMONS: – to the question.

MR. KENNEDY: – corporate governance? What's the relationship with the government, that over the previous number of – six weeks or so – so, what I'm looking for, Commissioner – if you look at that note, and I – the reading is a bit difficult, it's a bit light. But in number one, I – it's at page 9 – I'm looking at the breakdown of the corporation: the number of divisions, the employees in each division, what each division does, the growth in the number of employees.

Number two, I'm looking for – I got a note in relation to financial info of: the statements, revenues versus expenses, the breakdown of expenses and their budget request for 2012. So I'm –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – starting to dig in to –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – Nalcor, at least in – from my perspective, Mr. Simmons, in trying to find out –

MR. SIMMONS: Right.

MR. KENNEDY: – basically how it's – how the corporation itself is set up.

MR. SIMMONS: So in doing that did you find anything within the department, any kind of protocol about, say, communications between Nalcor –

MR. KENNEDY: No.

MR. SIMMONS: – and the department? Nothing?

MR. KENNEDY: No.

MR. SIMMONS: Any kind of protocol or statement about that helped – would help guide both the CEO and you as to where your respective roles and responsibilities were with respect to the operations of that corporation?

MR. KENNEDY: No, I didn't then, Commissioner. That was one of the things that, as I indicated yesterday to Mr. Simmons, I was trying to define in the early days, like, who played what role.

MR. SIMMONS: Right.

MR. KENNEDY: It was confusing to me.

MR. SIMMONS: Right.

So at that point then would it be similar to the Department of Health in that the – how that role and those responsibilities were divided up might

vary depending on who the minister was at the time.

MR. KENNEDY: Yes. That's correct.

MR. SIMMONS: Okay.

So did you do anything about that then? About that lack of any kind of defined, documented guidance for how this relationship was going to work?

MR. KENNEDY: No, Sir, there were certainly – there were discussions. And you'll see later on – I think the note referred to yesterday, Commissioner, was on May 31, 2012, where we're now – there's a direction note on oversight.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: And there was actually no – I tried to deal with it from a very practical perspective.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: And one example I can give you is that I remember having discussions with Mr. Martin where I felt that Mr. Bennett was out there, for example, writing letters to the editor, giving interviews.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: And I felt that he should be focusing more on the engineering side of the project. That, in other words, that we didn't need the individual in charge of the Lower Churchill Project out there writing letters to the editor on a daily – on a weekly basis or giving interviews.

MR. SIMMONS: Well, that's a very specific involvement –

MR. KENNEDY: Yeah.

MR. SIMMONS: – where you're involving yourself in the way Nalcor is internally dividing up its – dividing up the work and who they're tasking to do different work. But I'm asking about – at a higher level, at a level where we can have some guidance that's available to the Nalcor CEO and senior executive, to the

minister, deputy minister, associate deputy ministers in your department –

MR. KENNEDY: There was nothing like that.

MR. SIMMONS: – so everyone could know. Yeah.

And I understand there was nothing like that but did you see that as a problem?

MR. KENNEDY: Yes, I did.

MR. SIMMONS: But you didn't take on doing anything about it.

MR. KENNEDY: Mr. Simmons, Sir, or, Commissioner, if you look at the – by the time I get into the Department of Natural Resources, Sir, we're into the middle of a full-fledged controversy within a month with the PUB.

MR. SIMMONS: Mmm.

MR. KENNEDY: If you look at my notes, Sir, there's almost a daily diary of the steps I was taking. We were trying to – I was trying to learn what the project was about on a different level. There was significant criticism in the public that I – you know, that I was trying to deal with, Commissioner. So there was a lot on the go, Sir, at that point, by the time I got into the Department of Natural Resources.

I was trying to define the relationships and trying to understand the relationships, Commissioner, but no, there was – at that point there was nothing put in writing.

MR. SIMMONS: So when you left the portfolio and moved back to Finance, I guess, in 2013 –

MR. KENNEDY: Yes.

MR. SIMMONS: – was there – was that relationship any better defined than it was when you assumed the portfolio in 2011?

MR. KENNEDY: I don't think it was, no.

MR. SIMMONS: Okay.

So what can you tell me about your understanding when you became minister of Natural Resources then, of what the role of the Nalcor board of directors was?

MR. KENNEDY: Part of the problem there, Commissioner, is that I've learned a lot. When I had gone into the – into politics I didn't have the same understanding of, for example, corporate governance that I have today.

MR. SIMMONS: Hmm.

MR. KENNEDY: So I wouldn't have known, for example, what section 204 of the *Corporations Act*, in terms of imposing the duty of honesty and loyalty on the directors of the corporation or the Supreme Court of Canada decisions. I wouldn't have known it.

MR. SIMMONS: In a general sense what was your conception –

MR. KENNEDY: (Inaudible.)

MR. SIMMONS: – of what sorts of things the board was there to do?

MR. KENNEDY: The board would have been, in a very general sense from my perspective, Mr. Simmons – would have been to oversee the decision-making of Nalcor. I mean, obviously, it's –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – such a big corporation, Commissioner, you wouldn't expect the board to be into the nitty-gritty, but to oversee the decisions of Nalcor and to have a direct reporting relationship with the CEO.

MR. SIMMONS: Okay.

And did you see the department and the minister's office in the department playing a similar role?

MR. KENNEDY: By the time I got into Natural Resources, Commissioner – and I may be repeating myself – but the protocol or lack thereof was well defined.

MR. SIMMONS: Hmm.

MR. KENNEDY: There was a direct reporting relationship with the premier's office; there was a relationship with the – with Natural Resources, primarily the deputy would have been the main contact; and there was a direct relationship, which I didn't have any problems –

MR. SIMMONS: Hmm.

MR. KENNEDY: – between the minister and the CEO.

MR. SIMMONS: So did you or, to your knowledge, anyone else in senior positions in Natural Resources, turn your minds then, to where the responsibilities were between the board and the department so that you weren't treading on each other's toes.

MR. KENNEDY: Again, Mr. Simmons, I have no specific recollection of discussions with that. I know there were discussions in terms of the roles of government and Nalcor. I know that there were discussions in relation to oversight which eventually led to that direction note or briefing note –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – being prepared. But I have no specific recollection –

MR. SIMMONS: Mm.

MR. KENNEDY: – of anyone sitting down and saying: Well, we need policy to direct Nalcor in relation to this.

MR. SIMMONS: Right.

Did you have any concept of there being types or classes of decisions that the board could make on their own that the department would not be involved in and vice versa?

MR. KENNEDY: My answer to that, Commissioner, would again be by the time that I had got there, there were certain reporting relationships that existed that were not the way I normally did things.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: As a minister, Commissioner, whatever department I was in, I like to dig down; I like to know what was going on. Even though I'd only be there for a short period of time, I want to understand what it was I was doing. So that would – there were clearer reporting relationships. The reporting relationships with Nalcor were not clear to me.

MR. SIMMONS: Okay.

So you said there was a – kind of a direct line to the premier's office. Now, was that for Nalcor operations generally, or was that specific to something like the Lower Churchill Project? Because what we've heard before from some other witnesses was that it was kind of a special interest that the premier's office had in the – in that project, which would strike me as being something different than saying Nalcor generally reports to the premier, not to Natural Resources.

MR. KENNEDY: Yeah, I should make myself clear, too, Commissioner. I'm not saying there was anything wrong with the – with that relationship, having regard to the importance of the projects that Nalcor was doing to the – for the province in terms of oil and gas, the Hebron negotiations, the royalty negotiations. There were all kinds of things that the premier's office had to be involved in, Mr. Simmons. I'm not, again, saying there was anything wrong with that relationship. It was just an unusual one in terms of normal structure of government.

MR. SIMMONS: Okay.

Did that relationship stand in the way of you doing what you wanted to do when you became minister of Natural Resources?

MR. KENNEDY: No, the premier was very supportive.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: When I came, one of the first suggestions I made to her was that, look, we've got this ongoing – I don't know if a battle is the word, but it appeared to me to be a battle between the chair of the PUB and Nalcor. I said, I –

MR. SIMMONS: Mmm.

MR. KENNEDY: – you know, I'm told one thing by Nalcor, I'm told another thing by the chair of the PUB, so like let's bring in a third party to try to –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – a senior counsel, and she had no problem with that.

When I went to the premier and said let's go out and get some reports on our own, let's – I want to go meet with an energy advisor, she was totally supportive of all that.

MR. SIMMONS: Right. Did you ever feel left out of the loop or uninformed about things that were happening –

MR. KENNEDY: No.

MR. SIMMONS: – because of this relationship with –

MR. KENNEDY: No.

MR. SIMMONS: – the premier's office?

MR. KENNEDY: Both premiers – both Premier Williams and – I can't say that – I don't know if there were meetings that I wasn't present at –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – but both Premier Williams and Premier Dunderdale involved their ministers in meetings. So that if – for example – I'll use Mr. Martin as an example – if Mr. Martin was coming in, then the premier was – or the premier's office would notify the minister to the best of my knowledge, Sir –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – generally, that there was a meeting taking place.

MR. SIMMONS: So despite this, you know, direct line to the premier's office that you've talked about, you felt that you were informed of what was happening?

MR. KENNEDY: Yes.

MR. SIMMONS: And so did you feel that in any way you were restricted in running your department and managing your relationship with Nalcor? (Inaudible) –

MR. KENNEDY: No, not at all.

MR. SIMMONS: Now, you did, I think, in your direct examination refer to being generally satisfied that when you had questions or needed information from within Nalcor, that if you asked the questions, that you got responses and you got the information that you were looking for?

MR. KENNEDY: Well, Mr. Martin, especially.

MR. SIMMONS: Yeah.

MR. KENNEDY: And the example I think I – one of the examples I used yesterday, Mr. Simmons, is I went to New York and talked to –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – Wood Mackenzie about the shale gas, the effect of shale gas on the energy markets, and actually panicked a little because there's no – they were telling me, Commissioner, there's no markets for blocks of power. And I'm going what are we going to do with that extra 40 per cent of power that's meant to mitigate rates?

And so I came back, and I met with Mr. Martin immediately. Mr. Martin explained to me his rationale. It all made sense to me.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: So that every time I phoned or looked for Mr. Martin, Sir, he was always available.

MR. SIMMONS: Right. So we know that there was no written kind of protocol or definition about clearly defining what the relationship was between Nalcor and the Department of Natural Resources in the general sense.

What about for the Lower Churchill Project? Was there any kind of written protocol, guidance, anything on paper or in a computer document that set out when the department

wanted to be informed of things related to the Lower Churchill Project and what sorts of things it wanted to be informed of?

MR. KENNEDY: I'm not aware, Sir, of any policy. But part of the difficulty that I had –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – was that Nalcor seemed to have a lot of – yeah, well, a lot of influence. I'll use the example –

MR. SIMMONS: Mmm.

MR. KENNEDY: – I come –

MR. SIMMONS: Mmm.

MR. KENNEDY: – into a Cabinet meeting and –

MR. SIMMONS: Mmm.

MR. KENNEDY: – there's a deck being presented by Nalcor that I haven't seen. I –

MR. SIMMONS: Yeah.

MR. KENNEDY: That wasn't on with me, Sir.

MR. SIMMONS: Now, that happened, I think you said, at a Cabinet meeting held in Corner Brook?

MR. KENNEDY: It might've happened a couple of times –

MR. SIMMONS: Okay.

MR. KENNEDY: – and I was not very pleased.

MR. SIMMONS: Right, and what did you do about it?

MR. KENNEDY: I got very angry.

MR. SIMMONS: Okay, you got angry, but what did you do about it?

MR. KENNEDY: I basically told the chief of staff of the premier, I told – I don't know if I had words with Mr. Thompson – I said this is not the way I'm going to be the minister of Natural

Resources. You're not going to get – this is not gonna happen.

MR. SIMMONS: So did it ever happen again?

MR. KENNEDY: Well, I didn't think it did, Mr. Simmons, but Mr. Learmonth showed me all those emails yesterday – it was clear that things were still taking place.

MR. SIMMONS: Okay, well, for presentations to Cabinet or for information that was passed on directly, say, to the premier's office, were there other incidents that you – that that information moved up the line after that and it didn't come to you?

MR. KENNEDY: I'm not – I'm – not that I'm aware of, Sir.

MR. SIMMONS: Mm-hmm, okay.

So with those – that incident having happened, and you having been angry about it, you spoke to people in the premier's office; you spoke to Mr. Thompson about it –

MR. KENNEDY: I'm not sure if I spoke to Mr. Thompson. My direct contacts with the premier's office would be –

MR. SIMMONS: Okay.

MR. KENNEDY: – the chief of staff.

MR. SIMMONS: Chief of staff.

MR. KENNEDY: Yeah, I wouldn't –

MR. SIMMONS: Right.

MR. KENNEDY: Mr. Bown would go to Mr. Thompson.

MR. SIMMONS: Right.

MR. KENNEDY: That was –

MR. SIMMONS: Right.

MR. KENNEDY: – the reporting relationship to the premier's office.

MR. SIMMONS: So did you do anything then to try and better define or make it clear to everybody in your department and in Nalcor what you expected to be informed of and what was within the realm of Nalcor to deal with on its own?

MR. KENNEDY: I tried, Sir.

MR. SIMMONS: How?

MR. KENNEDY: Well, I can be very forceful, Mr. Simmons.

MR. SIMMONS: That's –

MR. KENNEDY: And I can assure you I was being very forceful with everyone around that we are the politicians. If this thing doesn't work, or if there are –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – problems, we're gonna wear this.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: So I want to be informed of everything that's going on.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: That's the – that was the general rule, Commissioner, that I tried to impart to people through the department, through Nalcor.

But I think there's some misunderstanding. There were never any harsh words, for example. I don't think myself and Ed Martin, there was never a harsh word in the whole time that I dealt with him. When I say I was angry, it'd be more angry –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – at the way that the system or the systemic issues that I saw existing as opposed to individuals.

MR. SIMMONS: Right, and systemic issues, you would normally think to deal with in a systemic way, as opposed to a one-off way of

speaking to people and saying do it differently, and I need to know things that politicians need to know. If it's a systemic issue, you'd think that there'd be some kind of process put in place in order to address it, if it's a systemic problem.

MR. KENNEDY: But, unfortunately, Mr. Simmons, one of the things I've found in government, generally, Commissioner, but in this case, is the issue – the systemic issues oftentimes weren't identified until it was too late.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: For example, and I – there are a number of other times, Commissioner, that I – you know, that I would get frustrated, but – for example, Mister, I don't know – well you do know, I guess everyone in this room knows, the amount of heat politically, Commissioner, we took for the PUB decision.

Yet we have Nalcor in a meeting in December 5 – at least in one meeting, I know this took place more than once – telling us that if you're going to meet the timelines that – if we're going to meet the timelines that are necessary, then the PUB has to have their report by March 31st, and we're told that in order to get in the House of Assembly, this is what has to take place.

The deadlines weren't met. Now I don't know, Mr. Simmons, what protocol or policy I can put in – what we could put in place for that. We expect, Commissioner, that when we're told – or we make decisions based on information that's provided to us – that that commitment, for lack of a better term, will be met. It wasn't. And it caused a lot of trouble.

MR. SIMMONS: So – so although there was – it sounds like you recognized that there could have been some systemic type issue about the lack of clear definition between what had to be communicated up to the department and what wasn't. There was no systemic response by the department to try and address that – is that the answer?

MR. KENNEDY: Again, Sir, I don't know how far, you know – you're – I'm not sure exactly what you're suggesting but Commissioner, if we look at the chronology of events, this is a very

hectic time. As the minister, Commissioner, I'm responsible for dealing with matters in the House of Assembly; dealing with matters in the public; dealing with matters in the media; trying to understand the project, Commissioner.

The – at this point what should – I would have thought – with all due respect, Mr. Simmons, would have been very basic. Like, Nalcor: give us the information we require to make our decisions, and if you tell us something is going to happen, then make sure it happens. Now I'm not sure, Commissioner, you know, that a policy is needed at that point?

It would have been nice, but to do it in the middle of everything else that was happening, Mr. Simmons, I think it was just – I mean, my officials in the department – it wasn't a big department, either, Commissioner. I don't know if you even know that, but we had a number of assistant deputy ministers and staff. We didn't have the staff that Nalcor had, Mr. Simmons.

MR. SIMMONS: Okay, so you've explained, I think, why there was no systemic response, so I take it that the answer is no, there was not a systemic response.

MR. KENNEDY: I'm not sure that common sense requires a systemic response.

MR. SIMMONS: Okay. I'll take that as a no.

So when you became a minister, Mr. Bown at that time, I think, was associate deputy minister, and later became deputy minister before you left the portfolio.

MR. KENNEDY: That's correct, Sir. He's right.

MR. SIMMONS: Okay.

What's the difference, what's like –

MR. KENNEDY: Yeah.

MR. SIMMONS: – how does that fit in to the structure being associate deputy minister versus deputy minister?

MR. KENNEDY: Yeah, the only other –

MR. SIMMONS: Shares responsibilities.

MR. KENNEDY: The only other department, Commissioner, where there would've been a similar set-up was Health.

In Health, we had an associate deputy minister who was a physician and we had a deputy minister who was a – who had been involved in writing health authorities who had extensive knowledge in the administration of health authorities.

In Natural Resources – and I don't know, Sir, if there was always an associate deputy minister. Excuse me, I think to – in – and – no, I think in Justice, Commissioner – I could be wrong – I think that now Justice Burrage was actually an associate deputy minister in Justice at one point.

So the associate deputy minister would be the – it normally would be the department – from what I can see in my experience, Mr. Simmons – where the responsibilities were so great that they were divided almost in terms of who would be responsible for what. And, for example, in Health the associate deputy minister did the negotiations for the physicians. In Natural Resources, there was a similar breakdown in that the associate deputy minister was primarily dealing – or excuse me, the deputy minister was primarily dealing with natural – with oil and gas issues.

MR. SIMMONS: Mmm.

MR. KENNEDY: And Mr. Bown was primarily dealing with Lower Churchill, although we did have Forestry and Agrifoods, we had Wildlife. For some reason at that point, Commissioner, Wildlife was also in the Department of Natural Resources.

MR. SIMMONS: Right.

So does the associate deputy minister report to the deputy minister who reports to you, or is it a different type of relationship?

MR. KENNEDY: Yeah, that's a fair comment. The associate deputy minister, for example, could report – could come directly to me.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I don't know if, you know, in either one of the departments, but normally they work closely together, what I found in terms of the –

MR. SIMMONS: I see. I see. So associate means they're an associate of the deputy minister and help discharge the deputy minister's role. Am I understanding that correctly?

MR. KENNEDY: Well, they'd be one level. It's – you know, it wasn't strictly like that.

MR. SIMMONS: Mmm.

MR. KENNEDY: The – it was simply that there were departments that were so big or had so much on the go. Like, for example, when Justice Burrage was in Justice he dealt with all the litigation issues that were ongoing, Commissioner. He dealt with a lot of the big constitutional issues, things like that.

MR. SIMMONS: Mmm.

MR. KENNEDY: In Health, as I've indicated, the associate deputy minister dealt with the – negotiations with the physicians. She was familiar with the ...

Mr. Bown was – you know, he dealt with the – again, the Lower Churchill significantly, but he had a lot of experience. From what I remember when I came into that department, he had a lot of experience dealing with that so there was a sense of continuity.

MR. SIMMONS: So just so I understand, were there also assistant deputy ministers?

MR. KENNEDY: Oh yes. Yeah.

MR. SIMMONS: ADMs?

MR. KENNEDY: Yeah.

MR. SIMMONS: Yes. So the ADMs, that's part of a more traditional structure. The ADMs report to the deputy minister who reports to the minister.

MR. KENNEDY: Yeah, I think – to go back for one second though, Mr. Simmons. Robert

Thompson, the Clerk, had been – when Premier Dunderdale was the minister, she – he had been there, Robert had been the deputy.

MR. SIMMONS: Mmm.

MR. KENNEDY: But Robert left with the premier – or he became the Clerk, I think –

MR. SIMMONS: Yeah.

MR. KENNEDY: – Mr. Bown – I think there was a sense of continuity. That Mr. Bown would continue to deal with the Lower Churchill Project.

MR. SIMMONS: I see. Yes.

So Mr. Bown had a considerable history, dealing with this, and he was really the department's point person, the responsibility for interfacing with Nalcor and the Lower Churchill Project.

MR. KENNEDY: That's correct. That's my understanding, yes.

MR. SIMMONS: Yeah. That was the situation when you came into the department –

MR. KENNEDY: Yes.

MR. SIMMONS: And that didn't change in any meaningful way when he became deputy minister; he still carried forward those same kind of –

MR. KENNEDY: Certainly.

MR. SIMMONS: – responsibilities for the project, did he?

MR. KENNEDY: Yes.

MR. SIMMONS: Yes. And still held it when you left in 2013?

MR. KENNEDY: Yes. Ah –

MR. SIMMONS: I'm not sure.

MR. KENNEDY: – yes, he was still there in 2013 when I left.

MR. SIMMONS: Okay. Right.

So, how much autonomy did Mr. Bown have to deal with Nalcor?

MR. KENNEDY: He knew all these people, he knew them well; he had a fair amount of autonomy, but Mr. – if I – and I don't know, Commissioner, how much you've had explained, but the role of the senior bureaucrats or civil servants should be to discharge their obligation in terms of the – I don't know, it'd be more than the operational side, but they shouldn't involve themselves, for example, in political decisions.

Now there's a thin line at times, and Mr. Bown had a lot of experience in terms of how to deal – he knew what he could deal with Nalcor on, and he knew when to come to me, for example, if there were political issues. I did not like, and I tried not to, Commissioner, to involve the executive in political decisions, because they had to work with whatever government was going to be there.

And Mr. Bown understood that; he was very good at knowing his role and he was very good at doing his role.

MR. SIMMONS: So I presume there was no expectation that Mr. Bown would come to you with every issue that he dealt with Nalcor on?

MR. KENNEDY: Not every issue, but Charles knew that I liked to be – he knew how much I was on top of things. I liked to be informed as to what's going on. To give an example, you know, he wouldn't come to me, for example when – he didn't have to come to me in terms of every detail, but it was to – the bigger picture. Like, the – for example, he would have been involved in the – I think he was on – again, Commissioner, I think, I'm not sure of this – I think he was on the Committee for the federal loan guarantee.

So he wouldn't come to me and tell me every minute – every time there was a discussion or meeting, but he would give me an overview as to what was going on. So it was an overview, and there were certain things he knew that I liked to be very involved in. For example, Mr. Simmons, the issue of rates.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: He knew that that was really something that I was on top of and I want to know how the ratepayer of this province is going to be affected, and so – that's something, he met with me, he dealt with me on – at one point it was almost a daily basis.

MR. SIMMONS: So the way the relationship worked then, was that you would give indications in various ways to Mr. Bown about what you were interested in knowing about, and then he had some degree of judgment he would have to exercise to determine what he was bringing up to you and what you shouldn't be troubled with.

MR. KENNEDY: It's the only way the –

MR. SIMMONS: What (inaudible) be dealt with.

MR. KENNEDY: It's the only way the system could work, Sir.

MR. SIMMONS: That's the way the system works. Yeah. Okay. Did Mr. Bown have any independent authority to direct Nalcor to do things?

MR. KENNEDY: I don't ever remember him direct – it's not the way he operated. He was very collaborative. He had very good relationships –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – I thought with Mr. Martin, Mr. Bennett and I don't know if he dealt with anyone else, Commissioner.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: He had very good relationships with the Premier's Office. He was well-respected in the civil service. He was experienced. So, I don't know – he knew the line himself as to what needed to come to my attention or the Premier's Office as to what he could deal with himself.

MR. SIMMONS: Right.

MR. KENNEDY: I had no question in my mind that Mr. Bown knew that.

MR. SIMMONS: As associate deputy minister with Nalcor with the Lower Churchill Project in his portfolio did you regard him as having any authority to direct Nalcor in any way?

MR. KENNEDY: I don't think he would do that, though. He didn't have –

MR. SIMMONS: No. No. No. Not would he do it. Did you regard him as having any authority to do it?

MR. KENNEDY: No.

MR. SIMMONS: So did you regard anyone in – conversely – in Nalcor having any authority to direct Mr. Bown in what he did?

MR. KENNEDY: Nalcor seems, Sir, from those emails that were shown to me by Mr. Learmonth yesterday seemed to –

MR. SIMMONS: Oh, we'll come to some of those.

MR. KENNEDY: They seemed to think they had the authority. Yeah.

MR. SIMMONS: That's not my question.

MR. KENNEDY: That's my answer.

MR. SIMMONS: My question is did you – did you regard – I'll ask it this way. Did you regard Nalcor as having any authority to direct Mr. Bown to do anything?

MR. KENNEDY: They shouldn't have. No.

MR. SIMMONS: They shouldn't have. So the answer's no. You didn't regard them as having the authority to do that.

MR. KENNEDY: Sorry. I don't (inaudible) show you. I can only respond to the emails that were –

MR. SIMMONS: Hmm.

MR. KENNEDY: – shown to me by Mr. Learmonth yesterday where they appeared to be trying to direct Mr. Bown.

MR. SIMMONS: I didn't ask you if they tried.

MR. KENNEDY: Okay.

MR. SIMMONS: I asked you if you regarded them as having any authority to direct Mr. Bown to do anything.

MR. KENNEDY: Sir, Nalcor made a lot of presumptions, okay.

MR. SIMMONS: Yeah. I'm not talking about –

MR. KENNEDY: I'm just telling you if you want to –

MR. SIMMONS: – you now. I'm talking about you. What – you tell me how you regarded this.

MR. KENNEDY: Sir, I regarded it as the fact that I expected a body who was working closely with us – I expected them to provide all relevant information to us, Mr. Simmons.

MR. SIMMONS: That's not my question. That's not my question.

MR. KENNEDY: I expected them, Sir, to repay the trust we had in them with providing us with the information we needed.

MR. SIMMONS: Okay. That's not – you haven't answered my question. My question is about how you regarded Mr. Bown's role and whether you would – I'll ask it a slightly different way. Do you have any expectation that Mr. Bown would feel that he had to do what Nalcor told him to do?

MR. KENNEDY: Unless he was told by myself or someone from the Premier's Office, no.

MR. SIMMONS: Right. Okay. So that's the answer.

So if Mr. Bown felt any pressure to do something, if he felt he was getting pressure from Nalcor, would you expect him to give into that pressure? Without coming to you first?

MR. KENNEDY: There are different kinds of pressure, Sir. There's a –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – more subtle pressure that comes from the working relationship; there would be the overt pressure where someone's told they have to do something. I would expect Mr. Bown to come to me if he felt there was pressure being put on him to do something that he felt he shouldn't do.

MR. SIMMONS: Thank you.

Did he ever do that?

MR. KENNEDY: Mr. Bown was clear in terms of how – or I thought I made it clear to Mr. Bown how I expected – him to deal with Nalcor. But, Sir, there were –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – also – and I don't – you'll have to ask Mr. Bown this, but there was also –

MR. SIMMONS: Yeah. No, I –

MR. KENNEDY: Just –

MR. SIMMONS: You would know if he came to you, so I'm asking you if he –

MR. KENNEDY: Well, Mr. Simmons –

MR. SIMMONS: – ever came to you.

MR. KENNEDY: – I'm trying to explain it. This was a little bit more complicated, Commissioner, in that we also had the premier's office involved so that the – there could be some direction. I mean, the premier's office could give some direction to Mr. Bown – I wouldn't have had any problem with that – to go and do certain things.

MR. SIMMONS: I didn't ask if anyone gave direction to Mr. Bown. I asked if he ever came to you and said I'm getting pressure from Nalcor. What do I do about it?

MR. KENNEDY: I don't think Mr. Bown had to do that, Sir, 'cause I would give him strict instructions, or what I felt were instructions, as to how to deal with Nalcor.

MR. SIMMONS: One more time and I'll give up.

Did he ever come to you and say anything to the effect of I'm being pressured by Nalcor to do something that I don't want to do?

MR. KENNEDY: I don't have any recollection of any specific instance, Sir, no.

MR. SIMMONS: Thank you.

Okay, now, when you became minister of Natural Resource, from what we've seen and what we've heard from your evidence, it appears that you took a very diligent approach to learning about the department and learning about the Lower Churchill Project in particular and that you wanted to involve yourself in understanding the issues.

MR. KENNEDY: I tried to, Sir, yes.

MR. SIMMONS: Yeah. Yeah. And is it fair to say that you even brought a skeptical kind of approach to this where you wanted to test assumptions that were being made or conclusions that were being reached about the project?

MR. KENNEDY: I would prefer to call it a contrarian approach as opposed to skeptic in terms of –

MR. SIMMONS: Okay.

MR. KENNEDY: – if something was put to me Commissioner, I like to test it; I like to understand. I ask a lot of questions. I did that in that every department and –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – I – sometimes my questions could be forceful, yes.

MR. SIMMONS: Great. So when you first came in, did you identify any sort of major questions that you were posing for yourself then that were the things you wanted to pursue –

MR. KENNEDY: Sure.

MR. SIMMONS: – as you looked at the project?

MR. KENNEDY: If you look at my notes of October 13, 27, and 30, Commissioner, I think this was even before I'm – sworn in – I think I was sworn in on the 28th maybe. I'm trying to define in my head the issues that we've got to examine, and at that point, Sir, early – they show up early in my notes – there were two main questions that were arising. To me, questions were being: Do we need the power –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – because to me it was quite simple, if we don't need the power why are we even talking about this?

And secondly: Which is the least-cost alternative?

I expanded that somewhat in my own – as I moved along. And then of course, another issue that was very important to me, Commissioner, was the issue of rates. Trying to determine what the effect on the ratepayer of the province was going to be. I think there's a note – a typed note, Commissioner, dated January 6, 2012, which outlines that I had at least 10 to 12 meetings with officials on the issue of rates. The environmental benefits, Sir, were very – a significant concern to me –

MR. SIMMONS: Okay.

MR. KENNEDY: – because we had Holyrood, Commissioner – at that point, if I remember correctly, might've been only – it wasn't being used as much where the mills – there had been mills closed down. But it was burning like 18 – burning 18,000 barrels of bunker c crude oil, I think a day when it was going full capacity.

And there was the issue then of – the economic benefits certainly was one that was being put forward by a lot of people. It wasn't the – a major concern for me, because I was looking at the overall picture. So those were the kinds of issues I defined earlier on, and my notes are replete, Commissioner, with reference to those kinds of issues.

MR. SIMMONS: Right, so I've got five there. I've got the question of whether the power was needed, then which was the least-cost option, what would the rates look like?

MR. KENNEDY: Yup.

MR. SIMMONS: The environmental benefits that could accrue, and generally the economic benefits –

MR. KENNEDY: Yeah.

MR. SIMMONS: – to the province from a development.

MR. KENNEDY: Those are the five – those are a number of main issues that arose. There – yeah, those were –

MR. SIMMONS: So some of these, like the economic benefits, that kind of rises to the level of public policy –

MR. KENNEDY: That was more issues –

MR. SIMMONS: – (inaudible) that was a government issue.

MR. KENNEDY: Yes, that was as much for me.

MR. SIMMONS: Right, okay – all right.

On the issue of do we need power, there's one document I want to refer you to because I have a question about it.

MR. KENNEDY: Sure.

MR. SIMMONS: P-01069, please.

MR. KENNEDY: Do you know what binder that's in Mr. Simmons?

MR. SIMMONS: It's not in any of your binders, okay?

THE COMMISSIONER: It will be on the screen.

MR. KENNEDY: (Inaudible.)

MR. SIMMONS: It'll come up on the screen.

MR. KENNEDY: I'll have a look, Commissioner.

MR. SIMMONS: It's actually from before you were minister, but it's just a queue to something I want to ask you about.

MR. KENNEDY: Sure.

MR. SIMMONS: Okay, so this is dated October 26, 2010, so this was about a year before you became minister. It's a note that starts out –

MR. KENNEDY: Is this prior to sanction?

MR. SIMMONS: Yes, it –

MR. KENNEDY: Or excuse me, prior to the announcement. The sanction is in – sorry – 2012, this is prior to that.

MR. SIMMONS: Yeah, yeah, and this is actually about a month before –

MR. KENNEDY: Yeah.

MR. SIMMONS: – what we call DG2, which was the determination that the Muskrat Falls option would be the least-cost option. And it says: "Hello Charles," – who we take to be Charles Bown, and if you scroll down a little bit, it comes from Paul, and there it refers to a "Wayne" and a "Gerard." Now, I understand these to be people within the – I'm not sure now whether they're within Natural Resources or Finance.

And it says: "Attached is an information package as a follow up to the discussion we had last Wednesday regarding Island electricity supply...." And it says that – there's a number of things listed there that have been reviewed,

And if you go to page 2, please – there's a presentation here called "Future Island Electricity Supply."

And just go to page 3?

In the "Overview", it lists things that have been considered in this analysis: "Electricity Forecast," "Island Supply ... Economic Assumptions..." – et cetera, et cetera.

Is this – did this presentation, or this report, ever come to your attention after you became minister?

MR. KENNEDY: Who prepared –

MR. SIMMONS: Does it seem familiar?

MR. KENNEDY: – this, Sir? (Inaudible).

MR. SIMMONS: This is internal to – and I’m going to say it’s Natural Resources, although I’m not certain at the moment whether Finance might have had some involvement in some of it.

But it’s not from Nalcor; it’s from within government.

MR. KENNEDY: It says “Follow Up” – CPT – “CPW Definition” – I – all I can say, Sir, no I haven’t seen it. I never saw that document.

MR. SIMMONS: Okay. Just go to page 4, then, ’cause this is where there’s a question I want to ask you.

So, there’s some information on this page of the presentation under the heading “Electricity Forecast.” And it’s got some graphs there showing the “Island Load Forecast” and the “Provincial Load Forecast.”

And – scroll down just a little – okay, you can stop there.

Under “Provincial Load Forecast,” the key on the bottom for the two lines on it – one says “NLH” and the other says “DNR.” And then if you look on the right-hand column under “Considerations,” the last bullet says, “DNR ...” – which would be Department of Natural Resources – “... does not have separate forecast for Island Interconnected. DNR & NLH forecasts for total NL are consistent.”

So, what can you tell me about the work that DNR did to generate its own load forecasts for the province?

MR. KENNEDY: I’m not aware, Sir, of any. I know that when we got into demand forecasts, a lot of it – the information – some of the

information certainly came from the officials in – because when we were – in the department.

But I had specific meetings with Nalcor in terms of demand. Like, for –

MR. SIMMONS: Mm-hmm – okay.

MR. KENNEDY: – Nalcor officials are who explained to me, you know, why we would – and again, I know this is all in my notes, Commissioner, but for the sake of brevity I think there was reference to the fact that even though the population was declining there was an increase in a number of homes that were using electric heat. That there was – and especially – excuse me – new homes that were being built, I think, there were issues of the load forecast obviously related to mining –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – Mr. Simmons –

MR. SIMMONS: Mm-hmm. Okay.

MR. KENNEDY: – especially if – in what was potentially going on in Labrador. So –

MR. SIMMONS: So –

MR. KENNEDY: – that’s what I remember.

MR. SIMMONS: Yeah.

So the first of the five issues you identified when you came in was: Do we need power? So you – obviously you took steps in order to educate yourself and to investigate this with Nalcor but here from a year prior we have a statement that the Department of Natural Resources forecasts the provincial load, forecast independently of Nalcor.

Now didn’t you know anything about that?

MR. KENNEDY: No sir.

What my notes indicate is that on November 7 – I guess this is a week, Commissioner, after I’ve been minister – I am meeting with Nalcor representatives in relation to demand.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: So the issues demand – from the information I was provided on demand even though we did have some people in Natural Resources who were very familiar with it we met with Nalcor to – I met with Nalcor – I’ve got, again, the notice there if you want me to refer to it – and they’d outline why the demand, why we –

MR. SIMMONS: Yeah, so –

MR. KENNEDY: – why do we need power.

MR. SIMMONS: – so my question, just to make sure I got the answer to my question, you did not know that the Department of Natural Resources did its own provincial load forecast, is that correct?

MR. KENNEDY: No I didn’t know that.

MR. SIMMONS: Okay.

Okay you were asked quite a few questions yesterday regarding the engagement of Manitoba Hydro International.

MR. KENNEDY: Yeah.

MR. SIMMONS: And I do have to go back through a couple messages just so I can ask you a couple of questions about that.

Can we start, please with P-01529? And scroll down – okay and you can – I think you can stop there please.

So Mr. Learmonth took you through the – (inaudible) chronology of the PUB report having been released late on Friday the 30th of March.

MR. KENNEDY: It was released on 30, I don’t know the time, yes. Okay.

MR. SIMMONS: And 2012. And that we have a message here from Mr. Bown to Paul Wilson at MHI on Sunday, April 1, at 10:50 a.m. and he says: “Paul; I am interested in a conversation with you to discuss next steps on Muskrat Falls. Are you available today? You can reach me at...” – and he puts the – his phone numbers there.

And next in sequence, I want to go to P-00739, please.

So, this is a message that was put to you and you were questioned on and it’s – April 1, 2012 is the date at 4:43 in the afternoon. So, it’s much later in the day than the one we just saw that had gone from Mr. Bown to Mr. Wilson and it’s from Mr. Bennett at Nalcor Energy to Mr. Wilson and he says: “Hello Paul, Charles Bown, the Associate Deputy Minister for Energy with the Government of Newfoundland and Labrador” has “asked me to pass a message along to you. He would like to have a conversation with you some time today. He can be reached at ...”

And then back to P-01529, please. And scroll up a – that’s good.

So, here we see that shortly after that at 6:08 pm on April 1, Mr. Wilson does reply to Mr. Bown and says: “Hello Charles, I can call you tomorrow once I return to the office.”

So the sequence here seems to be Mr. Bown contacts Mr. Wilson – doesn’t seem like he gets a reply. Mr. Bennett passes on the request to Mr. Wilson and then Mr. Wilson replies to Mr. Bown. Does that seem to be the sequence –

MR. KENNEDY: Yes.

MR. SIMMONS: – in which these things occurred? Okay. Good.

Now, let’s go to your notes for the meeting that took place that day which is at P-01237.

MR. KENNEDY: I –

MR. SIMMONS: Yes. That (inaudible) tab.

THE COMMISSIONER: That’d be tab 37?

MR. SIMMONS: 37.

MR. KENNEDY: That would be binder –?

THE COMMISSIONER: Binder –

MR. KENNEDY: I remember the note though and I remember going through it yesterday, Sir. That’s fine.

THE COMMISSIONER: Binder 1.

MR. KENNEDY: Yeah. I remember going through this yesterday, Commissioner. That's fine.

MR. SIMMONS: Okay. So we can bring it up. And so the – Yeah, and this is the meeting Robert Thompson, I think, is there. The premier is there.

MR. KENNEDY: That's correct.

MR. SIMMONS: Brian -

MR. KENNEDY: Brian Taylor, Chief of staff. Yeah.

MR. SIMMONS: Taylor.

Glenda who's communications person at the Premier's Office.

MR. KENNEDY: Director of Communications. Glenda Power. Yes.

MR. SIMMONS: Ed?

MR. KENNEDY: Would be Ed Martin.

MR. SIMMONS: Doesn't say which Ed it is.

MR. KENNEDY: It's Ed Martin.

MR. SIMMONS: Would be Ed Martin. And you were there and also Charles.

MR. KENNEDY: Yes. That's correct.

MR. SIMMONS: That would be Charles Bown – were all there.

And if we scroll down just a little, please – you've already referred to note number 4 –

MR. KENNEDY: Yup.

MR. SIMMONS: – which says “MHI review and notes we decided to hire same” something –

MR. KENNEDY: Same experts.

MR. SIMMONS: “same experts PUB went to”

MR. KENNEDY: Yeah.

MR. SIMMONS: Does this, you know, when in the sequence of events of the emails we saw this meeting took place? 'Cause it seems to me it would have had to take place before Mr. Bown's first message to Mr. Wilson 'cause this is where the decision was made to hire MHI.

MR. KENNEDY: Not necessarily. I would be surprised, Sir, if we had met – like meeting on a Sunday wouldn't have surprised me at all but, for example, I could have been in my District the night before –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – so the chances of it being a 9 o'clock on a Sunday morning – I'm not saying it didn't, but –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – it's more unlikely. It's more likely an afternoon meeting where – but there could have been some discussion – I didn't have any discussion – but there could have been some discussion with Mr. Bown prior to that in terms –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – of exploring the options –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – I think the key note there though, Sir, is that we decided.

MR. SIMMONS: Okay.

MR. KENNEDY: We in government.

MR. SIMMONS: It was the group and government decided to do that, fine.

So I want to bring you back to Mr. Bennett's message now at 00739, please.

Now, Mr. Learmonth asked you a question about this yesterday, and from the draft transcript, what I have is that he said: 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 – Mr. Bennett’s email.

MR. KENNEDY: Is Mr. Learmonth saying that, Sir?

MR. SIMMONS: This is Mr. Learmonth saying this to you yesterday

MR. KENNEDY: Sure.

MR. SIMMONS: And the problem which I describe is, 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?

And my question to you is, if you look at that message from Mr. Bennett, particularly in the context we just talked about, is there any recommendation in this message from Mr. Bennett?

MR. KENNEDY: It seems to me that all that’s happening there, Sir, is that Mr. Bennett would have had contact with Mr. Wilson, I’m assuming, when they were doing the MHI –

MR. SIMMONS: Mmm.

MR. KENNEDY: – report for the PUB –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – and simply indicating that Mr. Bown would like to speak to him.

MR. SIMMONS: Is there anything remotely improper or questionable or problematic about –

MR. KENNEDY: Not in that –

MR. SIMMONS: – Mr. Bennett’s message here?

MR. KENNEDY: No.

MR. SIMMONS: Nothing? Okay.

So MHI then, clearly, were engaged by the Department of Natural Resources, not by Nalcor?

MR. KENNEDY: That’s correct, Sir, yes.

MR. SIMMONS: And you were taken through a fairly length set of drafts that were exchanged for the scope of work that MHI was going to preform yesterday, and we saw that the point person for communicating those drafts to MHI was Mr. Bown, correct?

MR. KENNEDY: That appears to be the case, Sir, yes.

MR. SIMMONS: Right. Nalcor did not communicate drafts; Nalcor was not seized with dealing with MHI in order to settle the form of the scope of work. That communication was MHI and Mr. Bown in the department?

MR. KENNEDY: Mr. Bown was the contact –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – for the department, Sir, yes.

MR. SIMMONS: Right, okay.

So was anyone instructing Mr. Bown in the department as to how – as to what was – what needed to be in that scope of work? Was there any instruction either coming from you, the deputy or the premier’s office on that?

MR. KENNEDY: Sir, from my perspective, Commissioner, from my perspective, it was very – the exercise was very simple from – again –

MR. SIMMONS: Mmm.

MR. KENNEDY: – in my – at my level was, what are the DG – we need someone to examine the DG3 numbers. What are they gonna tell us? So that would’ve been the issue from my perspective.

So the defining of the terms of reference or scope of work, that’s something would be left to officials. This document’s a rather standard document that’s used in government contracts – used in Health, Justice, Finance –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – where there’s a contract with the consultant, the scope of work’s defined, and –

MR. SIMMONS: Mmm.

MR. KENNEDY: – it's signed by the minister and the representative corporation or company who's been hired – the consultant –

MR. SIMMONS: Right.

MR. KENNEDY: – who's been hired.

MR. SIMMONS: So you and Mr. Bown had both been at the meeting with the premier on the morning of April 1. Was there any discussion there about what the scope of work for their review should be?

MR. KENNEDY: I think my note, Sir, simply says the DG3 – all I'd ever thought about was the DG3 numbers. Now, what was involved in doing that, Sir –

MR. SIMMONS: Yeah.

MR. KENNEDY: – that would've been left to others to figure out.

MR. SIMMONS: Right.

MR. KENNEDY: I mean, I was just dealing with the DG3 numbers because those are the numbers we needed to make a sanction – a decision on sanction.

MR. SIMMONS: Right, 'cause where you were is that the PUB had looked at the DG2 numbers and had said we can't make a conclusion on which is the least-cost option based on those numbers.

MR. KENNEDY: Yeah.

MR. SIMMONS: So now you're in a situation where you needed to be able to say, once we have the DG3 numbers, what's the conclusion on least-cost option? That's really where you were.

So Mr. Bown would have known from that meeting, and I guess from what you would have said, that that was the objective?

MR. KENNEDY: Correct, yes.

MR. SIMMONS: Right. But aside from that, it was left to him to work out what the precise –

MR. KENNEDY: Yes.

MR. SIMMONS: – scope of work was going to be with MHI?

MR. KENNEDY: Yeah, I didn't – I wouldn't have had any involvement in terms of defining the scope of work, Sir.

I mean, there's things in that scope of work that I really, to this day, I don't really understand the full significance of.

MR. SIMMONS: Okay. Exhibit P-00261, please.

THE COMMISSIONER: Tab 132.

MR. SIMMONS: So you were shown this message yesterday. This is a bit later 'cause they – it had – this is now a couple of weeks on from the first contact with MHI. It's April 16, and it's a letter from Brian Crawley, who's at Nalcor Energy, to Mr. Bown.

Did you know what Mr. Crawley's role was at Nalcor Energy?

MR. KENNEDY: No, I knew Mr. Crawley, 'cause he had been formerly employed in the Premier's office, so I knew –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – Mr. Crawley. As for his role, I wouldn't have known his role, no.

MR. SIMMONS: Right.

So Mr. Crawley writes: "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."

So that statement Mr. Crawley made, that the terms of reference and the review are government's call, that – you would agree that that's –

MR. KENNEDY: Absolutely correct, yes.

MR. SIMMONS: – a factually correct statement?

MR. KENNEDY: Absolutely correct.

MR. SIMMONS: That’s where – yeah.

MR. KENNEDY: And Mr. Crawley would’ve known that from his –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – previous employment.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I knew Mr. Crawley well; I had a lot of respect for him, so when I see –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – something like that, that’s a absolutely correct statement.

MR. SIMMONS: Right. And Mr. Bown would’ve appreciated that, you would’ve appreciated that, and it would’ve been well understood that these terms of reference were government’s call?

MR. KENNEDY: Yes.

MR. SIMMONS: Yeah, okay.

Then he says: “but whatever we can do to support we obviously will.” So would there have been any concern with Mr. Bown consulting with Nalcor about things to do with the terms of reference?

MR. KENNEDY: It seemed to me, Mr. Simmons, that, if MHI were going to do their work, they had to have contact with Nalcor.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: The Department of Natural Resources did not have the information that was required for MHI to do their work. So I knew, Commissioner, there had to be contact with Nalcor.

MR. SIMMONS: Right. Yeah.

MR. KENNEDY: I mean, that was almost a given.

MR. SIMMONS: Right. So nothing objectionable at all about Mr. Bown involving people at Nalcor in the process as he worked through what the scope of work was going to be for the MHI report?

MR. KENNEDY: Yeah. Considering the time frames we were working under, I don’t know of any other way that it could’ve been done.

MR. SIMMONS: Right. Okay.

Now, you were brought yesterday to a couple of emails from Mr. Harrington who’s the – would you have known Mr. Harrington was –

MR. KENNEDY: No.

MR. SIMMONS: – the project director?

MR. KENNEDY: I –

MR. SIMMONS: What his position was in the project?

MR. KENNEDY: Mr. Harrington’s name would have come up at some point. I never met with him. I had –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I can’t say I specifically knew his exact role. As far as I knew, Sir, Gilbert Bennett was the man who was running – Mr. Martin was obviously the CEO of Nalcor.

MR. SIMMONS: Right.

MR. KENNEDY: But Mr. Bennett was the vice-president in charge of the Lower Churchill Project. In all the presentations to government, it would be Mr. Bennett –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – who would be present and Mr. Martin, and there would be times, Commissioner, if there was financial information discussed, where Mr. Sturge would also have been present.

MR. SIMMONS: Mm-hmm.

All right, so these were the people at the higher levels in Nalcor who you knew to be the ones who would communicate, let's say, Nalcor's position on things to government?

MR. KENNEDY: Yes, yeah.

MR. SIMMONS: Yeah, okay.

Let's look at one of those messages from Mr. Harrington, which is at P-00814, please.

THE COMMISSIONER: Okay, that's not in your book.

MR. SIMMONS: No, but you were brought to it yesterday, though. So, first of all, we see that this is – this is now May 14, 2012, so this is getting pretty close to when the terms of the MHI review were finally settled. And it's from P. Harrington; it's to G. Bennett, copied to Brian Crawley and Ed Martin.

So this is an internal Nalcor email, you see that? There's no one at government listed on the address list.

MR. KENNEDY: Oh, yes. Okay, yeah. Yeah, okay.

MR. SIMMONS: So this is entirely internal. This is –

MR. KENNEDY: Yes, that's correct.

MR. SIMMONS: – what's going on here.

MR. KENNEDY: It appears to be.

MR. SIMMONS: Okay?

MR. KENNEDY: Certainly.

MR. SIMMONS: Yeah. And it's addressed in the body. It says:

“Gilbert

“here are my comments” and he makes some comments.

He says: “I recommend ... the wording is put back to as last proposed.”

And then says: “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 in. 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” – which are information requests. “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.”

So just looking at that message, can you figure out from there what it is he's complaining about and what his concern really is?

MR. KENNEDY: No, I don't know, no. I mean, it's a – he doesn't appear to be terribly supportive of what MHI is doing is the way I – the interpretation I get from it.

MR. SIMMONS: Right. And his reference there to “similar to the last time with us compiling and producing documentation,” would you have recognized whether that was a reference to the MHI work that it did for the Public Utilities Board and the process that was involved with that?

MR. KENNEDY: No, I think the first time I saw this email, Mr. Simmons, I think it might have been Sunday night. This is Tuesday, is it?

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I think it was Sunday night, they had been provided to Mr. Williams; I would have reviewed them. So the first time I would have seen them would have been –

MR. SIMMONS: Yeah.

MR. KENNEDY: – Sunday. So I wouldn't have seen this email obviously.

MR. SIMMONS: So this is one of the emails that, yesterday, you said you'd had a problem with.

MR. KENNEDY: I thought it had gone to Mr. Bown.

MR. SIMMONS: Okay. But in this case it's Mr. Harrington to Mr. Bennett.

Now, Mr. Harrington was examined on this in his – when he gave evidence here, and so I'm just going to read you just a section from his transcript on November 20, which is at page 13. I don't have a printed copy to give you, so if you bear with me.

He says: "Well, my concerns were we – you know, the project team was under a lot of, you know, pressure at that point in time to get deliverables done. I'd seen how it worked previously under the PUB requirement, and ... that was a long drawn out effort.

"Information requests were submitted, they would be dealt with within the team and given back to the PUB and then back to MHI. In this situation, what I wanted to do is try and short circuit that type of review so that we would do it, basically, across the table with each other.

"So we'd have the documentation available to them, so they could be presented with it so that we'd cut out all of that long, drawn out, backwards and forwards with information request, because information requests can sometimes get misunderstood and misinterpreted. So my view at that point in time was this will be more efficient if we do it face to face."

That was his explanation of it. Now, with that explanation when you look at this message, is there anything particularly problematic or objectionable about this email message?

MR. KENNEDY: I don't think this was the one, Sir, that Mr. Learmonth pointed me to that I found was objectionable as there was one or two other ones that – it appeared to me – again, you'll have to ask – well, you've asked Mr. Harrington, or you can ask Mr. Martin, he's there. But it appeared to me he was not terribly impressed with the fact that government was going to MHI to have the DG3 numbers reviewed. That's what it appeared to me, Sir. I could –

MR. SIMMONS: Okay.

MR. KENNEDY: – be wrong, Commissioner.

MR. SIMMONS: So the – you were referred to a couple of other email messages. You know, we could look at them if we need to, but I'm going to tell you that those were internal to Nalcor also. Those didn't go outside Nalcor to – or they weren't addressed by Mr. Harrington –

MR. KENNEDY: Well, I must have misinterpreted yesterday, Mr. Simmons.

MR. SIMMONS: – to anyone outside Nalcor.

MR. KENNEDY: I thought that these messages –

MR. SIMMONS: Mmm.

MR. KENNEDY: – had gone to Mr. – I hadn't seen them, again.

MR. SIMMONS: Right.

MR. KENNEDY: I had assumed they had gone to Mr. Bennett – to Mr. Bown.

MR. SIMMONS: Okay. Thank you.

You were also asked a number of questions about the drafts of MHI's report. And again, there was considerable tracking of different versions of the report, and drafts came from MHI. The drafts from MHI, they all came to Mr. Bown at the Department of Natural Resources I believe. Did you understand that to be the case?

MR. KENNEDY: I assumed that, Sir, but you will have to confirm that with Mr. Bown, yeah.

MR. SIMMONS: Yeah.

And I think you told us something yesterday about how, when government retains consultants, it's not unusual for drafts of reports to be reviewed before they're finalized?

MR. KENNEDY: That was my recollection, Sir, the way things were done in government.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I was a little bit surprised because of the way we do things in the courtroom setting, Commissioner, in terms of the hiring of experts and how experts provide reports –

MR. SIMMONS: Yeah.

MR. KENNEDY: – and as lawyers being careful in getting involved in the reports. But in government that seemed to be a –

MR. SIMMONS: Mmm.

MR. KENNEDY: It seemed to be common.

MR. SIMMONS: Was that just within Natural Resources or –

MR. KENNEDY: No, that's in –

MR. SIMMONS: – in other portfolios.

MR. KENNEDY: No, that's my recollection, that it would happen. There would be consultation, and I think, Commissioner, the explanation for that was that the – a lot of times the projects were so complex, there was so much money involved, there were such contracts being entered into that you had to ensure that the work being done was clearly defined, that the reports themselves were accurate.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: It was always about accuracy in terms of these reports, Mr. Simmons.

MR. SIMMONS: Mm-hmm.

Okay. So that would involve wanting to make sure that the consultants had the facts right, I guess?

MR. KENNEDY: Yes.

MR. SIMMONS: And that they would go so far as to making sure that they had taken the facts into consideration, and that, when they were doing their analysis, that they considered the appropriate facts and hadn't left things out?

MR. KENNEDY: Accuracy was always a key, Commissioner. Obviously, it would be key in

any report, but ensuring that the documents were accurate because –

MR. SIMMONS: Mmm.

MR. KENNEDY: – as I said on a number of occasions here, Commissioner, we were always concerned, as politicians, with going out with information that's accurate. And that the level that we're operating that we've got to rely on others – I think, you know, as I indicated yesterday, Commissioner, we hire consultants and experts who provide us with information. The department officials will help provide that information to us.

And as politicians then, that information is distilled in a way that we can go out to the public, but we've got to ensure accuracy. And so that's my understanding, Mr. Simmons, of there wouldn't be substantive changes to reports, but –

MR. SIMMONS: Mmm.

MR. KENNEDY: – ensuring accuracy.

MR. SIMMONS: Right, so in this particular case did you actually know whether or not this process was being engaged in with MHI where there were drafts of reports being shared with the department?

MR. KENNEDY: No, I knew there was – I knew, Commissioner, that there was discussions –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – ongoing with MHI, I knew that Nalcor had to be involved. But in terms of drafts, no, I wouldn't have –

MR. SIMMONS: Okay.

MR. KENNEDY: Later on, I mean, my note of September 24, I think, 2012 indicates that Mr. Bown – he'd indicated to me as we were looking at the status of all of our reports that edits were being completed, but –

MR. SIMMONS: Yes.

MR. KENNEDY: – to me, edits, Sir, would be –

MR. SIMMONS: Right.

MR. KENNEDY: – grammatical changes, they would be formatting, they would be –

MR. SIMMONS: Right.

MR. KENNEDY: – ensuring accuracy.

MR. SIMMONS: So, in short then, did you have any problem or do you have any problem now with the fact that Mr. Bown engaged with MHI in reviewing, having reviewed drafts of their reports?

MR. KENNEDY: As long as it related to simply ensuring accuracy, yeah, yeah.

MR. SIMMONS: And did you know that Mr. Bown shared some of those drafts with some people at Nalcor?

MR. KENNEDY: No, I wouldn't have known that but, again, Sir, in terms of ensuring accuracy, we knew –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – Commissioner, in this case, because of the – what we were dealing with here, the DG3 numbers, I mean, were coming from – to the best of my knowledge, all the information was coming from Nalcor –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – so that I don't know how Mr. Bown or the department – we didn't have the ability in the department to figure out cumulative present worth and DG3 numbers, so we had to rely on Nalcor, Commissioner, to provide that information to Natural Resources.

So, no, I wouldn't have been surprised that Mr. Bown was speaking to Nalcor. I would've just probably assumed that that was happening.

MR. SIMMONS: Right. So any suggestions or comments that came back from Nalcor to Mr. Bown, he was in a position where he could decide whether to pass those on to MHI or not. Is that correct?

MR. KENNEDY: Yes, Mr. Bown would've been the – the contract was with government. But also, too, Sir, I'm assuming that MHI, if they – you know, the experts that – these are big companies –

MR. SIMMONS: Mmm.

MR. KENNEDY: – and, you know, I gave the example, Commissioner, of talking to Wood Mackenzie when we were looking at them reviewing Ziff, and even though I said it, I didn't think I had to say it, that you're – you know, you have to be independent and make sure you're reporting it – again, that definition of that word, but you don't tell us what we want to hear. And companies that big are not putting their reputations on the line for the small amount of money that they're going to make involved –

MR. SIMMONS: Right.

MR. KENNEDY: – in cases like we're involved in here, Commissioner. This is – my understanding that these companies are, you know, that if there's issues going on that are – that shouldn't be happening, they would raise it.

MR. SIMMONS: Right.

And you rely on them to bring that level of integrity and professionalism to the work that they do.

MR. KENNEDY: And I didn't see anything to indicate that that wasn't happening.

MR. SIMMONS: Right, okay.

So if we had a process here where drafts or reports came to Mr. Bown – he consulted with Nalcor, comments came back from Nalcor – Mr. Bown then was in a position to determine went back – what went back to MHI, you don't see there being any problem and it's not outside the range of what you'd normally expect to happen here.

MR. KENNEDY: It's not outside the range, but some of those emails that were referred to me by Mr. Learmonth seemed to be a very strident position or aggressive position being taken by some of the Nalcor people –

MR. SIMMONS: Mmm.

MR. KENNEDY: – which I’m assuming then would have been – you’ll have to ask Mr. – perhaps we shouldn’t assume –

MR. SIMMONS: Right.

MR. KENNEDY: – Commissioner, but that would have been passed on to Mr. Bown. You can ask him, he’ll be here.

MR. SIMMONS: And, of course, Mr. Bown was in the position where he could determine whether those should be passed on or not.

MR. KENNEDY: He is, Sir –

MR. SIMMONS: The (inaudible).

MR. KENNEDY: – but you’ve got a Nalcor – you know, there’s a lot of influence. Nalcor has a lot of influence.

MR. SIMMONS: Okay.

Some questions for you about natural gas. Now, the natural gas alternative had been screened out by Nalcor when the DG2 decision was made in November of 2010. When you became minister a year later – almost a year later – did you understand that that’s what had happened at DG2?

MR. KENNEDY: I understood, Sir, that with DG2 –

MR. SIMMONS: Yeah.

MR. KENNEDY: – that when Mr. Martin – I think it was Mr. Martin. Commissioner, again, it could have been others, but I think – what I understood with DG2, it was a screening process. It was a process whereby you look at a number of options and you determine which options we’re going to go to the next phase with. So I was – I became aware at some point, Mr. Simmons, that natural gas had been looked at and I don’t know if screened out is – that’s my word –

MR. SIMMONS: Now, that’s (inaudible) means the same term.

MR. KENNEDY: – screened out by Nalcor, yes.

MR. SIMMONS: Mmm.

MR. KENNEDY: So I was aware, yes.

MR. SIMMONS: Okay. So why, then, did you involve yourself in re-evaluating the natural gas options?

MR. KENNEDY: Yeah, this is – again, Commissioner, this is part of what I was trying to do as due diligence. You know, because Nalcor had done something I didn’t see that as being binding on me. There was a lot of issues being raised in the public by people about the validity of natural gas. There were issues being raised about shale gas. Dr. Bruno had raised an issue that appeared to me –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – to be valid, to be explored.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: So I decided at that point, Commissioner, that we would go further, not necessarily – not because I didn’t trust Nalcor, it was nothing like that.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I just wanted to say to the people of the province we’re trying as a government to do what we can to examine all of the options to make sure.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: Because there was such criticism of Nalcor out there and – at that point, in terms of, you know – and I don’t think it specifically related to natural gas, but we just wanted to go a step further, that’s all.

MR. SIMMONS: Right, right.

MR. KENNEDY: It was nothing more, Commissioner, than me trying to do my job, which I took very seriously.

MR. SIMMONS: Right. So this was an example, was it, of oversight and due diligence on the part of government to ensure that the action Nalcor had taken in screening out natural gas was the correct decision.

MR. KENNEDY: That's a fair way to put it, Sir, yes.

MR. SIMMONS: Yeah, okay.

And in undertaking that work, it was the Department of Natural Resources that did it, that undertook the work. It wasn't assigned to Nalcor to go do a new natural gas –

MR. KENNEDY: No.

MR. SIMMONS: – study.

MR. KENNEDY: No, I had indicated yesterday, Commissioner, that other than that one meeting that I'm – I can recollect where Mr. Martin was present with Wood Mackenzie, the meetings were government officials.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: When I travelled to New York, I met with them in London, they were government officials. I – not that I'd be – I didn't want to have Nalcor involved, but I just felt at this point, because we're examining natural gas, I wanted to draw my own – not – when I say, me, Commissioner, I don't mean that I'm the one doing it, but as a government, as a department that we can draw our own conclusions here.

MR. SIMMONS: Right. So – was within the Department of Natural Resources was responsibility for conducting this assessment assigned to anyone in particular?

MR. KENNEDY: In terms of which assessment though, Mr. Simmons?

MR. SIMMONS: Natural gas. And I'm saying natural gas generally. I know there's two aspects to it.

MR. KENNEDY: Right.

MR. SIMMONS: There's a pipeline to bring –

MR. KENNEDY: Yeah.

MR. SIMMONS: – offshore natural gas onshore and then there's the potential to import liquefied natural gas from world markets.

MR. KENNEDY: This is basically something I took upon myself, Commissioner.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I'm the one who started. Now, obviously, we had to involved officials. I couldn't –

MR. SIMMONS: Yes.

MR. KENNEDY: – in terms of obtaining information. And when it came to retaining a company, for example, I just said to the – my guess is I would've – excuse me. The natural progression of events, Commissioner, is that I would've said to Mr. Bown go talk to Mr. Foote and – who's the ADM, I think, dealing with oil and gas, and have him find a company who can do this.

MR. SIMMONS: Okay.

MR. KENNEDY: The – that's how the officials would have been involved.

MR. SIMMONS: Right. And so it was their work that resulted in Ziff being retained to do the reports, was it?

MR. KENNEDY: Yes, yes, certainly.

MR. SIMMONS: Okay. So you tasked them with finding – oh, you tasked Mr. Bown and knew that he would involve Mr. Foote. That's Wes Foote, is it?

MR. KENNEDY: Yeah, prior to becoming minister of Natural Resources, Mr. Simmons, I had never heard of Wood Mackenzie, I had never heard of PIRA, I had never heard of Ziff Energy. I didn't know who any of these companies were.

MR. SIMMONS: Right. So there had to be some sort of terms of reference developed then for the work Ziff was going to do, some assignment to them. Did you participate in

developing the instructions that they were going to be given about what they were going to look at?

MR. KENNEDY: Would have been similar, Sir, to the way that MHI was retained.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: Officials would determine the scope of reference, the terms of reference, but in my mind, Commissioner, it was very simple, is natural gas an option. Is it an option that is cheaper – again, always assuming, Mr. Simmons, that we need the power.

MR. SIMMONS: Yes.

MR. KENNEDY: I mean everything I did is based upon us needing the power – that – is natural gas potentially could it be cheaper than Muskrat Falls? I didn't know the answer. Could it be cheaper than Holyrood?

MR. SIMMONS: Mmm.

MR. KENNEDY: So that was the whole purpose.

MR. SIMMONS: Okay.

MR. KENNEDY: Like, so – and I knew – I think by this point I knew that there were two ways natural gas could be done, Sir: There would be the pipeline, I think Dr. Bruneau's premise was the pipeline from the Grand Banks; and I also knew from my previous discussions with Wood Mackenzie that the liquefied natural gas was also a potential option.

MR. SIMMONS: Okay.

So would I be correct, then, that what you wanted to do was do a genuine, arms-length reassessment of the natural gas issue, and you weren't out looking for a report just to support the decision Nalcor had already made?

MR. KENNEDY: Mr. Simmons – and I explained this to Mr. Learmonth that – during the interview – I had no emotional attachment even though I was out there advocating for Muskrat Falls at the –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – you know – I had no real emotional attachment to Muskrat Falls. I think the way I put it in one interview: if Muskrat Falls is not sanctioned, I'm not gonna lose any sleep.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: You know, we were not – and up until the end, I know it – because of the way speeches and the way politics works, everyone would assume we'd made up our minds. I can remember, Sir, and this is as clear as day, Commissioner. I remember this conversation – I was going to – and I apologize if I'm digressing, but it certainly – it speaks to this point, Mr. Simmons.

I was going to hockey on a Thursday night in November, Commissioner. It was 9 o'clock at Brother O'Hehir Arena at approximate 8:20, my phone rang in the car and I was hauling in to the parking lot. I was four or five parking spaces up the – on the right-hand side of the parking lot and it was the premier. And she said to me: It looks like the loan guarantee is gone. So Muskrat Falls is gone.

Now that's the kind of approach that we were taking. It mightn't have seemed like that to everyone, but that was the approach so –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – when we went out looking for issues on natural gas, Sir, it was the same thing. Like, I wasn't looking for anyone to confirm anything.

MR. SIMMONS: Right.

MR. KENNEDY: Tell us –

MR. SIMMONS: Yeah.

MR. KENNEDY: – what you find.

MR. SIMMONS: Yeah, and – I think, you know, you've stated that very clearly that this was to be a genuine – I'll call it a genuine reassessment, separate assessment of the natural gas issue.

So did you communicate it to Mr. Bown so that he and Mr. Foote would have understood in that way that that's what you wanted done?

MR. KENNEDY: I think they – yeah, they –

MR. SIMMONS: Yeah.

MR. KENNEDY: – would have been present, Commissioner, at all of the meetings. They would – or Mr. Bown would have been present at all the meetings. So we just wanted an answer. Tell us, you know, who –

MR. SIMMONS: Right.

MR. KENNEDY: – is natural gas cheaper? That's all.

MR. SIMMONS: So with the MHI review, you've said that it would have been clearly understood by you that Nalcor had information that would be needed by MHI and that would have to be involved at some level.

Did you turn your mind to it or have any expectation about the degree to which Nalcor might or might not have to be involved in this review of the natural gas issue?

MR. KENNEDY: No, I don't specifically remember that, Sir, no. I have no specific recollection of saying, well, should Nalcor be involved in that? I didn't recollect.

MR. SIMMONS: Right. Would it surprise you if your officials involved Nalcor as an organization that had information about the natural gas –

MR. KENNEDY: No.

MR. SIMMONS: – issue?

MR. KENNEDY: No.

Again, I want to make it clear, Mr. Simmons. Even though, Commissioner, my comments at times are critical of Nalcor – so I had no reason not to believe that the Nalcor officials would provide information that was – I mean, I dealt with Mr. Keating in the past. I'd always found him, again, to be –

MR. SIMMONS: Okay.

MR. KENNEDY: – upfront and –

MR. SIMMONS: Let's take a look at –

MR. KENNEDY: – (Inaudible.)

MR. SIMMONS: – Exhibit P-01199, please?

THE COMMISSIONER: That's on the screen; not in your –

MR. SIMMONS: Oh –

THE COMMISSIONER: – book.

MR. SIMMONS: – yeah.

THE COMMISSIONER: I don't think.

MR. SIMMONS: No, it's not in your book. So, let's scroll down to the bottom, please? Up a little bit so we see that message? Good, okay.

So, this is a message from Wes Foots to – I think you said it was the – an assistant deputy minister in the Department –

MR. KENNEDY: Yes, Mr. Foote –

MR. SIMMONS: – of Natural Resources?

MR. KENNEDY: – was the – yep, he was.

MR. SIMMONS: Responsible for oil and gas issues?

MR. KENNEDY: That's my recollection.

MR. SIMMONS: Generally.

MR. KENNEDY: Yeah, my – I know that Mr. Foote, when we went to find a company, so we could review natural gas, he was –

MR. SIMMONS: Hmm.

MR. KENNEDY: – the one who came up with (inaudible).

MR. SIMMONS: He found Ziff? Okay.

This is a message from Wes Foote to Jim Keating, and it says: “Ziff Call,” “Jim Did Ziff call go ahead? If so how did ...” – I think it’s supposed to be it – “go?” Signed “Wes”.

Scroll up a little bit to the next message on top? And Jim Keating replies to Wes Foote and says: “Really good. Call u tomorrow. Gone to Bryan Adams.” Signed “J”.

So, would it surprise you that Mr. Foote and Mr. Keating were communicating about issues like this? ‘Cause this is a reference to a call that you were asked about yesterday when Mr. Learmonth brought you to a message from Mr. Keating where he was reporting on the three hour call with Ziff.

MR. KENNEDY: It wasn’t the call that concerned me. It was –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – the length of the call, and I think the comments that were made.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: That’s something that would’ve gone beyond what I would’ve –

MR. SIMMONS: Right.

MR. KENNEDY: – agreed was appropriate.

MR. SIMMONS: Right.

MR. KENNEDY: The fact of call or having discussions or Nalcor’s involvement, you know, I wouldn’t have been particularly upset over that, but, again, these are emails, Sir, that I didn’t see.

MR. SIMMONS: Right.

MR. KENNEDY: The one that Mr. Learmonth showed me yesterday referred that there were comments made that –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – I thought were inappropriate at the – in the context of what was going on.

MR. SIMMONS: But when you look at this email here, it seems fairly –

MR. KENNEDY: Yeah, that’s –

MR. SIMMONS: – clear that Mr. Keating was involved, and his involvement was known to Mr. Foote, and then Mr. Foote was actually inquiring of him about what had happened –

MR. KENNEDY: (Inaudible.)

MR. SIMMONS: – on that particular –

MR. KENNEDY: Yeah.

MR. SIMMONS: – call. So, it wouldn’t surprise you that – or do you regard it as being, in any way, inappropriate to have involved Mr. Keating in providing information to Ziff as part of this process?

MR. KENNEDY: We didn’t need – again, Sir, it’s – you know, and I – Commissioner, I apologize. I said this on a number of occasions yesterday. I’m looking back and I’m looking at this I’ve seen for the first time, and looking –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – at them in hindsight.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: You know, if Charles Bown had come to me and said: Look, we need to get some information from Nalcor. Do you have a problem with Ziff talking to Nalcor? I’m sure I would’ve said: No, that’s not a problem. The extent of the involvement is something that, you know, it –

MR. SIMMONS: Right.

MR. KENNEDY: – that –

MR. SIMMONS: Right.

MR. KENNEDY: – perhaps caused me some concern when –

MR. SIMMONS: Sure.

MR. KENNEDY: – I saw this email, yesterday.

MR. SIMMONS: So, you've – I mean, you've been a lawyer for a long time, you've done lots of trial work, you've participated in some inquiries, I think, commissions of inquiries, not –

MR. KENNEDY: As –

MR. SIMMONS: – unlike this.

MR. KENNEDY: – as counsel, Sir.

MR. SIMMONS: As counsel.

MR. KENNEDY: It's a little bit different as a witness –

MR. SIMMONS: Yes.

MR. KENNEDY: – (inaudible).

MR. SIMMONS: Certainly.

So, you would appreciate that sometimes we have to take care when we look at isolated emails and isolated statements, and draw broad conclusions from them, would you accept that?

MR. KENNEDY: I don't think that that's what – I didn't interpret that, Commissioner, as what Mr. Learmonth was doing yesterday. He was showing me a bunch of emails and –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – so I – he was showing what – and he'll speak to whatever his point was; I didn't think they were being taken in isolation. He was showing simply that these are the emails that exist. I hadn't seen them, I didn't have any knowledge –

MR. SIMMONS: Right.

MR. KENNEDY: – of them –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – so I was just – and he asked me for my comments. I didn't think, Commissioner, that it – you know, as I indicated, you gotta look at the context –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – and part of this whole process is we got – you can take anything in isolation, Sir, and it can look nefarious or insidious, whereas in the context of what's going on at the time, it can have a more –

MR. SIMMONS: Right.

MR. KENNEDY: – a more reasonable explanation could be –

MR. SIMMONS: Right.

MR. KENNEDY: – drawn.

MR. SIMMONS: So Mr. Keating's given evidence, I mean, would you accept that he's in – probably in a better position to give us the context of that message than just reading it in isolation?

MR. KENNEDY: I knew that Mr. Keating given – has given evidence; I don't know what he said on this.

MR. SIMMONS: Okay.

Now, then also there was a report commissioned from Wood Mackenzie, and I'm not totally clear on how all this –

MR. KENNEDY: Okay.

MR. SIMMONS: – played out with Wood Mackenzie, but if I understand correctly, they were – were they – do you know if they were asked to look at both the alternative of bringing gas from offshore by pipeline, and also looking at the – importing the LNG option?

How much do you know about what instructions they were given and (inaudible) –?

MR. KENNEDY: I'm going by memory, Sir, but I can take you to specific notes if you want them.

My recollection, Commissioner, is that the Dr. Bruneau documents were – or his paper, or his – the – I think it was actually a presentation at the –

MR. SIMMONS: Mm-hmm, at the Harris Centre.

MR. KENNEDY: – at Memorial at the Harris Centre.

MR. SIMMONS: Yeah.

MR. KENNEDY: My recollection, that's around February? Again, I could be wrong.

MR. SIMMONS: Yeah, March.

MR. KENNEDY: Around February of 2012.

There had been issues raised earlier in relation to natural – my first meeting with Wood Mackenzie was in relation to shale gas, the effect on the energy markets –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – and oil – oil pricing. In that general discussion, Commissioner, there would've been discussion again, I'm just – of Henry Hub pricing, how natural gas was pricing, the differential between Asia and bringing natural gas in, where natural gas was produced.

It's when Dr. Bruneau's presentation – and I think Mr. Martin might've been, Cabot Martin might've been making comments also – that I realized, well, we gotta look at this. So then, I know I go back to – I think we have a preliminary report or we have something or we know generally what Ziff is going to say, because when we go back on July 29 in London, that's the same – I met with Profession Bulkin and – and I forget who else we met with – and then basically I said look, tell us about this, you know. And they went – my notes clearly indicate that we talked about the pipeline option –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – and also we talked about liquefied natural gas, because I found it quite fascinating the way they were explaining it. And there were some differences of opinion. I didn't see them, Commissioner, as being – I thought they were actually – it was good that we had – people weren't agreeing on everything. And the liquefied natural gas was certainly discussed in detail.

MR. SIMMONS: Sure. So how did the actual reports from Wood Mackenzie come to be

commissioned? Was that something that you told them in one of your meetings that you wanted them to do? Did you task Mr. Bown with doing it? Was it his own initiative? How do we come to have those reports?

MR. KENNEDY: I don't – like, it's been referred to as a report. Essentially, Commissioner, what we were – there was – we knew there would be further issues. As politicians, you know, the criticism was there. We knew there would be further issues. So all we were looking at was saying to Wood Mackenzie tell us: is Ziff right or wrong? I need to know, you know? Are they right or wrong? And if they are right, you know, are you willing to give us a letter –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – basically outlining your issues? I – it was never said to them at any point, you know, you have to agree with everything Ziff says. Tell us what you think. And I went back in October – excuse me – in August – this was when – if I – if my recollection is correct, Commissioner – I was coming from Norway, and on August 31 – yeah, August 31 I met with Wood Mackenzie again and we – there was a difference in terms of the way natural gas was being – my understanding, Sir, it was coming from the cost of natural gas in Europe, in Asia. And then we had shale gas. And that the Henry Hub price around that time was around \$2.50 to \$3. There were – per MMBtu. And I, for the life of me, Mr. Simmons, I don't know –

MR. SIMMONS: You're doing better than me if you remember MMBtu.

MR. KENNEDY: I don't even – and then there was reference to Bcfs and – so then, the issue was: well what's the cost of – for the pipeline, what would be the cost that the – to make it marketable? And I remember their terms being \$6 to \$7 Henry Hub price for it to be commercially viable.

Then when we got into the pipeline, there were more references to what we'd have to have – a regasification facility, there would have to be – or I think that's the term that's used. The liquid –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: The liquefied natural gas would have to be regasified and there would have to be a structure built. My recollection – I'd have to go to my notes, Commissioner, to be accurate, but my recollection is that the – Wood Mackenzie thought that Ziff's estimate for the regasification – that whole – was higher than what they would have put it at.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: But they also thought that Ziff was lower on another issue than they would have had it at. So they sort of balance each other.

So those were the issues. Liquefied natural gas was clearly discussed on those occasions, Commissioner, because it's in my notes, and I remember the guy – sometimes – I don't know, Commissioner, why I remember some of these things.

I don't remember Maximo's last name, but I remember Maximo was a young guy; he was – he seemed to me to be in his early 30s, and he had very firm opinions on natural gas. And I can tell you he was not backing down from that opinion. There was now indication in this meeting, Sir, that this – that these guys – this – in terms of his difference of opinion with Ziff.

MR. SIMMONS: Yeah. Thank you. My question was who did what question about the reports.

MR. KENNEDY: I get –

MR. SIMMONS: Okay?

MR. KENNEDY: Sorry, Commissioner.

MR. SIMMONS: Yes.

MR. KENNEDY: I get lost a little a bit.

MR. SIMMONS: So at – but I'm not sure you actually got to – and maybe you can't answer this question.

MR. KENNEDY: Okay. Sorry.

MR. SIMMONS: But my question is who commissioned the reports?

MR. KENNEDY: Government.

MR. SIMMONS: Who took responsibility – not individually – did – you've had meetings with Wood Mackenzie –

MR. KENNEDY: Yeah.

MR. SIMMONS: – did you say this is all very important stuff, I want a report or a commentary – a written commentary – from you on the Ziff reports? Did you ask Mr. Bown to go get that from Wood Mackenzie? Did these commentaries just appear on their own without you having initiated them?

MR. KENNEDY: No, we asked.

MR. SIMMONS: Hmm?

MR. KENNEDY: We asked –

MR. SIMMONS: Right.

MR. KENNEDY: – Wood Mackenzie, because we knew –

MR. SIMMONS: Right.

MR. KENNEDY: And again, I don't mean to sound –

MR. SIMMONS: Yeah. But who's we?

MR. KENNEDY: The government.

MR. SIMMONS: Yes.

MR. KENNEDY: Me.

MR. SIMMONS: Okay. You did.

So did you tell Mr. Bown to get the commentaries from Wood Mackenzie?

MR. KENNEDY: If Wood Mackenzie was willing to supply it.

MR. SIMMONS: You did. Okay. All right.

So who then gave the instructions to Wood Mackenzie about what they were supposed to do?

MR. KENNEDY: Well, Mr. Bown would've dealt with Wood Mackenzie. I wouldn't have –

MR. SIMMONS: Okay.

MR. KENNEDY: – dealt with – specifically what would be –

MR. SIMMONS: Right.

MR. KENNEDY: – in a report.

MR. SIMMONS: And had you asked for commentaries on both the pipeline option and the LNG option?

MR. KENNEDY: I think –

MR. SIMMONS: Or were you that specific?

MR. KENNEDY: Yeah. I'd have to go my notes of October 10 if you want me to –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – to answer that question, Commissioner. I don't have a specific recollection. The October 10 meeting in New York, I'd have to go to those notes if you want me to –

MR. SIMMONS: Okay.

MR. KENNEDY: – answer that question.

MR. SIMMONS: Well, let me bring you further on.

So, in the examination yesterday, it appears that what government eventually released publicly was a Wood Mackenzie commentary dealing with the pipeline option and not the one dealing with the LNG option. Do you recall that?

MR. KENNEDY: I thought Wood Mackenzie –

MR. SIMMONS: Okay.

MR. KENNEDY: – dealt with –

MR. SIMMONS: So that's part of my answer. You thought the LNG –

MR. KENNEDY: Yeah, I thought –

MR. SIMMONS: – material had been released publicly, did you?

MR. KENNEDY: I thought they made commentary on the LNG, yeah.

MR. SIMMONS: Okay.

MR. KENNEDY: I ...

MR. SIMMONS: So if that hadn't happened, there's no point in asking you why if – in that case? Okay.

MR. KENNEDY: I know the – Dr. Bruneau – the main issue was the pipeline, but I thought they had –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – commented on LNG. I don't know.

MR. SIMMONS: Okay. Good. Thank you.

So there is one email message that I want to refer you to in connection with that. You were brought to it yesterday. It's P-01206, please.

THE COMMISSIONER: Tab 138.

MR. SIMMONS: Yes. Thank you, Commissioner.

So we scroll down to the bottom. These – okay, just up a little bit so we can see it. Thank you.

So this starts with another message from Mr. Foote and –

MR. KENNEDY: Is this in the – excuse me, Mr. – is this in the booklet or is this one of the ones that weren't provided?

MR. SIMMONS: Yeah –

THE COMMISSIONER: Yes, 01206 is in your book at tab 38. It's in –

UNIDENTIFIED FEMALE SPEAKER:
Binder (inaudible) –

THE COMMISSIONER: – binder 4.

MR. SIMMONS: 138, volume 3.

THE COMMISSIONER: Binder 4.

MR. SIMMONS: Oh. My list says – my list says 3.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

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

Thank you, Commissioner.

MR. SIMMONS: Maybe I have Mr. Learmonth's list.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: Anyway, do you have it there, Mr. Kennedy?

MR. KENNEDY: Yes, I do. I have it, Commissioner, yes.

MR. SIMMONS: So this starts out with a message from Mr. Foote to Mr. Bown and Mr. Keating. And the subject is: Comments on WWM [sp WM] Review. It's addressed to Charles and there's some comments there from Mr. Foote on the review. So it appears here that Mr. Foote is not only, again, commenting on what appears to be a draft report, but he's also sent it to Mr. Keating at Nalcor Energy. See that?

And if we scroll up now to the top of the page, Mr. Keating replies. And this is where he says, yes – so he's agreeing: "yes..WM should say that they were to comment only on the pipeline piece." And you were brought to this yesterday and I think you made – you agreed that something to the effect that this appeared to be an inappropriate intervention by Mr. Keating in what was in the work that Wood Mackenzie was going to be doing. Do I recall that correctly?

MR. KENNEDY: Based on the way – yeah, the – I read the email. Yeah, that's correct.

MR. SIMMONS: Yeah, okay.

So, first of all – I mean, we've been through some of this earlier – Mr. Keating didn't have the authority to dictate to the department what they were going to do or not going to do with the Wood Mackenzie report.

MR. KENNEDY: I think you're underestimating though, Mr. Simmons, the influence that Mr. Martin and Mr. – and other officials at Nalcor had.

MR. SIMMONS: Authority, did he have the authority?

MR. KENNEDY: He didn't have the authority, Sir, no.

MR. SIMMONS: Mr. Bown could take this or leave it, right?

MR. KENNEDY: Mr. Bown can speak for himself, Sir, but I don't think the relationship was that simple.

MR. SIMMONS: You would've expected Mr. Bown to be the person who would make the decision on this, not Mr. Keating. Correct?

MR. KENNEDY: I would expect Mr. Bown to make the – to make the decision, but he would certainly pay attention – again, you can ask him, but my – to what Nalcor –

MR. SIMMONS: Mmm.

MR. KENNEDY: – had to say.

MR. SIMMONS: And Mr. Foote had invited comment from Mr. Keating. Correct?

MR. KENNEDY: Again, Sir, you've shown me certain emails that indicate that, yes.

MR. SIMMONS: Right.

So in the context of Mr. Foote having invited comment and Mr. Keating makes a comment and Mr. Bown is the one who, presumably, is going to get to decide whether he considers that

comment or not, is there anything particularly problematic about that process from your point of view?

MR. KENNEDY: Well, I don't like the word – I don't like the word "should." I mean, the comment made by Mr. Crawley referred to it as government's call, terms of reference.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: But, you know, "WM should say," that –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – causes me concern.

MR. SIMMONS: Mm-hmm.

Okay. So that's what it comes down to. It's the choice of language there, where he uses the word "should" instead of some softer, alternative word. Is that it?

MR. KENNEDY: Well, it appears to me to be imperative. It's not like a discretionary, well, may or we want to consider, it's should.

MR. SIMMONS: Okay.

So did Mr. Bown come to you and say: I've got a problem. Jim Keating, over at Nalcor, is trying to interfere in our Wood Mackenzie report. Did he ever come to you and say anything like that?

MR. KENNEDY: No, he didn't, Sir. No. No, he never said that to me.

MR. SIMMONS: Okay.

Okay, I'd like to go to the MHI report from October 2012 at Exhibit P-00058, please.

MR. KENNEDY: Is this the final report?

MR. SIMMONS: Yes. Yeah.

MR. KENNEDY: Okay, so P – is that the same –?

MR. SIMMONS: I'll –

THE COMMISSIONER: Tab 96.

MR. SIMMONS: – find it for you now. It's 96, volume 3. And if we go to – well, first of all, if we just scroll down a little bit. A little further.

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

MR. SIMMONS: And while we're here, if we can go over to page – try page 3.

MR. KENNEDY: No, what I have is simply – in 96, Commissioner, it's just the – it appears to –

THE COMMISSIONER: Oh yeah, right.

MR. KENNEDY: – be the cover page.

MR. SIMMONS: Cover page? Okay, well, we'll stop there.

This is page 3 and while we've got the report open, I just note that it actually says on the title page here: Prepared for the Honourable Jerome Kennedy, Q.C., minister of the Department of Natural Resources.

MR. KENNEDY: Yeah. Correct, yeah.

MR. SIMMONS: So it's very clear this was directed – this report was directed to you in particular as the minister.

MR. KENNEDY: Yeah.

MR. SIMMONS: Page 77, please.

THE COMMISSIONER: Okay, you're not going to have the full report there.

MR. KENNEDY: Okay.

THE COMMISSIONER: Likely what they did, because of the size of the report –

MR. SIMMONS: Mm-hmm.

THE COMMISSIONER: – they just put the first page in there. It's already been entered as an exhibit, so –

MR. KENNEDY: Okay.

THE COMMISSIONER: – if you look at your screen, you’ll see what you would (inaudible) –

MR. KENNEDY: Okay, well, just one second, Commissioner, if I could just go to my notes –

THE COMMISSIONER: Sure.

MR. KENNEDY: – my personal notes on that, to give me some guidance.

MR. SIMMONS: So, Mr. Kennedy, those are notes you prepare – are those notes you prepared to assist you with giving your evidence –

MR. KENNEDY: Which –

MR. SIMMONS: – here today?

MR. KENNEDY: Which ones, Sir?

MR. SIMMONS: The ones you’re referring to now.

MR. KENNEDY: Yeah, those are ones that were provided last week. It’s simply called an index to my handwritten personal notes.

MR. SIMMONS: Okay, good. Yeah.

MR. KENNEDY: It gives me the opportunity –

MR. SIMMONS: We have that.

MR. KENNEDY: Yeah.

MR. SIMMONS: Thank you.

MR. KENNEDY: Yeah.

But then the handwritten notes would be – but go ahead, Sir, and if I don’t –

MR. SIMMONS: Yeah.

MR. KENNEDY: Let’s see what you’re talking about. If I need to go to my notes –

MR. SIMMONS: Sure.

MR. KENNEDY: – I’ll find them. But I think those notes – I did extensive notes on the MHI report, my handwritten notes. I referred to – I

remember referring to them yesterday. But anyway, go ahead, Sir.

MR. SIMMONS: Okay. So since you don’t have the full document, maybe we can just go up one page to get to – see if we can get to the heading here and put this in context.

Okay, go up a little bit further. Okay, well go back, please, to page 77.

So, Mr. Kennedy, this is in a section of the MHI report dealing with – we’re dealing with sensitivities here.

MR. KENNEDY: I thought there was another sensitivity analysis –

MR. SIMMONS: Yeah.

MR. KENNEDY: – Commissioner, with MHI in this same report. I thought there was another sensitivity analysis that dealt with PIRA low, PIRA high –

MR. SIMMONS: Yeah, there are. There are several –

MR. KENNEDY: Oh, okay sorry.

MR. SIMMONS: – tables. So this is one of those tables.

So, first of all, I mean what did you understand at the time that the purpose of doing a sensitivity analysis was?

MR. KENNEDY: To look at different options, especially where from – again, Commissioner, my very – I would – you know, I would call it an unsophisticated way. It was quite simple: That the Isolated Island Option was based, to a great extent, on the price of oil. So the CPW would be – you had to look at the price of oil.

The price of oil, Commissioner, as we talked about yesterday, could go up and down and so, therefore, you had to look at PIRA low, PIRA high, PIRA forecast. And if you – my recollection, Commissioner – and I don’t know where this is, but my recollection is that if oil went down to \$50 a barrel or something like that, then there was a CPW differential of 558 million?

MR. SIMMONS: Right. So let me just go –

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

MR. SIMMONS: Let me just go over a couple of the basics to make sure we're understanding this the same way. The CPW we're talking about is a cumulative present worth analysis. And for each set of choices: the Interconnected Island Option, which included building Muskrat Falls and doing the Link, the Transmission Link, versus the Isolated Island Option, which was continuing to be unconnected to the Mainland power grid and building generation on the Island – for each of those, the CPW looks out over a period of time to see what all the cumulative costs are of each, brings them back to a present-day value and compares them to see which, in the long run, is going to be the cheapest option between the two.

Is – would that have been the way you would have understood it?

MR. KENNEDY: I think you've described it, but the way I had it in my notes, at one point, it was an apples-to-apples comparison of vastly different projects.

MR. SIMMONS: Okay, good. And that's –

MR. KENNEDY: That's the –

MR. SIMMONS: That's a fair one too.

MR. KENNEDY: That's the way it was described in my notes.

MR. SIMMONS: I'll give you that.

And the sensitivities – I'm going to suggest to you that the sensitivities can be used to do a couple of things. They can test what happens if the assumptions that are used in those cases are wrong.

MR. KENNEDY: Right.

MR. SIMMONS: And they can also test what happens if things we – if unexpected things happen. If there are things that we don't think are going to be the case, but something may happen in the future.

MR. KENNEDY: Yes, Sir.

MR. SIMMONS: And this is a way to start to test that.

MR. KENNEDY: Yeah.

MR. SIMMONS: Right, okay.

So this table here deals with Capex. You'd understand that to be capital expenditure?

MR. KENNEDY: Yes, I would, yeah.

MR. SIMMONS: And its – it has four lines here. It has a Base Case CPW, and then it has two columns there which deal with Preference for Interconnected Island Option, and Variance from preference. So for the base case, there's a \$2.4 billion CPW preference for the Interconnected Island Option over the Isolated Island Option.

Was that the way you would have read this?

MR. KENNEDY: Yes.

MR. SIMMONS: Okay.

And then we have three sensitivities – two of them deal with increases in capital expenditure, and one deals with a decrease in the capital expenditure. And the increases are either 10 per cent or 25 per cent. So at this point in October of 2012 you're working with a \$6.2 billion capital budget for the Muskrat Falls plant –

MR. KENNEDY: Right, yes.

MR. SIMMONS: – correct? Okay.

So the case, which says Increase Capex 10%, that would have been testing a 10 per cent increase over and above the 6.2 billion. Is that the way you would have understood it?

MR. KENNEDY: I'm not sure, sir.

MR. SIMMONS: Okay.

MR. KENNEDY: That's – there were different sensitivities that were, that had to be looked at and that appears to be what it says, but it's a –

MR. SIMMONS: Okay. Well let's say it's a 10 per cent overall increase in the capital expenditure for each case. And then the next one is a 25 per cent increase in the capital expenditure for each case. Now, that's an increase over the 6.2 billion – 6.2 billion is included in the base case as the capital expenditure for the Muskrat Falls and Labrador-Island Link and Labrador Transmission Assets. Do you accept that?

MR. KENNEDY: Sure.

MR. SIMMONS: Okay. And from what you said yesterday, I think you understood that there was a contingency figure included within the 6.2 billion.

MR. KENNEDY: (Inaudible) 9 per cent, yes.

MR. SIMMONS: Okay. So there's already some contingency in the 6.2. So when we look at an increase in Capex over that number, we would have to be looking at the type of cost overrun that you dealt with when you were in Treasury Board, where there is a budget price for a project, and the cost actually goes over budget and the department has to come back to the Treasury Board and look for more money. You follow me?

MR. KENNEDY: Okay, yes (inaudible).

MR. SIMMONS: Do you accept that?

MR. KENNEDY: Yeah.

MR. SIMMONS: Okay. So this sensitivity would help inform the decision-maker – government, Cabinet, you as minister, the premier – of what the impact on the CPW preference would be if there's a 25 per cent increase over and above what's been estimated as the cost of the Interconnected Island Option.

Is that the way you would have understood this?

MR. KENNEDY: I don't think that that's entirely fair, Mr. Simmons. We were dealing with experts in terms of Nalcor who were coming in and they were telling us what the cost of the project was going to be. We were testing them, Commissioner, as to what increase costs were expected.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: We were told, and I can take you to my notes of October 18, 2012, where Mr. Martin breaks down the cost of the concrete, the cost of the steel, the cost of improving the gates to the point, where he says: We are – not absolute degree, Sir – we have certainty here based on the engineering that 9 per cent contingency will work. That's what we were going on, Sir.

MR. SIMMONS: So what's the purpose in doing a sensitivity on capital expenditure at all? If you have that degree of certainty.

MR. KENNEDY: Well, Sir, we're dealing with – you go to – you can go to the technical briefing of the – of December 30, 2012. I don't remember us being told at that point or any reference in there, Commissioner, that there's a 25 per cent chance increase.

What we're told is that this –

MR. SIMMONS: I'm not suggesting you were. I'm not suggesting you were.

MR. KENNEDY: Okay.

MR. SIMMONS: What I'm asking you, because this is MHI does this report for you. They do sensitivities which are to test the assumptions and to try and measure the effect of the assumptions being wrong. That's my understanding of the way to interpret this.

Would you have understood what these sensitivities were about when you got this report? Did they mean anything to you?

MR. KENNEDY: Sir, we would have understood to the point that Nalcor explained these things to us (inaudible) –

MR. SIMMONS: No, no, MHI, this is MHI's report. This is not Nalcor's report.

Would you have understood what MHI was telling you about what these sensitivities –

MR. KENNEDY: Sir, we would have understood. Nalcor gave us a technical briefing. We meet on August 3 was the first DG3

alignment session. On September 19th, I think Commissioner, there were more discussions of costs. On October 18th I met with Mr. Martin to go through it directly. October 30th, we were – we met, we had a technical briefing. Mr. Martin and Nalcor had all the opportunity, Sir, I suggest Commissioner, to tell us that there is going to be an increase of 25 per cent.

Of course, I understood what sensitivities were but I also understood that we were relying, not only understood, we were relying upon Nalcor's expertise, Sir, what they told us the cost of this project was going to be.

We're not going to the public, Sir, on the basis that there could be a 25 per cent increase in capex. We were told by Nalcor that the 6.2 billion includes 9 per cent contingency. We've already utilized the 15 per cent contingency, so this number is accurate.

MR. SIMMONS: Okay, so, Natural Resources and government commissioned MHI to do this report for Natural Resources and government, correct?

MR. KENNEDY: That's correct.

MR. SIMMONS: All right. This is the report. I presume when you got it you digested it carefully – because it's an important report.

MR. KENNEDY: Yeah. The report would have been reviewed, Sir. Certainly.

MR. SIMMONS: Yeah. Okay. And I know what you're saying about what Nalcor, you know, you've recounted for us what Nalcor did or didn't say about cost but leave that aside for a moment because that's not what my questions are about.

This sensitivity for increasing capex 25 per cent, regardless of whether you think it would happen or not – it informs you of what the impact on the CPW is if it were to happen, correct?

MR. KENNEDY: No. I don't accept that, Mr. Simmons.

MR. SIMMONS: It doesn't tell you –

MR. KENNEDY: Mr. Simmons, I –

MR. SIMMONS: – what the impact on the CPW is if that were to happen.

MR. KENNEDY: The obligation – My answer to your question, Sir, it was clearly – the obligation was clearly on Nalcor to provide us with the accurate information and that it shouldn't be left to us, as a government, to read a one table in a 80 or 90 page report and say there to the people of this province there could be a 25 per cent increase in capital (inaudible).

MR. SIMMONS: So did you ignore the sensitivity analysis done by MHI?

MR. KENNEDY: No, let me take you – if you want to talk about sensitivity analysis – let's find the other one where they talk about the price of –

MR. SIMMONS: No, I'm going to ask you some questions about this one now, okay?

So, did you ignore this part of the MHI –

MR. KENNEDY: Mr. –

MR. SIMMONS: – report where they gave you – where they gave you a sensitivity analysis and informed you of what the impact on the CPW would be if there were a 25 per cent increase in capex?

MR. KENNEDY: Mr. Simmons, we didn't ignore anything. If we made –

MR. SIMMONS: So, (inaudible).

MR. KENNEDY: – a mistake here, sir, we trusted Nalcor.

MR. SIMMONS: So, you didn't ignore this.

Now, the point I'm getting to here and it's – this is not a big point – (inaudible) you started out here – the point (inaudible) if you look at the table, please, on 77.

MR. KENNEDY: I see it.

MR. SIMMONS: You see it there. Okay.

When you look at “Increase Capex 25%”, it says, “Preference for Interconnected Island option” is still \$1.7 billion.

MR. KENNEDY: But you’re missing a point, Sir, that it was very important – again, with all due respect, Commissioner.

You’re missing a point that’s very important to us. This is not – we’re going to do Muskrat Falls at all costs. We’re looking at a least-cost option but if the price of that project increases then we know there’s a significantly increased impact on the ratepayer.

MR. SIMMONS: Right.

MR. KENNEDY: We need to know the impact on the ratepayer. We have figured it out based on 14.3 cents and, I think, 16.4 cents.

MR. SIMMONS: Okay.

MR. KENNEDY: If you’re going to increase the cost of the project we have to do new numbers to look at the impact on the ratepayer.

So that’s my suggestion to you, Sir, is that it’s not enough to have a sensitivity analysis which says the project could increase. We’re relying on the expertise of those who are giving us this information to tell us whether or not there’s going to be an increase in cost and what’s the cost of the project. We were told that clearly. We were told it with a degree of certainty and we were not told, Sir, in relation to there were other potential risks or costs.

MR. SIMMONS: So, had you been told that the cost would be 7.2 instead of 6.2 billion and the preference for Interconnected Island Option was still there – I’ll tell you the 25 per cent option capex increase still had a preference of 1.7 – had you been told that the capital cost was actually going to be higher – say it’s 7, 7.2 – if there was still a significant preference for an Interconnected Island Option: would knowing that have made any difference to decision that was ultimately made?

MR. KENNEDY: I guess that’s really, Commissioner, one of the problems that, you know, that I’ve had and continue to have with

this process. If we had known – we should have known –

MR. SIMMONS: Right.

MR. KENNEDY: – so –

MR. SIMMONS: Let me ask you now –

MR. KENNEDY: No, if I could just answer, Mr. Simmons. If we had known, we would have had to make a decision but we would have had the true numbers.

MR. SIMMONS: Right.

MR. KENNEDY: And at that point as a government, Commissioner, we would have had to look at: what is the cost on the ratepayer and how do we mitigate those costs to keep it to where it should be. So I’m not saying to you, Mr. Simmons, that we wouldn’t have proceeded, but we would’ve – our analysis, Commissioner, would have been different, because we always got to come back to – as I did in my first month as minister and looking at the rates – the impact of the rates or potential rates on the ratepayer of this province.

MR. SIMMONS: All right.

So – maybe I’ve got this wrong, but as long as there is a CPW preference for Interconnected over Isolated in the long run the rates of the ratepayer will still be lower for Interconnected than for Isolated. Is that the way that you understood it?

MR. KENNEDY: Again, Commissioner, I can only tell you – and I got this chart in my mind, I can’t – maybe it’s at DG2 – but I have this chart in my mind where you have to look at the price of oil because what we’re dealing with, Commissioner, is that Holyrood – we’re – Holyrood is burning oil so therefore it’s – the price of oil at 18,000 barrels a day in bunker C crude, my understanding, is a cheaper form of oil but it still costs a lot of money – that we have to look at the various costs.

The one thing, Mr. Simmons, that everyone missed and these energy advisors that we went to here, in both PIRA and Wood Mackenzie, was the impact, Commissioner, of shale oil on

the Americans moving towards self-sufficiency and the price of oil. Oil is based on – it's quite simple, you know, I – very simplistic from my perspective but it's supply and demand.

So the price of oil – if we looked at the price of oil going down, Commissioner, if the cost of Muskrat Falls went up, the price of oil goes down, then the cumulative present worth will come closer, is my understanding Mr. Simmons. I could be, you know, –

MR. SIMMONS: Not arguing

MR. KENNEDY: – being too simple on that.

So it's not enough to say that it's going to be the least-cost alternative at all costs. What is the cost? We started at 5 billion, we go to 6.2.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: You add another 25 per cent, Commissioner, we've got to make a decision. I'm not saying the decision would have been different –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – because there were certain benefits to Muskrat Falls that were very important to us in terms of the long-term supply of energy –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – the fact that we needed power, the environmental benefits of closing Holyrood.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: There were a whole bunch of issues there. But if the cost increased again, then, as a Cabinet –

MR. SIMMONS: Mmm.

MR. KENNEDY: – as a government, we would have to say: Are we going there.

MR. SIMMONS: Right.

So – and you don't have to answer this question if you don't want, but listen to it, and I'd like to see –

MR. KENNEDY: Okay.

MR. SIMMONS: – if you can actually address the question.

So put yourself back in the position you were in, in the fall of 2012, when you had to do a Cabinet paper making a recommendation to Cabinet on whether to sanction this project or not. And we know, at the time, the preference for Interconnected over Isolated was 2.4 billion; that's there. Had it been 1.7 billion, as listed in that line with – says capex is 25 per cent higher – I know this is hypothetical, now, putting –

MR. KENNEDY: Okay.

MR. SIMMONS: – it (inaudible) – had it been 1.7 instead of 2.4 as being the amount of preference, would you have gone ahead and made the recommendation?

MR. KENNEDY: So we would now be up to 1.7. Is that the – that's the Interconnected Island –?

MR. SIMMONS: That's the difference. That's –

MR. KENNEDY: Puts us up to 7.9?

MR. SIMMONS: No, this – that's not a capital cost number.

MR. KENNEDY: That's not a –

MR. SIMMONS: That's the CPW.

MR. KENNEDY: Okay.

MR. SIMMONS: That's how much lower the Interconnected Island CPW is compared to the Isolated Island CPW. It's not –

MR. KENNEDY: Okay.

MR. SIMMONS: Say it's not 2.4 billion lower, it's 1.7 billion lower, you've still got all the other factors you'd talked about: the economic benefits, the, you know, security supply and

everything else that you named out there, what would you have done? Would you have said, no, I'm not gonna recommend it?

MR. KENNEDY: I would want – at that point, Commissioner, because we're still back to these issues of we need the power and, you know, what are we going to do, there would have to be a rate-mitigation plan. In order – as that cost –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: If it went to a certain point, there would have to be a rate-mitigation plan that was concrete, not just, we'll leave it to the next government – you know, will determine is – I'd want to know exactly what are the excess markets, what are we going to make on the excess markets, what are we making – what are we saving by not buying oil anymore, does Nalcor need an 8.5 per cent return on equity, and there would have to –

MR. SIMMONS: Right.

MR. KENNEDY: – be numbers that would go, Commissioner, to reduce those rates.

MR. SIMMONS: Okay. Thank you, Mr. Kennedy.

Commissioner, we haven't had a break.

THE COMMISSIONER: I was just gonna say –

MR. SIMMONS: So –

THE COMMISSIONER: – if this might –

MR. SIMMONS: – probably a good time?

THE COMMISSIONER: – be a good spot.

MR. SIMMONS: Yup.

THE COMMISSIONER: Okay. All right.

So we'll adjourn now for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

MR. SIMMONS: Thank you, Commissioner.

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

MR. SIMMONS: Madam Clerk, can we have Exhibit P-00077, please?

THE COMMISSIONER: That's not in your book, so you'll have to look at the screen.

MR. KENNEDY: Okay, thanks.

MR. SIMMONS: That's not in your book.

So, Mr. Kennedy, this is Nalcor's submission to the Board of Commissioners of Public Utilities on the PUB reference. If we scroll down a little bit, please, Madam Clerk, down – we can see it's submitted on November 10, 2011. You had been the minister for a short period of time before that, I believe, in Natural Resources?

MR. KENNEDY: Yeah, that's correct, Sir. Yes.

MR. SIMMONS: Yeah. Do you know if you saw – if you've ever – well, let me ask you first: Do you know if you saw this or a draft of it before it was submitted by Nalcor to the PUB?

MR. KENNEDY: No, I don't know if I saw it before, but I certainly read it after, Sir.

MR. SIMMONS: Okay. So you have read the Nalcor Submission to the PUB, this one we have here, submitted in November 2011.

MR. KENNEDY: Well, I – my notes, Sir, indicate that on November 18 I read the Nalcor PUB submission on the demand for power.

MR. SIMMONS: Okay.

MR. KENNEDY: So I would have read parts of it, certainly.

MR. SIMMONS: Okay, all right. Well, let's go to page 233, please. So on the top of this page there's a diagram there. We're not going to work through the detail of this, but there's a reference

here to Westney's Risk Resolution methodology.

And if you scroll down, please – okay, you can stop there. It says: “Westney's Risk Resolution® methodology represents a departure from the conventional approach” et cetera. “According to Westney, both tactical and strategic risks should be considered.

“Tactical risks and strategic risks are differentiated below” And there's definitions there of both tactical – and strategic is over on the next page.

MR. KENNEDY: Okay.

MR. SIMMONS: You can look at it if you want. But as you said yesterday that you didn't know anything about the difference between tactical and strategic risk.

MR. KENNEDY: (Inaudible.)

MR. SIMMONS: So I'm just wondering if, when you had – when you looked at this report, if this is something that you noted or paid any attention to or became aware of at that time in 2011?

MR. KENNEDY: No, I never became aware of it, Mr. Simmons. And I would have been looking at more basic issues. Like the demand for power, that was what I –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – would have focused in on. So, no, I wouldn't have – I've never seen that, Sir.

MR. SIMMONS: Right. So did you consider an analysis of risks of the project to be one of those basic questions that interested you at the time –

MR. KENNEDY: Yes.

MR. SIMMONS: – when you became minister?

MR. KENNEDY: Yeah.

MR. SIMMONS: Okay.

Well, that's what this is about. This is about assessing risks. Isn't this something that you would have paid attention to when you read this submission?

MR. KENNEDY: Sir, I'm now – I think by the time Nalcor – by this submission, I'm there probably 10 days. I'm trying to get familiar with the project in general.

MR. SIMMONS: I understand that.

MR. KENNEDY: And I do – I think I referred you yesterday, or referred someone to the initial conversation with Mr. Bown in terms of the 14.3 cents, that it included a 15 per cent contingency.

MR. SIMMONS: Mmm.

MR. KENNEDY: So risk for me, Sir, whatever way – term you use, would've been defined as the potential for there to be increased costs in the project.

I would not have dug down into the, as the minister, Sir, into – I think you said, what, page 277?

MR. SIMMONS: Two-thirty-three.

MR. KENNEDY: Two-thirty-three, yeah. I wouldn't have dug down into it certainly that deep, Sir, nor did anyone ever bring it to my attention.

MR. SIMMONS: Right.

So the fact that this submission made it to your desk for you to have it at all, that tells us that people in your department, though, had it and were aware of it?

MR. KENNEDY: Oh certainly. I'm not –

MR. SIMMONS: Right.

MR. KENNEDY: – sure, Sir, that I would've had the full report. I don't – you know, I can't recollect – all I know, Commissioner, that the big issue for me, as I'm starting on my analysis, Mr. Simmons, is do we need the power? Like, the demand for power, so that's what I focused on, my notes indicate, Sir.

MR. SIMMONS: Right.

MR. KENNEDY: Whether or not the full report, I can't remember, Mr. Simmons.

MR. SIMMONS: Just scroll to –

MR. KENNEDY: But the department, yeah, the department would've had it, sure.

MR. SIMMONS: Right. Scroll to the top of the next page, please.

So this is where the strategic risk definition is. So although this document was available to you and sounds like you had a look at it, none of this tactical and strategic risk bit stuck with you, and –

MR. KENNEDY: No.

MR. SIMMONS: – it wasn't knowledge you carried forward?

MR. KENNEDY: No, and, Sir, as I said yesterday, after the interview with Mr. Learmonth, I went back and went through all of my notes, and –

MR. SIMMONS: Mmm.

MR. KENNEDY: – I don't have any reference, Commissioner, to those terms tactical or strategic risk in my notes, nor do I have any recollection of any of the Cabinet presentations, Mr. Simmons, of there ever being reference to these types of risk.

Risk was a concept, obviously, that we knew existed –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – but what we were trying to do, Sir, as I think I said yesterday, was to define the risk, be able to minimize the risk and – I don't know if mitigate the risk would be a proper term, but that's what we were trying to direct.

MR. SIMMONS: So you didn't drill down into the details with Nalcor about how the risk was assessed and quantified?

MR. KENNEDY: I would've expected Nalcor to have brought that to our attention, Sir.

MR. SIMMONS: Right, okay, so is – that's an area where you relied on the expertise and left it to Nalcor to make their determinations, was it?

MR. KENNEDY: Well, I can't say I totally – we totally left it to Nalcor.

MR. SIMMONS: Mmm.

MR. KENNEDY: I explored – again, in my role as minister, I'm at a level – we explored, Sir – I explored as best I could, having regard to my previous experience on Treasury Board, the issue of cost overruns.

MR. SIMMONS: Right.

MR. KENNEDY: That's the term I use, Commissioner. I know that it's been various terms you've heard, and so I was always acutely aware; we knew what had happened with Hebron and Vale, so –

MR. SIMMONS: Right.

MR. KENNEDY: – that's the way I would describe it. Throughout my – and you'll see, as we go through my notes, there's continuous reference to, you know, contingencies, cost overruns, potential for cost.

MR. SIMMONS: Sure.

So while we've got this report here, let's go to page 249, please. So I'll just bring you to some statements in this report, and I just –

MR. KENNEDY: Yeah.

MR. SIMMONS: – want you to know if this is anything that you were aware of at the time, or if at any time before sanction of the project you became aware that this was a position that Nalcor Energy was submitting to the Public Utilities Board at this time. So the heading here is Strategic Risk Management and Mitigation Process at Decision Gate 2. And down to line – I'll read several lines down.

“Risk identification activities for the Project have resulted in the identification of a number of

key risks. As these key risks can significantly influence the ability to achieve the Project's goals and objectives, they have been and continue to be the focus of significant attention by the PMT" – that's project management team – "to actively mitigate the risk involved. These efforts have resulted in positive progress that have caused Nalcor to decide that a reserve amount above and beyond the 15 percent tactical contingency amount was not required at this time but will be considered further as part of the DG3 decision."

So were you aware, at – when this submission was made, that that's a decision that had been made, that there would not be a strategic reserve amount established above and beyond the 15 per cent tactical contingency amount?

MR. KENNEDY: Again, Sir, I don't know. The terms tactical contingency is not something –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – that I would've been aware of. I was aware that there was a 15 per cent contingency. It was explained to us why there was a 15 per cent contingency. It seemed low to me, but it made sense in the way it was explained, yeah.

MR. SIMMONS: Right, so this suggest though that there's key risks that have been identified and, because of progress that's being made to deal with them, then the – then there's no reserve or allowance being made for certain of those risks. Would you have taken that at the time?

MR. KENNEDY: As I said, Sir, I didn't see – I don't, you know –

MR. SIMMONS: Okay.

MR. KENNEDY: – that particular part of that report was never brought to my attention, and those terms were never used, but that's generally what I understood.

MR. SIMMONS: Okay.

MR. KENNEDY: Yeah, it was –

MR. SIMMONS: Scroll down to line 25, please?

MR. KENNEDY: 15 per cent contingency, yeah.

MR. SIMMONS: And more along the same theme at line 25: "With the extent of the mitigation activities undertaken and in progress, and probabilistic cost reductions in the order of - \$400 million being available and a P50 strategic exposure of \$290 million (in the range of \$187 million (P25) to \$413 million (P75)), Nalcor executive determined that it was not appropriate to create a positive or negative strategic reserve amount at DG2."

So were you aware – did you note, when you saw this report, this reference to a P50 value?

MR. KENNEDY: I've never heard those terms, Sir.

MR. SIMMONS: You –

MR. KENNEDY: (Inaudible.)

MR. SIMMONS: Did –

MR. KENNEDY: Sorry.

MR. SIMMONS: Would you have seen it in this report? Is this something that would have peaked your interest or curiosity as being something relevant to how Nalcor was assessing risk, and that would be of interest to you given your degree of oversight that you wanted to apply to this project?

MR. KENNEDY: The degree of oversight – we've got to be realistic here in terms of –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – the role that I am playing, the role that the department's playing. Nalcor – and I am assuming, Mr. Simmons, I don't know, but assuming all the Cabinet presentations – or the presentation decks of Nalcor would be available.

I don't have any recollection, Commissioner, of there ever being reference to be explaining tactical or strategic risk or P50. Those – when I

read the first time – the first recollection, Sir, I have of those terms would've been when I looked at the report that was filed here.

MR. SIMMONS: Okay. So either you didn't read it when this was filed or it didn't catch your attention enough for you to be interested in it?

MR. KENNEDY: I don't think that's a – that's, I don't think, a fair comment –

MR. SIMMONS: Okay.

MR. KENNEDY: – Mr. Simmons. I mean, I am the minister of Natural Resources. Nalcor are the agency who's providing the information to us. We have individuals in the department. Nalcor are in, Sir, presenting – they're meeting with the department officials, so if there was an issue there, I would have expected, Sir, to –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – for it to be brought to our attention; there was plenty of opportunity to be brought to our attention. And specifically, Mr. Simmons, as we moved closer to the issue of decision on sanction, I was specifically questioning on risk, and these terms were never brought to my attention nor were – Commissioner, do I have any recollection of them being used in a Cabinet meeting or ever explained to us.

MR. SIMMONS: So back in November of 2011 then, would you have expected that officials in your department who were more hands-on with this – Mr. Bown, maybe others – would have been looking more closely at items like this that were contained in the Nalcor submission to the PUB?

MR. KENNEDY: You'll have to ask Mr. Bown on that, but again, just to put it in perspective for you, Mr. Simmons, what I am trying to do is get my head around what this project is about. I'm – and I think, Commissioner, if you look at – as I refer – that typed note of January 6, the first month was spent, to a great extent, on demand and on rates, trying to understand did we need the power and the rates.

So all I can tell you, Mr. Simmons, is that I didn't see that document. I read the parts of the

PUB report, and I think I've got extensive knowledge to indicate the issue of the PUB submission in relation to demand. That was really the big issue to me as I started this. From a logical perspective, the big issue for me was whether or not we needed the power, was there a demand for power?

MR. SIMMONS: I'll try my question again.

Would you have expected officials in your department, including Mr. Bown or dealing more directly with Nalcor on these issues to have been aware of the approach that's described here, that been taken by Nalcor to strategic risk, 'cause this a public document?

MR. KENNEDY: I would have expected Nalcor, Sir, to have brought to – Cabinet's attention –

MR. SIMMONS: You would not have expected people in your department to be aware of it?

MR. KENNEDY: That's – I wasn't finished my answer, Mr. Simmons. I would've expected Nalcor –

MR. SIMMONS: I am sorry. I'll let you finish

MR. KENNEDY: – to bring it to our attention, and Mr. Bown was very diligent, Sir, in terms –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – of what he did. If he was aware of it, he would have certainly – my expectation – he would've brought these issues to our attention. But I think, primarily, in terms of the relationship that existed, we were relying upon Nalcor to provide us with the information we needed to make the decision, Sir.

MR. SIMMONS: Right. And you rely on officials in your department to determine what information needs to be brought up to you – when they flag things that are of interest that they know you would want to be aware of, right?

MR. KENNEDY: Yes, certainly –

MR. SIMMONS: You do?

MR. KENNEDY: – I agree with that.

MR. SIMMONS: Okay.

And information that's here in a public document, filed by Nalcor – and it's as available to the Department of Natural Resources as it is to anyone else – if anyone in your department had any concern with the approach that was being taken to risk here, would you have expected that to have been brought up to your attention?

MR. KENNEDY: Again, Sir, I, you know, I guess I'm repeating myself, but I would've expected Nalcor, at some point in time, to have brought these issues to our attention.

MR. SIMMONS: So is the answer no?

MR. KENNEDY: I would've expect Nalcor, Sir, to bring these matters to our attention.

MR. SIMMONS: That's not what I asked you. I want – I would like you to answer the question.

Would you have expected officials in your department, who would be aware of this approach taken to risk – if they had any problem with it, to bring it to your attention?

MR. KENNEDY: I would suggest, Sir, that you ask Mr. Bown the question: Whether or not he knew or not? I don't know if he knew. And Mr. Bown would've brought it – if these issues were there, he would've brought them to my attention.

But all I can tell you – and what I'm trying to explain, Mr. Simmons, is the way that I dealt with things, if I was aware that there were risk factors – and again, we're using all kinds of terms, Sir, that, you know, that weren't used anywhere in terms of Nalcor's discussions with us. If I was aware – I want to know the cost of the project. Are there increased costs in the project? So that's – anything that relates to that, Sir, is what I want to know. And that was a common theme throughout.

MR. SIMMONS: Please focus on the question. I'm asking you about your expectation. Did you, as the minister of Natural Resources, have an expectation that if officials in your department had any concern about the risk approach

described in this public document, that they would have brought it to your attention?

MR. KENNEDY: The primary responsibility – my answer is quite simple, and I keep repeating my – the primary responsibility, Mr. Simmons, would've been upon Nalcor, with all the opportunities that they had available, Sir, to present this information to us.

MR. SIMMONS: So your answer is it's Nalcor responsibility; it's not the responsibility of anybody in your department. Well, I'm gonna take that to be your answer, unless you say otherwise.

MR. KENNEDY: You – Sir, I've given you my answer. If there were – and I don't know – maybe Mr. Learmonth or Ms. O'Brien can tell us the number of Cabinet presentations that there were. Mr. Commissioner, I don't know. I haven't seen any of them. I don't know if they're here.

MR. SIMMONS: Okay.

MR. KENNEDY: It's my recollection that Nalcor was presenting to us, Sir, every month – every couple of months they were outlining the risk factors, Sir. In terms of contingency, the terms "tactical and strategic reserve" were never used. There were no "P-factors" referred to. I've gone through all my notes and all I can tell you, Mr. Simmons, is that as we got closer to the sanction of the project, the risk issues were ones, Commissioner, which I specifically – I questioned Mr. Martin and Nalcor people on.

MR. SIMMONS: I'll give up and move on.

So can we have Exhibit P-00067, please?

THE COMMISSIONER: Tab 121.

MR. SIMMONS: So this is the Cabinet paper on sanction decision that you were referred to yesterday. And if we go right to page 43, at the end please, there is appended to it – I think this is a Minute of Council, as I see it's called MC.

MR. KENNEDY: Yeah, I'm not – there's an OC, Commissioner; I don't know if anyone explained –

MR. SIMMONS: Mmm.

MR. KENNEDY: – the difference. I'm not sure I know a whole lot.

THE COMMISSIONER: (Inaudible.)

MR. KENNEDY: There's an OC and an MC, but this would be a Minute of Council, yes – of Cabinet, excuse me.

MR. SIMMONS: Okay.

And it starts out by referring to the submission from the minister of Natural Resources, which is the submission contained, I think –

MR. KENNEDY: Yeah.

MR. SIMMONS: – on the previous pages here. So it was in response to that submission – there was three decisions made. The first one was to give approval to Nalcor Energy to sanction and proceed with development of the project. The second was approval given to the Department of Finance to make a base equity contribution. And the third was approval given to the Department of Finance to make contingent equity contributions.

And then if we go to page 37, please, we see that this is – if we scroll down a little bit – this is your signature and this is the note that's dated December 5, 2012.

So before you sign off on a Cabinet briefing document like this, can you give me some idea of what the lead-up process is, what kind of role you play in the preparation of the submission, who does what, how much – you know, how many –

MR. KENNEDY: Yep. The normal –

MR. SIMMONS: – iterations? General description of the process.

MR. KENNEDY: – sure.

The normal process – and I don't know if it took place here with – in relation to this Cabinet paper, Mr. Simmons. The normal process that would – there would be – a Cabinet paper begins as either a briefing note, an information note or a

direction note, generally, coming from the premier's office or the minister, saying to the officials, prepare a note.

That note, then, will work its way into a – or a draft Cabinet paper. That Cabinet paper will be – then will go to Cabinet Secretariat, where there are different civil servants who do analysis on the Cabinet paper. It then would go to the various departments, Sir, for comment in terms of – did Labrador and Aboriginal Affairs have any concerns? Did Justice have any concerns? Did Women's Policy Office have any concerns? Did Environment have any concerns?

There would be a Committee meeting of – there are three Committees: there's Social Policy, Economic Policy and Treasury Board. Then, ministers – there probably could be five or six ministers, Mr. Simmons, on each Committee. Then it could go back for further information. It could work its way up to Cabinet. It will come to Cabinet, there'd be discussions in Cabinet and depending on the nature of the decision made – that's the normal process. Whether or not it engaged – it happened here with this paper, I don't know.

MR. SIMMONS: Oh, so you can't say. But normally there'd be a fairly –

MR. KENNEDY: (Inaudible.)

MR. SIMMONS: – high-level of deliberative process, multiple opportunities for Cabinet members and others to have input into the considerations –

MR. KENNEDY: Yes.

MR. SIMMONS: – that go into preparing a paper like this.

MR. KENNEDY: And – yeah, that's correct, Sir. And then Finance, for example, you'll see that the Finance Department, Justice Department would be two –

MR. SIMMONS: Yeah, yeah –

MR. KENNEDY: – primary departments.

MR. SIMMONS: So do you know whether this one originated from you as the minister of

Natural Resources or from the premier's office? If – the initiative to start this paper, how it got started.

MR. KENNEDY: I'm not sure, Sir, but I mean we knew we were gonna need a paper in order to –

MR. SIMMONS: Yeah, right.

MR. KENNEDY: – for government to approve the sanction –

MR. SIMMONS: Right.

MR. KENNEDY: – or for Cabinet to approve the sanction decision there had to be a paper.

MR. SIMMONS: So you'd be confident that in addition to Natural Resources, Cabinet Secretariat at least would've been involved in reviewing this before it went to Cabinet.

MR. KENNEDY: No, I can't say I'm confident –

MR. SIMMONS: Can't say for sure?

MR. KENNEDY: I can't say, Mr. Simmons, I'm confident in this case because everything about Muskrat Falls, you know –

MR. SIMMONS: Hmm.

MR. KENNEDY: – this whole project was –

MR. SIMMONS: Right.

MR. KENNEDY: – unusual, Sir – the amount of work that had gone into it, the amount of time that it had taken up, the amount of study that had been done. So I can't say, for example, that the normal process would have been –

MR. SIMMONS: Right.

MR. KENNEDY: – followed here. I really don't know.

MR. SIMMONS: But we do know it went to Cabinet under your signature, so –

MR. KENNEDY: Oh, it definitely went to Cabinet under my signature. (Inaudible.)

MR. SIMMONS: So we can safely say that the Department of Natural Resources had worked on it.

MR. KENNEDY: Yeah.

MR. SIMMONS: Can we safely say that you were 100 per cent confident in what you were submitting to Cabinet? Because I presume you wouldn't have done it otherwise.

MR. KENNEDY: Yes, obviously. Now, we have to rely, Mr. Simmons, on – or Commissioner – on officials when it comes to preparing papers –

MR. SIMMONS: Right.

MR. KENNEDY: – and –

MR. SIMMONS: Right.

MR. KENNEDY: – you know, but once I sign something, any time I sign something, Sir, I'm responsible for it.

MR. SIMMONS: So I presume – this is a pretty important submission. I presume this just didn't come across your desk, you read it once and signed it. So can you tell me something about what kind of role you played in the drafting and preparation of it?

MR. KENNEDY: Yeah. Normally, Sir, I wouldn't play any role in the drafting and preparation of it or a minister would not normally, Commissioner, play a role in the drafting of a Cabinet paper or the preparation of it.

The Cabinet paper would be prepared by officials. It would be reviewed by various departments and then it would – the minister – I would read it obviously, but it's not like if I were to prepare a document myself. So it's – yeah, it's under my signature, so as the minister of Natural Resources I signed the document, Sir, yeah.

MR. SIMMONS: Right, so I presume that the statements made in it and the positions taken would be consistent with the work you had done in informing yourself on this project since you'd been minister and (inaudible) –

MR. KENNEDY: And I had no reason to believe otherwise, Sir, and that the officials wouldn't make sure that everything in there was accurate and the position of both the department and government, yeah.

MR. SIMMONS: Page 1, please. Scroll down and you can stop there.

So the paper – it's reasonably a little lengthy paper. And it begins here with background with mention of the Energy Plan. And the beginning there about four lines down there it says: "As such, Government committed to lead the development of the Lower Churchill Project through Nalcor to realize a renewable future and to meet the province's energy needs with, 'environmentally friendly, stable, competitively priced power.'" And we've heard a fair bit of evidence about the Energy Plan from other people here.

From the time that you became minister, did the Energy Plan really play any part of your consideration of the Lower Churchill Project? Did it inform the way you approach your work?

MR. KENNEDY: I think the Energy Plan was the basis of what we were doing here, Sir.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: And I think to summarize it, Commissioner, again, as I knew it, that the basis of the Energy Plan was to transform from a renewable resource economy – excuse me – from a non-renewable resource economy to a renewable resource economy.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: That – we – that's the way the Energy Plan, is my understanding, the most basic principle of the Energy Plan.

MR. SIMMONS: Right so a theme was to take advantage of the income that was coming from the exploitation of non-renewable oil resources offshore and use it to create a renewable resource such as the development of the Lower Churchill Project.

MR. KENNEDY: That was understanding, Sir, yes.

MR. SIMMONS: Yeah, okay.

And did that inform your thinking on the way through that this was kind of an overriding objective that the province had to work towards?

MR. KENNEDY: Yeah, I mean that was the basic principle. That never changed, Mr. Simmons.

MR. SIMMONS: Right. Right.

So there's a reference there in the last lines to environmentally friendly power. So I presume that that is a reference to hydro power being more environmentally friendly than burning fossil fuels, such as at Holyrood or perhaps another fossil-fuel power –

MR. KENNEDY: That was certainly our position as a government, yeah.

MR. SIMMONS: Right.

MR. KENNEDY: And my position personally.

MR. SIMMONS: Right. So totally apart from the least-cost option question, an environmental advantage of one option over another would be something that would've been taken into consideration by government when they're looking at their long-term goals.

MR. KENNEDY: It was a big factor, Sir. It sort of got – it seemed to me at times it got lost in the debate around –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – Muskrat Falls was the importance to the environment, what we were doing here in terms of the potential to move to a – to close Holyrood. That was a key factor.

MR. SIMMONS: Right.

MR. KENNEDY: But it seemed to lose some significance as we moved through the debate.

MR. SIMMONS: Right.

And then it says stable power. Now, from other evidence we've heard, my understanding is that the Isolated Island Option was potentially

subject to power rate volatility as the price of oil rose and fell –

MR. KENNEDY: No question, yeah.

MR. SIMMONS: – in the future. And that a large advantage of a admittedly capital-intensive hydroelectric project was, once it's built, the operating costs are stable so you don't experience the fluctuations in power rates in the future.

Was that your understanding?

MR. KENNEDY: No question, yeah.

MR. SIMMONS: Yeah. So how did that figure into –

MR. KENNEDY: Very important.

MR. SIMMONS: – the assessment here?

MR. KENNEDY: Yeah.

We were looking at – Commissioner, we're back to the fact that we need power in the province, so, if we need power – what are we going to do? We looked at the alternatives, and the fact – when I – 'cause I spent a month on this, and I got my own – I saw my own little unsophisticated handwritten charts, but my understanding, Mr. Simmons, was that what would happen is that, although there could be a spike in the prices early on, in terms of electricity – and that's where the rate mitigation would obviously have to come in –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – then eventually it would level out, quite to the point where – as Isolated Island, because of the potential volatility of fossil fuels, or of oil, particularly, would go up –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – that it would level out.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: In fact, what we had done, Sir, you know, we had – when we looked at the rates to – that was one of the first I tried to

satisfy myself on, because that was very important, and we looked at all of the charts, and I remember there being three different profiles, Commissioner, of a – again, I – you know, I could be wrong on this, but it's – I remember there being – the average profile was around – either 1,500 or 1,700 kilowatts an hour, then the higher rate was 2,100, and then there was the –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – 1,200. You average it all out; we did up different charts for which one would go higher. I guess that's the long way of saying I agree with you –

MR. SIMMONS: Right.

MR. KENNEDY: – Mr. Simmons.

MR. SIMMONS: So it's – and what I was suggesting is it's not so much a comparison as one set of rates is lower than the others; it's that with a – with the Interconnected Option, there would be stability; the rates would – once fixed – would remain –

MR. KENNEDY: That's right.

MR. SIMMONS: – relatively the same –

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

MR. SIMMONS: – whereas, on the Isolated case, where you can't precisely predict what's going to happen with oil, there's volatility in –

MR. KENNEDY: Right.

MR. SIMMONS: – that there was value given to stability over volatility in rates.

MR. KENNEDY: No question, Sir.

MR. SIMMONS: Okay. Page 2, please.

And this is your tab 121 at page 3 – in volume 3, by the way, if you wanted to follow along.

MR. KENNEDY: No, I'm just looking at –

MR. SIMMONS: Okay.

MR. KENNEDY: – it on the screen. That’s fine –

MR. SIMMONS: Okay.

MR. KENNEDY: – (inaudible.)

MR. SIMMONS: So on this page, and just over on to the beginning of page 3, I’m gonna suggest that there’s a listing of the things Nalcor has done. So if you go back up to the top of page 2, please, you start out by talking about attempting to gain transmission access through Quebec.

MR. KENNEDY: I was familiar with that, Sir, yeah.

MR. SIMMONS: Something had been on Nalcor’s agenda, had been dealt with before you became minister.

MR. KENNEDY: But it was also – I was familiar with it. I had been at meetings where there was discussions of the Régie –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – decision and –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – the FERC and OATT –

MR. SIMMONS: Right.

MR. KENNEDY: – and all of that –

MR. SIMMONS: So you were informed about that. And – if we look at the paragraph beginning “In July 2010”?

MR. KENNEDY: Yeah.

MR. SIMMONS: So in July 2010, there’s a generation planning forecast done by Newfoundland and Labrador Hydro and this refers to the expected energy capacity deficit in 2015 and energy shortage in 2019 that you told us about yesterday, right?

MR. KENNEDY: Oh, absolutely, yes.

MR. SIMMONS: Yup, okay.

And then if we scroll down through, there’s a description of as a result, Hydro examined options, compared Isolated Island Option to Interconnected Island Option, and did the cumulative present worth analysis –

MR. KENNEDY: Yeah.

MR. SIMMONS: – of 2.2 billion and so on, and then in November of 2010 Nalcor and Emera announced their deal, and at the top of page 3 there’s a reference to the Navigant report.

So I’m going to suggest that in this Cabinet paper that’s a description of things that Nalcor had done, had been their initiatives, and the things that they’d handled up to that point –

MR. KENNEDY: That’s correct.

MR. SIMMONS: – some of them. Okay.

Now, when we look at page 3, starting: “In June 2011, Government submitted a reference ...” – now we’re getting to the things government has done. So the first one is government submitted the reference to the Public Utilities Board. So that wasn’t a Nalcor action – that was a government action, correct?

MR. KENNEDY: It’s – I wasn’t specifically involved in it, but I have no reason, Commissioner, to doubt what’s written there. I mean, obviously, government submitted the reference.

MR. SIMMONS: Yeah. Let’s look at the next paragraph. The next paragraph goes on and refers to a “Natural Resources Canada” – conducting – “an analysis of both options and found that Muskrat Falls was the lower cost option.” And I know this inquiry is not looking into any actions of the federal government, but this is a piece of information that appears to be, relied upon to some extent in this paper here.

So what can you tell me about that assessment by Natural Resources Canada?

MR. KENNEDY: My understanding, Sir, even though I wasn’t specifically involved, Commissioner, in the negotiation of the loan guarantee, was that there was extensive analysis done by, you know, by the federal government –

it could be NRCan. I know that they were involved, that in terms of looking at options, looking at first, one of the first option was Muskrat Falls as the lowest cost option. And secondly, I thought, Mr. Simmons – I could be wrong on this, but I thought – there had also been a financial analysis done by the federal government.

MR. SIMMONS: Okay. Did the province have access to those analyses?

MR. KENNEDY: You'd have to ask either Mr. Bown or Mr. Martin about that, Sir. I wasn't – I would have been informed, obviously, of what was going on with the federal loan guarantee, but I wasn't directly involved in the negotiation.

MR. SIMMONS: And you were satisfied to include this description of it in the paper that was going to Cabinet?

MR. KENNEDY: Yes.

MR. SIMMONS: Okay. Then the next paragraph refers to the government engaging MHI "to assess updated Muskrat Falls cost estimates (Decision Gate 3 numbers)," which we've talked about before there, which was government's initiative.

And then in the next paragraph there's a reference to wind. We haven't really talked about wind but it says: "In addition to assessments to determine if Muskrat Falls was the least-cost option when compared with the Isolated Island option, there have been several studies to determine the viability of other long-term generation alternatives to Muskrat Falls. For example, both Hatch and MHI assessed how much additional wind generation could be added to the isolated island system"

So were you aware that government had commissioned a study from MHI on potential for wind as well?

MR. KENNEDY: Yeah that was one of the studies, Commissioner, when – what we looked at when we were getting to the – moving towards the decision on sanction was that we'd like to have more information on all of the options to be able to release to the public. So my recollection is that we retained MHI to do a – it

wouldn't – we knew I think that, Mr. Simmons, that Hatch had done a report briefly but this wasn't a question of not – of questioning Nalcor or not trusting Nalcor or Hatch or anyone else –

MR. SIMMONS: Mmm.

MR. KENNEDY: – we simply wanted to get another opinion as to whether or not the wind was a viable option.

MR. SIMMONS: Right.

So the Hatch report had been obtained by Nalcor and was –

MR. KENNEDY: Yeah.

MR. SIMMONS: – informing the work that they were doing but your department saw fit to go and engage MHI to do a report for government on that –

MR. KENNEDY: Yeah.

MR. SIMMONS: – and we won't go through any detail, but if we could bring it up, it's P-00059 because I don't think it was shown to you.

So this is it here –

MR. KENNEDY: It is, yeah.

MR. SIMMONS: – Review of the Wind Study for the Isolated Island of Newfoundland and just go to page 3 please. Scroll down.

So this is another one that's noted as prepared for you in your capacity as minister of Natural Resources.

MR. KENNEDY: That's correct, yeah.

MR. SIMMONS: So this is another example is it of the department exercising its due diligence function and ensuring that Hydro and Nalcor had factored appropriate wind into their analysis?

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

MR. SIMMONS: Okay.

Back to 00067, please. Okay – okay, scroll down – yes, you can stop there.

And then we go on and after (inaudible) discussing wind the Cabinet paper goes on to the Ziff reports and I think it refers here to both pipeline natural gas and to LNG –

MR. KENNEDY: Okay. I see it.

MR. SIMMONS: Okay.

I notice the Wood Mackenzie analysis of Ziff is not included, but I understand this to be not intended to be a completely comprehensive review.

MR. KENNEDY: Yeah I have – I would have no – I don't have any recollection, Sir, as to why that wasn't included.

MR. SIMMONS: So Ziff was a government initiative and if we scroll down then, the last one on this list is: "The Department of Natural Resources (NR) also completed a series of public reports related to Muskrat Falls, including two focused on potential alternatives."

So can you tell me something about this initiative of the department to prepare public reports for release in the fall –

MR. KENNEDY: Yeah –

MR. SIMMONS: – of 2012?

MR. KENNEDY: Yeah. What we were trying to do, Mr. Simmons – there were a lot of issues out there in the public, as I think everyone's aware, Commissioner – and we were just simply trying to put forward our position, or – that we'd show the people of the province that we had studied these issues and that we'd come to certain conclusions. So there were a number of issues that had been raised, Mr. Simmons, Commissioner. There were a number of issues that were out there, that were being raised, so we said – well, what are they? Which are the ones that need to be explored?

I mean, Gull Island was obviously one, Commissioner. Could we wait 'til 2041 was another issue. The legal options for example, whether or not we could recall power under

92A, the regulatory process, the good faith action.

The wind report, the rates – obviously we did – we wanted people as best we could determine, Commissioner, to know the issue of rates – and the question of the demand for power.

Now those are the ones that I think we commissioned –

MR. SIMMONS: Yeah,

MR. KENNEDY: I think it's a good – Mr. Simmons – but – I don't know if there's anything else, but those are the ones –

MR. SIMMONS: Yeah.

MR. KENNEDY: We were simply trying to let the public know we were conducting due diligence and trying to review all of the options.

MR. SIMMONS: Right. So we'll just take a look at one to see the format. P-00061, please.

MR. KENNEDY: Which one is that, Sir?

MR. SIMMONS: That is, ah –

MR. KENNEDY: Okay. Gotcha.

THE COMMISSIONER: Tab 99.

MR. SIMMONS: – tab 99.

So we can – we just – this is the one that's "Upper Churchill: Can we wait until 2041?" Scroll down please? And you can stop there.

So it's – on the cover, it says Department of Natural Resources and it says Government of Newfoundland and Labrador. So why was it that the department was preparing these papers and issuing to the public instead of telling Nalcor to go do it?

MR. KENNEDY: What we were trying to do, Sir, was to give a level of assurance that Nalcor and government weren't just one entity; that we had different roles here, and this probably could just as easily have been prepared by Nalcor but we determined as a government that – or Natural Resources – that this would be one that we

would prepare in conjunction with the other one, so.

MR. SIMMONS: All right –

MR. KENNEDY: It was nothing to do again with Nalcor couldn't have done it, or they shouldn't have done it – it was simply we were trying to answer the questions that needed to be answered.

MR. SIMMONS: So any member of the public looking at it would see Department of Natural Resources on it, Government of Newfoundland and Labrador on it, so they would take this to be the government's analysis of the matters that were addressed in these reports –

MR. KENNEDY: Yup.

MR. SIMMONS: – and that's what you intended to happen.

MR. KENNEDY: That's correct, yeah.

MR. SIMMONS: Okay, back to P-00067, please. We'll go to page 5.

I'm not going through every bit of it, but there's – I'm just using this document, Mr. Kennedy, as a cue to ask you a number of questions about the process.

So on page 5, the discussion turns to benefits –

MR. SIMMONS: Yes.

MR. KENNEDY: – stemming from Muskrat Falls as having also been assessed. And at the beginning of that paragraph, again it refers to, “stable, competitively priced source of energy.” And then it goes on to say, “generate significant economic benefits through substantial employment and income to businesses.”

So was the kind of economic spin-off of constructing the project something that was considered an important factor in making this decision?

MR. KENNEDY: It was a more important factor for some ministers, obviously, Commissioner, than others.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: For me it was the question of – the project – was it the – was it the project that we needed to proceed with? But there was certainly – yeah. I mean, no one can deny the economic benefits in any project that you look at, Mr. Simmons, the economic benefits are ones that are – that government attempts to define, to let people know that there are, you know, there are significant other benefits out there. People are going to be employed here, there's going to be a, you know, businesses are gonna make money. No question about that, Sir.

MR. SIMMONS: Right.

And then it also mentions facilitating “mining expansion.” And this was one of those topics where there was a paper – P-00071, please.

Tab 104, volume 3.

So what can you tell me about –

MR. KENNEDY: Okay.

MR. SIMMONS: – what was being considered here? What was –

MR. KENNEDY: Can we just go down a little bit further? Who wrote this paper?

Yeah, I – okay – I think there were two papers, weren't there, Mr. Simmons? One I think Dr. Locke prepared one, and I think we looked at one.

MR. SIMMONS: Okay. This is the one that was issued in the fall of 2012 by the department and if we go back up to the heading, it says, “Labrador mining –

MR. KENNEDY: Yeah.

MR. SIMMONS: – and power.” And if you're not familiar with the –

MR. KENNEDY: I'm familiar.

MR. SIMMONS: – content of it –

MR. KENNEDY: I'm familiar.

MR. SIMMONS: – that’s fine. But if you can tell me what the idea was here of what the benefit was that was being –

MR. KENNEDY: Yeah.

MR. SIMMONS: – taken into account when this decision was made?

MR. KENNEDY: When Muskrat Falls was first announced, Mr. Simmons or Commissioner – it was my understanding Muskrat Falls, initially – because we needed power, we have to do something to ensure that we have the power. So, again, that’s the whole discussion that took place.

But what was going on, Commissioner – and again, I – excuse me, I could be a bit off on my numbers – but what was going on in Labrador at this time was quite fascinating. The iron ore at that point – and again, I’m going by memory, Sir – but my recollection, Commissioner, iron ore around 2010, because of what was going on in China – the Chinese economy was flying – iron ore was up at around \$180 to \$160 a tonne. And so we had new interest in mining in Labrador. We had Alderon, we had Tata Steel, we had other companies looking at mining. And my understanding, Commissioner, is that iron ore is – it needs a lot of electricity to – for mining.

So we were looking at this and we were actually afraid at that point that if – even though it wasn’t the initial reason for doing this – is that if the iron ore companies, if they all went ahead, they could use all the power from Muskrat Falls. So that then you were into the whole well, should we develop Gull Island? But Gull Island, Commissioner, the difficult Gull Island, which I think has always been the preferred alternative for most people – because we couldn’t get across Quebec – Ontario needed a lot of power. The nuclear – my understanding was that Ontario was in the process of refurbishing a nuclear plants but we couldn’t get across Quebec to get the power there. So, we were looking at the Labrador mining and we’re simply saying: Look, there are things happening in this province that require electricity and so –

MR. SIMMONS: Right. So the Isolated Island Option would have done nothing to supply power to any potential new mines in Labrador

’cause it’s – the Island would not have been connected to Labrador. Is that right?

MR. KENNEDY: That’s correct. And again, my understanding, Mr. Simmons, is that, in fact, sorry – I’m not going digress in answering – I’m going to answer your question, Mr. Simmons, so –

MR. SIMMONS: So, at the point when this sanctioned decision was considered what part did the expectation that there was going to be, or there could be, demand for power for iron mines –

MR. KENNEDY: Very significant.

MR. SIMMONS: – in Labrador that couldn’t otherwise been met. What part did that play?

MR. KENNEDY: Very – it was a significant part. Yes.

MR. SIMMONS: Right.

MR. KENNEDY: But it wasn’t the primary goal of the development.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: And what we’re seeing now, Commissioner, in the last few weeks, we’re now seeing there’s new revived interest in iron ore in Labrador. So, it’s a –

MR. SIMMONS: Right.

MR. KENNEDY: It’s all very cyclical.

MR. SIMMONS: So, would you agree with me that that type of consideration – that’s a public policy consideration that has to be taken into account by government and wouldn’t be something where it would be within Nalcor’s realm to be making decisions about whether mining should be promoted in Labrador or not?

MR. KENNEDY: No. It wouldn’t – but Nalcor would be – have to be the vehicle to negotiate the power (inaudible).

MR. SIMMONS: The vehicle to supply the power. But –

MR. KENNEDY: And to negotiate the agreements.

MR. SIMMONS: But as for whether there's a public policy –

MR. KENNEDY: Yup. There's always –

MR. SIMMONS: – objective to promote mining or not that's government's determination.

MR. KENNEDY: That's government. I agree with that, Sir. Yeah.

MR. SIMMONS: Yeah. Okay. P-00067 again, please. And scroll down.

In the paragraph beginning: "The province will begin receiving dividends" – this is a reference here to dividends from the project and some estimates of the amount of the – of dividends that could be received by the project.

So, what part did that prospect play in the recommendation made to sanction the project?

MR. KENNEDY: That was a little bit tangly, Mr. Simmons, 'cause there were a couple of different viewpoints there.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: Essentially, okay – if I use export – so, we're going to export energy – sell it on the spot markets – money would go to Nalcor.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: And it could come back to government as a dividend. What we were sort of looking at was: Why can't it go to the ratepayer directly to reduce rates in terms of it's a benefit of Muskrat Falls? There was no question that the fact we were told by Nalcor and – appeared to be verified by – not just Nalcor – by government agencies that there would be money made off this, obviously.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: But primarily, I'd always seen anything that comes from Muskrat Falls, in

terms of moneys made, should go back to reduce the rates of the people.

MR. SIMMONS: Right. Now, it doesn't say that here

MR. KENNEDY: It doesn't say that, no.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: Because the normal corporate structure, I assume, you know, would be the monies would – the monies made would go to Nalcor and then government would get – as the only shareholder, would get a dividend.

MR. SIMMONS: Right, but it would give government flexibility in the future to decide how it was going to treat those dividends and what use could be made of them.

MR. KENNEDY: Oh no, there was – yes, there was no question about that, Sir. There was – that was always the basis, yeah.

MR. SIMMONS: And then, the next paragraph again flags the environmental benefits, and we won't go there, but I will point out that at P-00073, there's another one of these papers released by the Department of Natural Resources dealing with the benefits of closing Holyrood.

MR. KENNEDY: This was a big issue for me, Sir, and it's still a big issue.

MR. SIMMONS: Page 7, please – scroll down.

There's discussion there about the federal loan guarantee and the timing and I'll only pause there for a moment to say that under the timing paragraph, it appears there is explicit recognition that although the Cabinet and government are being asked to sanction the project at this point, there's recognition that the Maritime Link is yet to undergo review before the UARB, and that Emera is not required to sanction the link until after that review.

Do you see that under the –

MR. KENNEDY: Yes, I do.

MR. SIMMONS: – timing part? So that was explicitly brought to Cabinet –

MR. KENNEDY: Well that was our understanding.

MR. SIMMONS: – at the time, very clearly.

MR. KENNEDY: In fact, I think I referred yesterday to a note, Sir, where there was some discussion what would happen if the –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – if the federal loan guarantee –

MR. SIMMONS: Right.

MR. KENNEDY: – didn't come through.

MR. SIMMONS: Right.

MR. KENNEDY: Or excuse me, if Emera – if the UARB didn't sanction, what would happen with the federal loan guarantee.

MR. SIMMONS: Right, so the sanction decision was made by Cabinet with full knowledge that the UARB decision was yet to come.

MR. KENNEDY: Yes.

MR. SIMMONS: Yeah, okay. On the top of the next page, please.

We're dealing with alternative – there are several alternatives presented here – choices Cabinet would make. The first one is the one they chose which was to sanction the project and approve the Department of Finance to supply the base in contingent equity. And for that alternative, there are a number of advantages and disadvantages listed, and under the advantages list – scroll up a bit. This is where – the fourth one mentions the "Project provides power for export and/or domestic industrial development."

Now the paper up to this point, I haven't seen it explicitly deal with power for export. So aside from this – the dividend issue we talked about,

did that play any particular part or role in the consideration that Cabinet gave?

MR. KENNEDY: Yeah, we were always told, Sir – or informed – we believed actually that –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – that 20 per cent – 40 per cent of the power would be there for the province – the Island portion of the province. 20 per cent, I think – and sometimes I get it confused, Mr. Simmons – but I think the 824 megawatts works out to 4.9 terawatts of power –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – that the province would use 40 per cent, the, Commissioner, the – Emera would get 20 per cent and there was 40 per cent left.

So the issue was well is that gonna – if we're going – if we're doing this to meet the demand, there's 40 per cent of the power – does it run down the river? What do we do with it? Because once you've built the dam, obviously it's there to be utilized. And with the Maritime Link it gave us access to the markets in Nova Scotia, New Brunswick. I think Point Lepreau was down at one point in New Brunswick.

So the issue of the export markets was one that certainly played into it. The degree of the ability to export whether it would be large-box versus spot markets sort of was an issue. But yeah, it was a factor.

MR. SIMMONS: All right. Now I know when decisions are made collectively – as they are in Cabinet or any group, which – you know, I've – collectively has to come to a decision – that it's often difficult to say exactly why the decision was made because individual people may have their own reasons.

But if it's open to you, can you give me any comment on whether or not this whole range – this whole range of factors we've just looked at were taken into account when the decision to sanction the Muskrat Falls project was made?

MR. KENNEDY: I'm assuming, Commissioner, there's a waiver of Cabinet privilege here?

THE COMMISSIONER: Mr. (inaudible).

UNIDENTIFIED MALE SPEAKER: Yes, Cabinet privilege has been waived for the purpose of the purpose of the Inquiry.

MR. KENNEDY: Okay. So this one is a little bit different, Mr. Simmons, because the Cabinet had been briefed so often on this. Like everyone was familiar with Muskrat. It had been debated in the House of Assembly for so long.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: Normally when a paper comes up, it can be the first time that some ministers have actually seen it. So there can be discussion that's more animated than a paper that people have had an opportunity to – you know, they're familiar with and they know our position. So I don't remember with Muskrat Falls there being – in this paper there being anything.

I can remember Cabinet meetings, Sir, some of them were pretty rough. Because people – you've got people around the table who are very concerned about their constituents, the people of the province.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: And they feel – you know, very strong opinions on what some of the things should happen.

But this was not one. This was one that by the time we got to Cabinet, everyone, I think, was satisfied based – we – I think we – what's the date of the Cabinet paper? December?

MR. SIMMONS: The Cabinet paper is December 5.

MR. KENNEDY: Yeah. I don't know if we'd debated in the House of Assembly by that point. My recollection is that –

MR. SIMMONS: No, I'm sorry, I can't give you (inaudible).

MR. KENNEDY: Okay. In any event, there was –

MR. SIMMONS: But I gather what you're saying is that a consensus had already been built and there didn't have to be as much debate –

MR. KENNEDY: No.

MR. SIMMONS: – in Cabinet as we might have thought there would have been.

MR. KENNEDY: In my long way of saying, that's exactly what I meant to say.

MR. SIMMONS: So it's only on one other thing that I want to bring you to in this paper and then pretty well done. Page 12, please?

So this is an appendix to papers dealing with financing. And if we scroll down – scroll down a bit further.

Okay, here we go: "NL Government Equity Contribution." And we've seen that the minute of council that accompanies this –

MR. KENNEDY: Yes (inaudible).

MR. SIMMONS: – directs the Department of Finance to contribute base equity and contingent equity.

MR. KENNEDY: Correct.

MR. SIMMONS: So would you have understood that the base equity was the equity contribution that was necessary in order to build the project according to the estimate –

MR. KENNEDY: Yes.

MR. SIMMONS: – at that time?

MR. KENNEDY: In fact, the budget, I think, Commissioner, if I remember correctly –

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: – the budget, and when we went into budget debate, that that issue of the amount of equity going to Nalcor was discussed in 2013.

MR. SIMMONS: Right. So the base equity was what would go into the share of the 6.2-billion cost of –

MR. KENNEDY: It was identified, yeah.

MR. SIMMONS: – the project. So the contingent equity had to be costs in excess of that if they were incurred.

MR. KENNEDY: Yes.

MR. SIMMONS: That’s what it would have to be for. You accept that. Okay.

On page 13, if we scroll down – let me see if I can find this. So the paragraph beginning, the borrowing approach: “The borrowing approach will be determined as the project proceeds and will include factors such as future cash flow expectations/requirements and” the “probability of cost over-run risks.”

So aside from what you’ve told us about relying on what you’ve been told and everyone had been told in government by representatives from Nalcor about whether there was any risk of going over budget or not, did government do anything independent of Nalcor to assess probability of cost overrun risks?

MR. KENNEDY: Not that I’m aware of, Commissioner. I don’t know what other witnesses have told you; I’m not aware, no. I think that we placed significant credence and emphasis upon the information that had been provided to us –

MR. SIMMONS: Okay.

MR. KENNEDY: – by Nalcor in terms of the amount of engineering that had been done, Mr. Simmons.

MR. SIMMONS: Thank you.

So, just a couple of other questions now. So by the time this paper was submitted, can I presume that you, as the minister, had been – you were concerned about whether the power was needed, had been satisfied, or you would have submitted the paper?

MR. KENNEDY: Absolutely.

MR. SIMMONS: Mm-hmm.

MR. KENNEDY: I mean, this wouldn’t – we wouldn’t have gotten to this stage if –

MR. SIMMONS: Right.

MR. KENNEDY: – you know, if the issue of the need for power – isn’t it?

MR. SIMMONS: And you had been satisfied that the natural gas options had been properly screened out?

MR. KENNEDY: Yes, I was. Yeah.

MR. SIMMONS: You’d been satisfied that the maximum amount of wind generation had been properly considered?

MR. KENNEDY: Yes, I was, Sir. Yeah.

MR. SIMMONS: You were satisfied that the Muskrat Falls option was the least-cost option.

MR. KENNEDY: Based on all the information we had at the time, yes, Sir.

MR. SIMMONS: Right. Thank you very much. Those are all my questions

MR. KENNEDY: Thank you, Mr. Simmons.

MR. SIMMONS: 12:29.

THE COMMISSIONER: Thank you very much.

All right, I wanna try to get a bit of the lay of the land now for this afternoon, because I was worried about this yesterday: how long we were going to actually be with Mr. Kennedy. We’re gonna need to finish Mr. Kennedy this week, for sure, and also we’re going to need to get Mr. Bown done.

Now, my understanding – I briefly spoke with counsel this morning – Commission counsel, to see the expectation from Mr. Bown and we’re looking at least, I think, two days. Is that what you indicated Mr. –?

MR. LEARMONTH: It is.

THE COMMISSIONER: At least two days.

So we'll take the afternoon; we'll see where we are. And it may well be – seeing you're used to working Saturdays and Sundays – we might be doing Saturday or Sunday with you this week, to finish you off, if we need to. Unless there's some reason why you can't do it?

MR. KENNEDY: Yeah, I'm out of town, Commissioner, on – I'm supposed to catch a flight at 2 o'clock tomorrow afternoon and I will be back Saturday night. So Sunday I'm certainly available.

THE COMMISSIONER: Okay. Well, we'll have to look at Sunday then.

But we'll see how it goes this afternoon to see where we are, and obviously I'd like to have Mr. – this witness finished, certainly, before the next two witnesses testify, as well as Mr. Bown.

So – okay. So we'll come back this afternoon – 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: All right, the Concerned Citizens Coalition?

Just before we start, Mr. Budden, so I'm again thinking about how we're going to deal with Mr. Kennedy and making sure we finish him. And I understand that a concern was expressed about splitting his testimony, so I understand that concern.

So my thinking now is, is that hopefully we can do this – it might go a little longer today. And, also, Mr. Kennedy, I think you advised Ms. O'Brien that you are available at least tomorrow morning 'til noon?

MR. KENNEDY: Yes, I am, Commissioner.

THE COMMISSIONER: So if we need to, we'll have to go then. Because if we're going to have to go with anyone on the weekend, we could probably finish Mr. Bown on Saturday, I guess, is probably the better way to go. So hopefully we can finish Mr. Kennedy by noon tomorrow.

So, Mr. Budden, when you're ready.

MR. BUDDEN: Sure.

Good day, Mr. Kennedy.

MR. KENNEDY: Mr. Budden.

MR. BUDDEN: We know each other, of course. And as you know, I'm the lawyer for the Concerned Citizens Coalition, which is a group of individuals who have, for a number of years, been critics of the Muskrat Falls Project.

You would know some of them, of course, and I believe you know Mr. David Vardy?

MR. KENNEDY: Yes, I do. Yeah.

MR. BUDDEN: Okay.

Perhaps, Madam Clerk, we can call up Exhibit P-00350. I don't believe it's one of your tabs, but it should appear before you on the screen. And it's page 9 that I'm interested in, Madam Clerk.

What this is, Mr. Kennedy, as I understand it, it is an email from Mr. Gary Kean, who is a reporter with *The Western Star*, to Mr. David Vardy. And it's dated, I believe, a day or two following a talk you gave with the Corner Brook Board of Trade. And perhaps you could read this to us and then confirm whether it is an accurate account of a portion of your speech that day.

MR. KENNEDY: The read – Mr. Budden, the – what's there under: I questioned?

MR. BUDDEN: Perhaps you could read the whole thing just for completeness.

MR. KENNEDY: Yeah, so Mr. Kean to Mr. Vardy: "Here is my transcription of the portion of Natural Resources Minister Jerome

Kennedy's address to the Greater Corner Brook Board of Trade on Friday, Feb. 10, 2012.

"He was talking about the Manitoba Hydro ... reference to the idea of Corner Brook Pulp and Paper closing down when he said this"

Do you want me to continue, Sir?

MR. BUDDEN: Yeah, if you could read that, please.

MR. KENNEDY: "I questioned the chair of the Public Utilities Board and their lawyer at a meeting: how can you even consider Corner Brook Pulp and Paper closing down? There is no evidence of that.

"The first reference I can find to this theoretical, hypothetical situation of Corner Brook Pulp and Paper closing down is ... an article written by David Vardy in August of last year, and Mr. Vardy is one of the most" critical "vocal critics of the Muskrat Falls project.

"I told the Public Utilities Board chair and their lawyer, unequivocally, that there is no evidence. Yet, how does this find its way into the report?

"It's almost as if some of these critics want Corner Brook Pulp and Paper to close down so they can say, 'I told you Muskrat Falls is not needed. Is that cynical on my part, because where else is this coming from?'"

MR. BUDDEN: And perhaps just read the little bit at the bottom as well, from there.

MR. KENNEDY: From there, he went to talk on about – excuse me – "He went on to talk about his discussions with Joseph Kruger and the reassurances government were given that the company wanted the mill to be viable for the long term. I don't think there are any other references to you specifically."

MR. BUDDEN: Sure. And so what you've done here, I would suggest, Mr. Kennedy, is you've made a direct connection between the theoretical, hypothetical situation of Corner Brook Pulp and Paper closing down and Mr. Vardy being one of the most vocal critics of the Muskrat Falls Project. You'd agree with me there?

MR. KENNEDY: It appears that way, Sir, yeah.

MR. BUDDEN: Sure.

And then after calling out Mr. Vardy and only Mr. Vardy by name, you say – quote: "It's almost as if some of these critics want Corner Brook Pulp and Paper to close down so they can say, 'I told you Muskrat Falls is not needed.'"

Correct? Did you –

MR. KENNEDY: That's what's there, Sir, yeah.

MR. BUDDEN: Sure.

Why would you make these – what I'd suggest are quite inflammatory remarks about Mr. Kennedy – about Mr. Vardy, to basically imply in Corner Brook, before the Corner Brook Board of Trade, that he would want the pulp mill to close down to sort of validate his concerns about the demands of the project.

MR. KENNEDY: Yeah.

First, Mr. Budden, I have to explain the context in which this speech was given. The – at that point in time it's my recollection – around that time somewhere – that – and for some period of time, there had been questions of, Commissioner, whether or not the Corner Brook Pulp and Paper mill was sustainable because of what we'd seen in the downturn in the newsprint industry.

So I was involved – obviously, I had a number of colleagues who were sitting in Cabinet from the Corner Brook area and this was a major concern. In the political environment that we were in at the time – I'd also met, Mr. Budden, I'm not sure, but I'd met with the union at some point, and there were issues of unfunded pensions. So there was a lot of tension in the area. So I addressed the issue of the Corner Brook Pulp and Paper mill and tried to assure people that the mill wasn't closing down.

The – I can't remember now, I think that speech is actually in there, Mr. Budden. I can't remember if that was a typed portion of the speech or if I had a handwritten note. Sometimes

I would, Commissioner, write it in handwritten notes.

It wasn't my intent, Sir – sometimes, as a politician, when you're giving speeches and you're speaking to a particular audience – it wasn't my particular intention to single Mr. Vardy out; in fact, I had no great problems with the issues being raised by Mr. Vardy, so I don't know on that particular day why those comments were made. I certainly didn't mean to indicate that Mr. Vardy wanted the mill to close down, but I could see how it could be interpreted that way, Sir. That wasn't my intent.

What I would say, Commissioner, is like I said to you yesterday, there were times in political life, especially for someone like myself, with my temperament, that I would say things that I perhaps shouldn't say, and that's a – that's one, Sir – that's an example of one where comments were made that should not have been made.

MR. BUDDEN: Sure. Fair enough.

But you are going out – you're going pretty hard on Mr. Vardy here. You really are, aren't you?

MR. KENNEDY: I didn't mean it to be that way, Sir, in terms of the – and I don't know what precipitated that, Commissioner, but, I mean, the comments are there; they are what they are, and I – they're inappropriate, Sir, yes. That's the best way –

MR. BUDDEN: Fair enough. I'd like to talk about them a little more.

MR. KENNEDY: Yeah.

MR. BUDDEN: Perhaps we can go to Exhibit 00332, please, Madam Clerk?

And while that's happening, what you're saying here is there's no evidence of the pulp and paper mill closing down, and then you say the first references to this hypothetical situation is in Mr. Vardy's paper, and if you can scroll down to page 2, please, Madam Clerk?

So you refer to a paper of August – this past August, which would've been August of 2011, so this is obviously the paper you're referring to, I would assume, Mr. Kennedy?

MR. KENNEDY: It's the only paper I have recollection at that time reading, Sir. I'm not sure – I'd have to go to – I made notes on – I think it was November 7, I made notes of my – of reading Mr. Vardy's article, but I don't know if that reference is in there, no. I haven't –

MR. BUDDEN: Sure.

MR. KENNEDY: – looked at my notes, yeah.

MR. BUDDEN: Well, in the bit we just looked at, you talked about Mr. Vardy's paper of August 2011.

MR. KENNEDY: Okay.

MR. BUDDEN: And this is indeed a paper of August 2011. Now –

MR. KENNEDY: Okay. That would be the one, then. That's the one I read, yeah.

MR. BUDDEN: Fair enough. Perhaps we could scroll down to page 11, Madam Clerk?

There's a passage there that begins – the Clerk is just bringing it up now – the one that begins "The actual compound ... growth." So I'm reading – putting a couple of quotes here from the paper. And perhaps you could read those first couple of sentences, Mr. Kennedy? Just read them into the record.

MR. KENNEDY: The second paragraph, Mr. Budden?

MR. BUDDEN: Yes. The one –

MR. KENNEDY: Yeah.

MR. BUDDEN: – beginning "The actual" –

MR. KENNEDY: "The actual compound annual growth rate in energy consumption that occurred for the period" – excuse me – "1970-2010 was 2.3% (see Figure 2). This rate is in fact driven by growth in the first 20 year period, since there was virtually no growth from 1990 to 2010." To continue, or is that what you want?

MR. BUDDEN: Sure. Just continue until we –

MR. KENNEDY: “The Province’s population is virtually static and growth projections are modest. In recent years, the loss of two pulp and paper mills at Stephenville and Grand Falls plus the expropriation of the Abitibi hydroelectric facilities and the elimination of a paper machine at Corner Brook have created negative growth.”

MR. BUDDEN: That’s good. So that’s a discussion of – you know, it’s a pretty, I would suggest, non-controversial discussion of some past events in Newfoundland’s history and that the reference to Corner Brook Pulp and Paper is just –

MR. KENNEDY: Okay.

MR. BUDDEN: – a passing reference to a past event. So it’s not predicting or suggesting the mill may close.

MR. KENNEDY: Yeah.

MR. BUDDEN: Okay, fair enough.

Perhaps we could just scroll down to the rest of that page and I believe onto the next page. There’s a passage here that begins: The load forecast. Yes, it’s there. If you could read this as well into the record, please, Mr. Kennedy, the paragraph there in front of you beginning: The load forecast.

MR. KENNEDY: Yes, just one second, Mr. Budden, please.

MR. BUDDEN: No problem.

MR. KENNEDY: Sorry.

“The load forecast is based upon forecasts provided by the Department of Finance, which is projecting minimal growth in population over the forecast period. Nalcor has assumed that the two mills at Stephenville and Grand Falls will remain closed, that the Corner Brook paper mill and the Come by Chance Refinery will continue with their present level of energy use and the nickel smelter will begin to take power in 2011 ...”

MR. BUDDEN: That’s fine.

So, again, it’s a passing reference to Corner Brook, but certainly nothing predicting the closing of that pulp mill or anything of the sort.

MR. KENNEDY: That’s fair, Sir.

MR. BUDDEN: Okay.

So – and I would suggest to you – and it’s a searchable document so I’m sure your lawyer will correct me if I’m wrong, but I believe these are the only – I’m pretty sure these are the only two references to Corner Brook or to the Corner Brook Pulp and Paper mill in that paper.

So do you have any reason to disagree with me on that, Mr. Kennedy?

MR. KENNEDY: No, I don’t, Sir. I’m looking at – I had actually two pages of notes there in separate parts of the documents and I’m looking at one and I see no reference to Corner Brook there.

MR. BUDDEN: Okay, fair enough.

So – and at the time you did this were you aware, for example, that Mr. Vardy, as clerk of the Executive Council back in the early ’80s, had led the drive to bring Kruger in when Bowater announced they were pulling out, that he headed the task force that eventually brought in Kruger. Were you aware of that?

MR. KENNEDY: I would not have been aware, Sir, that he was the clerk of the Executive Council

MR. BUDDEN: Okay and that he had played a lead role in actually bringing Kruger into the Corner Brook Pulp and Paper mill.

MR. KENNEDY: I wouldn’t have been aware of that, no.

MR. BUDDEN: Okay, fair enough.

So I guess my question to you is: Why did you really demonize Mr. Vardy in the fashion you did?

MR. KENNEDY: I don’t think, Sir, I would use that – I agree with that description, demonize. I

mean I made comments, Mr. Commissioner, that I've indicated that were inappropriate.

There was a very emotional, highly politically charged situation ongoing in Corner Brook. There were rumours out there that the Corner Brook Pulp and Paper mill were going to close. I had met with Mr. Kruger myself – and I can't remember, Mr. Budden, exactly when it was – and we were given assurances that there was no – that the mill wasn't going to close.

At that point – and I'm not making excuses, Mr. Budden, I accept responsibility. What I say, Commissioner, those are my words, but at that point I was a little bit more sensitive to criticism than I should have been.

MR. BUDDEN: Okay, fair enough. And none of us are perfect, but I guess my interest is really not why you were sensitive to criticism, but why you chose to target Mr. Vardy who had nothing to do and had never suggested that Corner Brook should close, let alone that he would be gratified by it.

MR. KENNEDY: Yeah, I don't think – Sir, that's not the way – again, the Commissioner can read these himself. That's not the way I meant the comments to come across. And sometimes, Commissioner, in giving speeches – in giving political speeches there – and, again, I don't know if this is written into the document. I think the document is actually there.

I haven't seen – I can't remember, Commissioner, if it's written into the document of it it's something that I extemporized. And that's what gets people, I guess, what – politicians in trouble is when we go off our script. So, I mean, if you want me to look at the document to see whether or not that's written in there, I can do that.

MR. BUDDEN: No, I'm not particularly interested in that. But I guess what I am interested in is, I mean here you are, you're not quite four months into your tenure as the minister, and as you said already – as is totally understandable – there's a bit of a learning curve; you're still figuring out what DG2 means, what DG3 means and so on. Yet here you are and – but you would have been aware that Mr.

Vardy was one of the critics of the Muskrat Falls Project?

MR. KENNEDY: I had never heard of David Vardy, Sir. I didn't know who – David Vardy. Until I became the, I think, the Natural Resources minister, I'd never heard his name.

MR. BUDDEN: But you certainly knew who he was by four months later in February?

MR. KENNEDY: Yeah.

MR. BUDDEN: You read his paper, you had – you were standing in front of the board of trade in Corner Brook essentially implying that he wanted the mill to close down.

MR. KENNEDY: I read his paper, Sir, I had no – the paper – the issues raised in his paper, I thought, were good ones. I had no problem with the issues. I mean my notes will indicate that I am raising them – I'm paying attention to the issues raised.

At this point, too, Mr. Budden – and, again, Commissioner, I'm not making any excuses here. As a politician, when you put your name on the ballot box for – and you get elected, you got to be ready to take the criticism that comes with that, Commissioner. But, unfortunately, in the age of social media, that became a little bit more intense than I think most of us expected.

So there was criticism and very personal comments. Now, I'm not saying by Mr. Vardy or anyone else, but there were very personal attacks that were taking place. And, unfortunately, sometimes, Mr. Budden and Mr. Commissioner, politicians react in emotional ways that – I'd like to be as tough as I try to make out to be, Mr. Budden, but I'm not. And there were times that things would get to me and there were times that I would hit back in a way that's not appropriate – and I think, Mr. Commissioner, I've made that comment.

I certainly didn't – it wasn't my intention to say that David Vardy wanted the mill to close down. I see the way it reads there, Mr. Budden. I had no reason at that point – as I told you yesterday the reason I went off and started investigating shale gas was because Cabot Martin had raised an issue that I thought to be valid.

MR. BUDDEN: Stop you there –

MR. KENNEDY: So Mr. Vardy –

MR. BUDDEN: I guess I'm not worried or really challenging you on your excuse. I mean I realize that things get a little heated.

MR. KENNEDY: I didn't mean it to be an excuse, Mr. Budden.

MR. BUDDEN: Okay, well, I guess my question is – it's not really answering my question why Mr. Vardy – why, at this moment in time, was this particular critic of the project, that you were saying – I mean, okay, let me start again.

You're saying that your – you very much had an open mind about Muskrat Falls.

MR. KENNEDY: Yes, I did, Sir.

MR. BUDDEN: You're saying that you were open to commentary from all directions, that you were skeptical of Nalcor; you had some concerns about the way they were presenting information directly to Cabinet –

MR. KENNEDY: Yeah.

MR. BUDDEN: – and so on, all of that. But how do you reconcile that with this quite – obviously, this quite sharp attack on a man who is – really, his only role in this is as a critic. He's not – unless you would suggest otherwise, he's not sniping at you on social media or anything.

MR. KENNEDY: I don't –

MR. BUDDEN: Why Mr. Vardy?

MR. KENNEDY: I don't remember Mr. Vardy doing that. No, Sir.

MR. BUDDEN: Yeah.

MR. KENNEDY: But I just – I need – if you want me to answer the question, Mr. Budden, I'm going to have to go to the actual speech if you want me to – you know, to look at the context in which the comments were made.

MR. BUDDEN: If you think that's helpful.

MR. KENNEDY: It – I'm not – I don't know if it will be, but it may be. If you want me to do that, that's up to –

MR. BUDDEN: Yeah, just – my question is pretty simple.

MR. KENNEDY: I don't know the answer to that, Sir.

MR. BUDDEN: Okay.

MR. KENNEDY: I don't remember, for example, Commissioner, Mr. Vardy having done anything that precipitated those comments; it was the emotional reaction to everything that was going on in Corner Brook. I haven't – I can't point to you – there was any interaction with Mr. Vardy that really agitated me or annoyed me. I – no, I can't – I can't pinpoint that. I can't pinpoint, Commissioner, for example, that there was anything – that on that particular day I was really agitated by anything. I can't – no, I don't have an explanation, Sir.

MR. BUDDEN: Well, the effect of what you did is you pretty – came down pretty hard on a Muskrat Falls critic in that particular forum, on that particular day and I'd suggest because he was a Muskrat Falls critic, unless you can provide another answer.

MR. T. WILLIAMS: Mr. Commissioner, this issue has been canvassed– in all due respect, and I realize Mr. Budden has clients to represent. But in the last five to 10 minutes I've noticed that Mr. Kennedy has said that he was more sensitive to criticisms, he regrets his remarks – inappropriate. I mean, you've made comment yourself that you're not interested in personality fights in this respect, when you look at the Terms of Reference.

I realize that's a valid point that he's raised. I think he's dealt with it, I think the witness has answered it; I just don't see how long we need to pursue. If we're going to go through every article – you know, Mr. Kennedy's been quite open, I think, in his direct and indirect, that he's spoken inappropriately. If he needs him to acknowledge that on a particular issue, that's fine, but how long we need to canvass an issue that this witness has already spoken to I wonder.

THE COMMISSIONER: Mr. Budden.

MR. BUDDEN: Again, it's not the reaction per se that I'm concerned about. It is – I'm wondering why, at this particular point in events, when Mr. Kennedy's given evidence about how he was open minded and so forth – he is singling out a person for this quite sharp criticism who also happens to be a prominent Muskrat Falls critic, and I'm asking him if he can explain – and the very question I put to him at the moment I was interrupted was: Why, if you can offer no other reason, why Mr. Vardy was subject to such sharp criticism, it must have been because he was a Muskrat Falls critic. And I asked him to take issue with that if he has any evidence to the contrary.

I think it's a perfectly legitimate question.

THE COMMISSIONER: So I'm sitting here listening to this and I can understand, certainly, the point that is being made and I think for – I can understand why you would be pursuing this on behalf of Mr. Vardy. I'm not sure, ultimately, at the end of the day, it's gonna play a huge part in my decision, per se. But I understand – if I'm hearing you right, it's not so much the issue of Mr. Vardy right at the moment.

Are you going towards – I'm hoping I'm not going to sort of let cats out of bags or whatever, 'cause I'm sure you have a strategy here – but are you – is what you're really going to is why was the – why was this government minister basically saying these sort of things about – just because somebody was a critic of the Muskrat Falls Project. If that's where you're going –

MR. BUDDEN: That's where I'm going, yes.

THE COMMISSIONER: Let's – can we get to there and –

MR. BUDDEN: Okay. I thought that's where we were to with my question when I was interrupted. I'll try it again.

But my question to you is: Mr. Vardy was a well-known critic of Muskrat Falls, you'd agree with me there?

MR. KENNEDY: I knew who Mr. Vardy was, Sir, in terms of, yes, he had – he was a – I'm just

trying to remember now before I became minister, before – yes, I did. The answer is yes. Okay, yes.

MR. BUDDEN: And you had no other beef with him, no other dispute with him, no other –

MR. KENNEDY: No.

MR. BUDDEN: – issue with the way he treated you or anything?

MR. KENNEDY: No, not at all.

MR. BUDDEN: Okay. Therefore, I'd suggest to you it must have been because he was a Muskrat Falls critic that you attacked him in this fashion on that day.

MR. KENNEDY: I'd think, Sir, that that's the only logical answer here, yes.

MR. BUDDEN: Okay. I guess the – do you not see the potential chilling effect that could have on public debate, when a minister of the Crown, a high-profile minister of the Crown, such as yourself, uses that form to attack a critic in that fashion?

MR. KENNEDY: Sir, I don't see it – again, it's a comment that I made that I shouldn't have made, but it – a potentially chilling effect, I don't see that, Commissioner. In fact, I recognize, Mr. Budden, shortly after, there was a number of speeches I gave together – I recognized after that that's not the approach to take.

In other words, being adversarial, I mean, people have the right to speak out. They have the – unfortunately, I was the one tasked with answering, you know, on almost a daily basis, Mr. Budden, out there in the public in terms of the media – the House of Assembly wouldn't have been sitting then, I don't think, Commissioner – giving speeches. I was the one tasked with doing that; myself and the Premier.

So, I – you know, there's times I get tired, and there's times I would say things, but I certainly – I'd recognize that that wasn't the way to do things, and even though I was still out there, I tried not to be – I did mention peoples names, but, for example, I mentioned peoples names

later. It was simply – that this is what they’re saying. This is why we’re checking this out. So, I don’t know if –

MR. BUDDEN: Okay.

MR. KENNEDY: – it would be chilling. I certainly didn’t intend it that way, Sir.

MR. BUDDEN: Okay.

You indicated that you had met with Mr. Wade Locke who, of course, is – also has expertise related to the Muskrat Falls Project. Had you ever considered inviting Mr. Vardy or Mr. Penney or Mr. Sullivan, perhaps Mr. Martin?

MR. KENNEDY: Not Mr. Sullivan.

MR. BUDDEN: Mr. –?

MR. KENNEDY: No, I had no dealings with Mr. Sullivan.

MR. BUDDEN: Okay.

Okay, well, I’m going to put names out to you who were, at that time, well-known critics to the project; names I’ve mentioned: Mr. Vardy, Mr. Ron Penney, Mr. Des Sullivan, Mr. Ed Hollett, Mr. Cabot Martin. Did you ever think to invite any of those individuals in to see –

MR. KENNEDY: I would’ve –

MR. BUDDEN: – where they were coming from?

MR. KENNEDY: Looking back on it now, and, again, Commissioner, as I’ve said on numerous occasions, the benefit of hindsight, Mr. Vardy and Mr. Penney – I certainly should’ve – they were individuals who I could’ve talked to.

MR. BUDDEN: Sure.

MR. KENNEDY: Not – the other individuals I don’t know why I would talk to them, but those were individuals I could’ve talked to, yeah.

MR. BUDDEN: Okay, fair enough.

You know Mr. Todd Stanley, of course, and you know he’s given evidence here before this Inquiry so far?

MR. KENNEDY: I know Mr. Stanley has given evidence, yeah.

MR. BUDDEN: Okay. When you were minister of Natural Resources, what role did Mr. Stanley play in the department, or for the department at that time, as best you recall?

MR. KENNEDY: Mr. Stanley was certainly a high-ranking lawyer in the Department of Justice; one of ones, Mr. Commissioner, that we, as a government, replied upon a lot. He did have dealings with, I know, oil and gas, specifically, while in Natural Resources. And he would’ve been a lawyer tasked to assist Natural Resources at times, yeah.

MR. BUDDEN: Sure, fair enough.

Can we bring up Exhibit 00790, please, Madam Clerk?

MR. KENNEDY: Do I have that here, Mr. –?

THE COMMISSIONER: 00790?

MR. BUDDEN: You may not –

THE COMMISSIONER: You do at tab 128.

MR. BUDDEN: Oh, you do have it? Fair enough.

MR. KENNEDY: Okay, so –

MS. O’BRIEN: Volume 3.

MR. KENNEDY: What is this?

MR. BUDDEN: It is Mr. Stanley’s –

MR. KENNEDY: Okay, gotcha, yeah.

MR. BUDDEN: – interview, which has been entered as an exhibit, and perhaps you could turn to page 20 of that, Mr. Kennedy.

MR. KENNEDY: Okay, sorry, could I have the exhibit number again, Commissioner?

THE COMMISSIONER: Tab 128 –

MR. KENNEDY: Yeah?

THE COMMISSIONER: – in volume 3.

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

MR. BUDDEN: Sure. And Mr. Stanley has given an answer there. It's a couple of paragraphs long, but I'd like it if you could read it –

MR. KENNEDY: What – sorry, what page is it?

MR. BUDDEN: I'm sorry, page 20, Mr. Kennedy.

MR. KENNEDY: Page 20, okay.

MR. BUDDEN: And you can see the – down the fourth entry is Mr. Stanley, and it goes: "You know, there were instances" – perhaps you can read his answer into the record?

MR. KENNEDY: Okay, I'm sorry, page –?

MR. BUDDEN: Page 20.

THE COMMISSIONER: Red page 20.

MR. KENNEDY: Red page 20, okay.

MR. BUDDEN: Yes, you'll find that throughout, we –

MR. KENNEDY: Yeah, okay.

MR. BUDDEN: – the pagination is –

MR. KENNEDY: I'm sorry, and where is it?

MR. BUDDEN: From: You know.

MR. KENNEDY: Yes, I have that, okay, Sir, yeah.

MR. BUDDEN: If you could take it right down to unusual that would be fine.

MR. KENNEDY: Okay.

Mr. Stanley says: "You know, there were instances where we went over to Hydro, or Nalcor, for a briefing on something as to how" – excuse me – "the Muskrat project would be structured – this was fairly early days – and they would tell us it's gonna be A, B or C.

"I remember a meeting where we went – and I can't remember what the briefing was, the topic of it – but the instructions were, like, you know: And it's gonna work like this. And the government people were sitting there and were like: Well, who said it's going to work like that? That's, you know, the perceived, at least, concerns about how that would be.

"And Nalcor's response was, this was approved by the premier. And one of the Natural Resources people who was there said: Oh, that's interesting, I don't remember writing the policy analysis on that." I'm sorry for my inflection, I'm not sure if I should be using the inflection but I'm just reading it –

MR. BUDDEN: You're doing fine as far as I'm concerned.

MR. KENNEDY: "The comment was facetious. There was no policy analysis on it. Right? It never came through the experts at Natural Resources to say: Okay, here's the wrinkles, here's the hairs on that, here's the problems with it.

"Nalcor came and got approval from the Premier's office. We're gonna do this; marched off and had their instructions and their approvals. So that was unusual."

MR. BUDDEN: Okay, that's fine. Is that basically the way he generally describes the situation there? And I think of that last paragraph in particular: "Nalcor came and got approval from the Premier's office." He's speaking, of course, from the perspective of the department.

Was that the situation, as you found it, when you were appointed minister of Natural Resources, generally the way he describes it there?

MR. KENNEDY: No, the way I always understood it, because of the nature of the Muskrat Falls Project, Commissioner, because

of the, you know, the – it's something – we hadn't done anything, you know, as a government, like this before, that the premier, as being the head of government, was obviously involved; whether it was Premier Williams or Premier Dunderdale; they were involved.

Whether or not Nalcor went to the premier's office to get approval, I wasn't aware of that, Sir. It – there was a direct relationship with the premier's office, but I know when I got there, one of the issues I was trying to determine myself, Mr. Budden, was the relationship between Nalcor and the Department of Natural Resources.

MR. BUDDEN: Okay. Do you remember in your interview – I'll just read this very brief clip from page 13 of your interview. This is an interview with Commission counsel back in September.

You said in response to some comments with Mr. Bennett, you said: Yeah. And I said: Wait now, like, shouldn't you – meaning Mr. Bennett – be looking after the technical side of things? So that there was, by the time I got there, I'm not sure who was in charge. The relationship was very close between government and Nalcor.

MR. KENNEDY: Yeah.

MR. BUDDEN: So that was your sense at the time, you weren't sure who was in charge between government and Nalcor, at the time you arrived?

MR. KENNEDY: I think I expanded on that as I went through the interview, Mr. Budden. But, essentially, it wasn't who was in charge, it was trying to define the roles, because you had – Nalcor obviously had to be involved in the – were involved in the projections, in the numbers, in the operational aspects, and then government was obviously involved in terms of policy and things like that.

So I was trying to define, for myself, the relationship that existed. And this stemmed, I think, just from me, in my experience in other departments, wanting to ensure that I was aware of things that was going on.

MR. BUDDEN: Okay.

Perhaps we can scroll on to the following page, still with the same exhibit, page 21 –

MR. KENNEDY: Well, I should – and I made this point, though – excuse me, Mr. Budden or sorry, Commissioner –

MR. BUDDEN: Sure, no problem.

MR. KENNEDY: I did make this point, too, though, that the premier always – I'm not aware, there could have meetings that I wasn't present, but I know I would get a call, it could be, you know, a half-hour's notice that there's going to be a meeting, are you available?

So I was – the premier's office that happened all the time. So I was led – from that, I inferred that when meetings took place, that I was asked to the meetings. I don't think it was the premier making decisions in conjunction with Nalcor to the exclusion of me because, you know, well, whatever reason.

MR. BUDDEN: Okay.

But as you said before, the relation between Nalcor and your department was very different than it was, say, between Eastern Health and the Department of Health when you were in Health.

MR. KENNEDY: Yeah, I think it was the nature of the project that was being – not only the nature of the project, but oil and gas was very similar. I don't know if Mr. – if anyone explored that, but the oil and gas relationship was also very – there was a direct relationship.

MR. BUDDEN: Sure, okay.

There's another bit I'd like you to read. We're there at the bottom now.

MR. KENNEDY: Are we still with Mr. Stanley or myself?

MR. BUDDEN: We are, yes, and it's the following page.

MR. KENNEDY: Okay.

MR. BUDDEN: There's a line there about halfway down page 21 beginning – Mr. Learmonth asks a question of Mr. Stanley: You

said Mr. Kennedy didn't have a good relationship – if you could read that little bit until I tell you to stop.

MR. KENNEDY: We didn't get off to a good start.

MR. BUDDEN: Okay.

Actually, if you could just read it there, then I'll ask you to comment on it.

MR. KENNEDY: Okay.

“MR. LEARMONTH: You said Minister Kennedy didn't have a good relationship with Nalcor, can you give me examples of that –

“MR. STANLEY: Well, he –

“MR. LEARMONTH: – or your understanding of the reasons for it?” – Oh.

“MR. STANLEY: That would presume insights in Minister Kennedy's ...” – sorry, I didn't mean to chuckle at the –

MR. BUDDEN: It's a little hard not to.

MR. KENNEDY: “That would presume insights in Minister Kennedy's thinking ... I'm not sure I'm gonna put” that on the record. So the –

MR. BUDDEN: There's a little more. I'm not saying that just to get to that line; perhaps you could just read the next paragraph.

MR. KENNEDY: Yes, sure.

MR. BUDDEN: That's where I'm really interested in.

MR. KENNEDY: Mr. Stanley: He think I “viewed them as being, as a number of people in government did as you're getting into 2000 ... 2011, '12, I think. You know, they were sort of viewed as being a little bit of a runaway train that we didn't have any control over. You know, so they'd call over and asked, say – government – well, I need the following 15 things for the

project to go ahead and I need it all done by Tuesday.”

MR. BUDDEN: Okay.

Well, okay, that line there, “a runaway train that we didn't have any control over,” was that a view you also would have had of Nalcor at that time?

MR. KENNEDY: No, I certainly wouldn't have used that term. I would have – there were issues and concerns that I had stemming from my reading of the environmental assessment or the Joint Review Panel report. And reading Mr. Wells's letters I certainly had concerns and I had concerns from a particular meeting that took place in ...

And, again, Commissioner, some – this is, sometimes things stick with me. There was meeting on August 10, 2011, we were in the middle of the election, we were in Grand Bank. We were in the, I think it was the hotel – I don't know if it's called the motel Mortier.

MR. BUDDEN: Mmm.

MR. KENNEDY: And Mr. Bennett and Mr. Sturge were giving a presentation. And I asked Mr. Bennett a question and he didn't respond the way that I felt was appropriate. And I was not very pleased with that, so I then read the issue – I read in the environmental assessment panel – and, again, I don't know what page, Commissioner, but there's a footnote where the Joint Review Panel asked for certain financial information. Nalcor wouldn't give it to them because they didn't feel it was necessary, or – again, I'm paraphrasing, Sir.

Then I read Mr. Wells's letter, so by the time I get in here I know there's issues, and I know – every minister, though, Mr. Budden, has a different style. So I can't say how previous ministers have done it, but as I said yesterday, this is high profile, if this goes bad I'm going to be sitting where I am today. So I wanted to be involved and I wanted to be involved in the decision-making and I wanted to assert control over the areas that I should have control over.

MR. BUDDEN: Sure, okay.

So we do have, however, one of your, the senior – your – I don't know if advisor is the word, but certainly Mr. Stanley was a well-positioned –

MR. KENNEDY: Yeah.

MR. BUDDEN: – player at this time and his perception, as expressed in his interview, was that Nalcor was a runaway train. Did anybody ever express words to that effect to you, anybody below you in the hierarchy of the Department of Natural Resources or with Justice or any other department?

MR. KENNEDY: No, I think, Mr. Commissioner, as you'll see over the next few days, Mr. Charles Bown is a very calm and diplomatic man who had a very, you know, he – I'm not going to say he was not adversarial – he was firm in what he did, but Mr. Bown certainly didn't express those opinions to me, nor did anyone else.

MR. BUDDEN: Okay, so nobody said to you, look, you know, we're glad you're here as a minister, we have a bit of an issue here; we need to rein Nalcor in, nothing like that?

MR. KENNEDY: No.

MR. BUDDEN: Okay, sure.

MR. KENNEDY: No, there was a – that's not what was said to me. I realize there were issues.

MR. BUDDEN: Okay.

Have you – you've heard, I would assume, Nalcor described as a world-class team? You've heard that expression.

MR. KENNEDY: I've heard that expression, yeah.

MR. BUDDEN: Sure.

Is it an expression that you, yourself, have used to your knowledge?

MR. KENNEDY: I heard the premier use it on a number of occasions. I – again, I'm going by memory, Sir, but I don't know whether in that

three-day debate, where I'd seemed to be on my feet for 10 hours a day, whether or not I had used that term.

MR. BUDDEN: Okay.

MR. KENNEDY: If I did, I would have only used it once.

MR. BUDDEN: Okay. What did you understand the term to mean as it was used around you by your associates?

MR. KENNEDY: Best in the business, the best you're going to get out there.

MR. BUDDEN: Okay.

Were you aware at the time you were minister – now, obviously we all know a lot of stuff now, but were you, the minister, aware that hardly anybody in management at Nalcor had ever been involved in a hydroelectric megaproject of this sort?

MR. KENNEDY: And again, you've hit upon – Commissioner, Mr. Budden has hit upon a very important point is what I know now versus what I know then. All I can tell you, Mr. Budden, that these gentlemen, Mr. Martin and Mr. Bennett and other people at Nalcor, would come before Cabinet; they appeared to know their stuff. They had done their work.

I mean, whatever people will say, Mr. Martin did his work. Mr. Bennett – they did – they came in with presentations that were complete. They appeared to be giving us all the information. They appeared to be confident in what they were doing. So whether or not they had any previous involvement in hydro, I'm not sure when I became aware of that, Mr. Budden, but they certainly did not lack any confidence in what they're doing, and they appeared to me to be very competent.

MR. BUDDEN: So they clearly projected self-confidence. I mean, that's – there's a lot of evidence to that effect.

MR. KENNEDY: But competence, too, though. They also projected competence in terms of being able to tell us – again, the political system: we elect people, Commissioner; we're made

ministers. You don't have any particular expertise in the area, or you're sitting around a Cabinet table making decisions; we've got to rely upon experts and consultants and people to come in and tell us what's going on.

MR. BUDDEN: Sure. I'm going to pursue –

MR. KENNEDY: So when Nalcor came in –

MR. BUDDEN: Yeah.

MR. KENNEDY: – we had no reason to suspect, at that point, that there were issues with what they were saying.

MR. BUDDEN: What skill set did anybody in government have to judge whether they were competent?

MR. KENNEDY: Well, I think, Mr. Budden, that could be more of a flaw with democracy than with Nalcor or government in that, you know, the deputy minister – you got to remember, the deputy – the premier is up there, and I know we've talked so much – and, excuse me, Commissioner, she'll speak for herself, but there's a million things she's doing with or –

MR. BUDDEN: You're getting a bit away from my question.

MR. KENNEDY: I think I am, yeah. Thank you.

MR. BUDDEN: Yes.

MR. KENNEDY: But, okay, let me try again.

MR. BUDDEN: Yeah.

MR. KENNEDY: The only – as ministers, we didn't. So the only people who could've done it would have been people within the Department of Natural Resources.

MR. BUDDEN: Yes.

MR. KENNEDY: Yeah.

MR. BUDDEN: So you're not – you obviously have a skill set in your own field, as did other ministers there.

MR. KENNEDY: Yes.

MR. BUDDEN: But nobody, I presume, within Cabinet had any particular expertise or experience in this kind of construction that you knew of.

MR. KENNEDY: Not in Cabinet. No.

MR. BUDDEN: Of course.

And, to your knowledge, did anybody in the department have that kind of experience or training?

MR. KENNEDY: This was the first time, I think, that Government of Newfoundland and Labrador had engaged in a megaproject like this. My understanding, Sir, was that Nalcor had been involved in Hebron; they had been involved – which was a – you know, a big project. They'd been involved in the oil field, so they had been involved in big projects, but in terms of hydro, no.

MR. BUDDEN: Okay.

And perhaps we could go back to Exhibit – I think we still have it here – 00790 and scroll down to page 32, Mr. Kennedy.

MR. KENNEDY: Is this Mr. Stanley again?

MR. BUDDEN: Yes, it is. This will be the last time, but –

MR. KENNEDY: Okay.

MR. BUDDEN: – I have a lot of blacked-out sections; we'll go past that. And here we are.

MR. KENNEDY: Okay.

MR. BUDDEN: Right after the long redacted portion, there is a dialogue between Mr. Learmonth and Mr. Stanley. I'd like you to read. It's important; I'd like you to read it.

MR. KENNEDY: So after the blacked-out portion.

MR. BUDDEN: Wait a minute. This may – yeah, right after the blackout where it says "Now at the time."

This is Mr. Learmonth speaking “Now at the time.” If you could read that to us until I tell you to stop onto the next page.

MR. KENNEDY: Okay.

“Now at the time, let’s say up until, let’s say January 1, 2013, or even after that, January the 1st, 2014. Are you aware of any concerns expressed within government as to whether Nalcor had made and was making full disclosure to government of the actual cost estimates for the Muskrat Falls Project?

“**MR. STANLEY:** The estimates or the actual costs?

“**MR. LEARMONTH:** The estimates. In other words, was there any discussion about – I’m not sure there – we’re getting the full picture here. Or was it that we can rely 100 per cent on Nalcor – we know we have to review –

“**MR. STANLEY:** The –

“**MR. LEARMONTH:** – you know, that subject matter generally.”

Keep going?

MR. BUDDEN: Yes, please.

MR. KENNEDY: “**MR. STANLEY:** Right.

“The – I don’t remember there being a concern that Nalcor’s cost estimates, as they were being provided at any point in time – were being lowballed or a concern that they were being artificially reduced or something. I don’t remember that, the idea that – I don’t remember any discussion that Nalcor’s saying it gonna be X, but we don’t trust that number, because we think they’re gaming the number. I don’t remember any discussion about that at all.

“That may have been in part, because as I said before, what Nalcor was doing to generate those numbers, for the cost estimates for construction and the like, were largely – as, like I said, it’s a black box. Government had no insight – you know, I didn’t see any insight by government into what Nalcor was doing. And I don’t think government had the expertise to say to Nalcor, send me over everything, I’m going to do an

independent cost review. There’s nobody in government to dictate that email, right?”

MR. BUDDEN: That’s good. I’m – that’s where I want you to stop.

That sentence: “Government had no insight – you know, I didn’t see any insight by government into what Nalcor was doing. And I don’t think government had the expertise to say to Nalcor, send me over everything, I’m going to do an independent cost review.”

Do you take any issue with what Mr. Stanley –

MR. KENNEDY: Okay.

MR. BUDDEN: – is saying there?

MR. KENNEDY: I’ve got to break it down to –

MR. BUDDEN: Okay.

MR. KENNEDY: – if I may –

MR. BUDDEN: Please.

MR. KENNEDY: – into two sections.

MR. BUDDEN: Okay.

MR. KENNEDY: I don’t think, you know, it’s accurate to say government had no insight. Nalcor were coming to Cabinet, they were presenting to Cabinet so the ministers were aware of what was going on. So there was insight into what Nalcor was doing, there was approval being given. So in that – I don’t agree with that part of it.

Then the next part of it is “I don’t think government had the expertise to say to Nalcor, send me over everything, I’m going to do an independent cost review.” My understanding, Sir, and – excuse me – is that this cumulative present worth or this CPW analysis requires a lot of inputs, and I don’t –

MR. BUDDEN: Mm-hmm.

MR. KENNEDY: I see Mr. Kelly there; he might understand it, but I don’t understand what was going on. So in terms of the CPW, no, I’m not aware that government had the – the

Department of Finance had the wherewithal or the knowledge or the expertise to do that same analysis.

MR. BUDDEN: Sure. Okay.

Well, CPW is at a high level. Even before we get to that, we had –

MR. KENNEDY: Okay, sure.

MR. BUDDEN: – analysis of the load forecast, say, or analysis of the cost estimates.

Did government, to your understanding, have the expertise to take a sort of a second cold eyes look at those numbers?

MR. KENNEDY: I didn't think we had the expertise, no.

MR. BUDDEN: Okay.

So this –

MR. KENNEDY: Excuse me, I should say I'm not – not that I'm aware of.

MR. BUDDEN: Okay. So just to wrap up this particular line, there was nobody, as you understand it within government, either the civil service or the government, that had the experience or the expertise to really critique the Nalcor numbers.

Would that be a fair comment?

MR. KENNEDY: Minister Marshall was, Commissioner – oh, excuse me, Minister Marshall, Mr. Budden, was the minister of Finance at the time. I don't know what – I didn't see his testimony. I don't know if he had any answers on that, but that expertise, in terms of financing, would have to come from, I think, Finance.

But the load forecasting, I mean, Mr. Simmons showed me a document today that I'd never seen before. Load forecasting and demand, Sir, was something that was from – when I got there, it was provided to us by Nalcor.

MR. BUDDEN: Okay.

To your knowledge, were any such exercises ever carried out by government?

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

MR. BUDDEN: Sure.

This is a question that's been bounced around a little bit, but who – and I've asked this of other witnesses as have other lawyers – who, in your opinion, was the government minister responsible for Nalcor?

MR. KENNEDY: Oh, I would've been, as the minister of Natural Resources.

MR. BUDDEN: Okay. And that would include, I would presume, the responsibility to make sure that Nalcor was appropriately governed, that there was a good board of directors in place and so forth?

MR. KENNEDY: Yes, it would, yeah, the minister – again, the minister of Natural Resources and the premier's – between both, yeah.

But the minister of Natural Resources, Commissioner – I hope I didn't try to stray away from my responsibility yesterday. As the minister of Natural Resources, Sir, I was the lead minister here.

MR. BUDDEN: Sure.

And you're aware, and I realize that you're not a corporate lawyer, most of us aren't, but you are aware of the significance and importance of having a strong, capable board of directors for any company –

MR. KENNEDY: Yes, I am.

MR. BUDDEN: – private, public or otherwise?

MR. KENNEDY: Yup.

MR. BUDDEN: You will recall yesterday you were examined about an email that Tom Clift, one of the board members –

MR. KENNEDY: Yes, I remember that, yeah.

MR. BUDDEN: – had sent to Robert Thompson in January –

MR. KENNEDY: Yup.

MR. BUDDEN: – of 2012. We won't go through it again, but you – can you confirm that you were totally unaware of that email had been sent or received?

MR. KENNEDY: No, I'm familiar with – I know Mr. Clift.

I was not – I've never seen that email, no.

MR. BUDDEN: Okay. So were you aware at the time you were minister – now, here's some of the highlights of it – that the – in January 2012, the – Mr. Clift, speaking on behalf of the board, wanted additional board members appointed with expertise in "large-scale engineering project experience, international project experience, labour relations experience and additional finance or accounting experience"?

MR. KENNEDY: I wasn't aware of that, Sir, no.

MR. BUDDEN: Okay. Should you have been aware of it?

MR. KENNEDY: Sir, the board of Nalcor – I'd never met with the board of Nalcor. I knew some of the people who were on the board at the time and I think, Commissioner, some of them have testified in front of you. I thought that they brought a varied degree of life skills, experience and expertise to the board.

Whether or not I should've been aware – again, your question: Should I have been aware it? If Mr. Thompson – if he thought I needed to be aware of it, he would've made me aware of it, Sir. Mr. Thompson was a very conscientious – and I think the email you were talking about went to Mr. Thompson?

MR. BUDDEN: It did.

MR. KENNEDY: Mr. Thompson is a very conscientious civil servant, Sir; very experienced.

MR. BUDDEN: Okay, so the board of Nalcor are saying: Look, whatever our life skills, we have these gaps. Specifically –

MR. KENNEDY: Yup, that's right.

MR. BUDDEN: – we have a gap for large-scale engineering project experience. They brought it to Mr. Thompson, who was – as you said – conscientious. You, however, are the minister – as you've said two minutes ago – responsible for Nalcor. Should that not have been brought to your attention: that your board is unhappy; they feel under resourced?

MR. KENNEDY: Ah, yes, okay.

MR. BUDDEN: Okay.

The board wanted somebody with the skill sets; instead they got Mr. Terry Styles. That's what happened, isn't it?

MR. KENNEDY: That sounds rather – I'm not – they – Mr. Styles was appointed to the board, but your comment sounds rather dismissive of Mr. Styles. I'm not willing to go that far.

MR. BUDDEN: Well, did Mr. Styles have large-scale engineering project experience?

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

MR. BUDDEN: Did he have international project experience?

MR. KENNEDY: No.

MR. BUDDEN: Did he have labour relations experience?

MR. KENNEDY: Not that I'm aware.

MR. BUDDEN: Those are the things the board wanted. But that's not –

MR. KENNEDY: But –

MR. BUDDEN: – that's not what they got, is it?

MR. KENNEDY: But I've already told you, Mr. Budden, I wasn't aware of the email.

MR. BUDDEN: Okay.

MR. KENNEDY: And I thought when – briefly when Mr. Learmonth referred me to the email yesterday I thought it was – what he was looking for would be what Mr. Clift was suggesting: that there be people, you know, from around the country, if not around the world, who would be asked to sit on the board of Nalcor to provide that experience.

MR. BUDDEN: He was asking for certain skill sets –

MR. KENNEDY: Yeah.

MR. BUDDEN: – I don't think he cared where they came from, necessarily. But he was asking for certain skill sets, and we're agreed on that.

Were you aware that, at the time of his appointment as Nalcor chair, Mr. Styles was in a personal relationship with your Cabinet colleague Joan Shea?

MR. KENNEDY: No, I wasn't –

MR. BUDDEN: Okay –

MR. KENNEDY: – I don't know the personal – I don't get into the personal relationships of my Cabinet colleagues, Sir.

MR. BUDDEN: Okay. But when the partner of one of your Cabinet colleagues is being appointed to chair a board for which you're responsible, don't you feel you should've known that?

MR. KENNEDY: Sir, Minister Burke, if that's who you're talking about, was one of the best ministers I dealt with when I was in Cabinet, Sir.

MR. BUDDEN: That's not my question.

MR. KENNEDY: Well, you seem to be, Sir, on the one hand you're criticizing me for casting aspersions on other people and you seem to be doing the same now to people.

MR. BUDDEN: I'm making a connection between Mr. Styles' skill set and what skill sets he didn't have.

But in any event, my questions was: Should you not have, as minister responsible for Nalcor, have been aware of the personal relationship between your Cabinet colleague and (inaudible)?

MR. T. WILLIAMS: Mr. – Mr. – Commissioner, I think this is going a bit far. I mean, we're getting into personal relationships.

THE COMMISSIONER: Just let Mr. Budden ask the question. Then I'll hear your objections.

MR. BUDDEN: My question is – you were the minister responsible for Nalcor. You've said that. Should you not have been aware that the person who was being nominated as chair of the Nalcor board was in a personal relationship with one of your Cabinet colleagues? Should you – that not have been brought to your attention?

THE COMMISSIONER: All right, Mr. Williams.

Mr. Williams.

MR. T. WILLIAMS: Yes. Mr. Commissioner, I just – I don't think it's an appropriate question that should be put to a witness as to what the level of knowledge he has as to the personal relationships of his Cabinet colleagues. I mean the Terms of Reference of this Inquiry certainly don't delve into this level.

This has – I would – you know, that the line of questioning with respect to competence of – or of the board of Nalcor is one thing but to get into this level, I just don't see the relevance of it other than to be inflammatory questioning of the witness.

THE COMMISSIONER: That's true but I've heard some other inflammatory questions of others in the past, including from clients of yours but that's not the test here.

The test here, for me, is, you know, what is the relevance of this and – first of all – I don't even know if Mr. Kennedy was the person who would have had any say in the appointment of Mr. Styles to the board, because, I thought, I heard other testimony that some of these appointments were being made directly by the premier's office.

So, and whether or not Mr. Styles had any sort of a relationship with Ms. Burke – unless there is something to suggest that somehow it impacted the sanction of Muskrat Falls really, to be quite honest with you, I'm not going to hear from Ms. Burke and I'm not going to hear from Mr. Styles any more than I have and I'm not going to get into it. So, that's my position on it.

MR. BUDDEN: I'd like to speak to that, if I may.

THE COMMISSIONER: Go ahead.

MR. BUDDEN: The Commission has heard from the board of directors – has had the opportunity to observe Mr. Styles – to judge what knowledge he did or didn't bring to the board. The Commission has also heard from Mr. Clift as to what the board felt it needed. I think it's a perfectly legitimate line of questioning to see how a person got appointed to the board – at least to the level of what this minister knew or didn't know.

THE COMMISSIONER: Well, I'm going to –

MR. BUDDEN: That's as far as I plan to pursue it with this witness.

THE COMMISSIONER: Well, I'm going to use my veto power to say: If you can establish that Mr. Kennedy appointed Mr. Styles to the board or alternatively had some involvement in appointing him to the board and base – then I'll ask – allow you to ask him why he was – why he appointed him to the board or why he agreed to or whatever the scenario is. We're not there yet – right at the moment. I don't know if Mr. – I don't know if Mr. Kennedy even appointed Mr. Styles to the board.

MR. BUDDEN: I would suggest, with respect Mr. Commissioner, the issue – it's been established that Mr. Kennedy was responsible for Nalcor. Therefore, it follows he would be responsible for the board, whether or not he made that appointment.

THE COMMISSIONER: Well, if you're not going to ask the question – Mr. Kennedy, were you involved in the appointment of Mr. Styles to the board?

MR. KENNEDY: No, I wasn't. Those appointments, Commissioner, some of them were dealt with the – through the premier's office. There wasn't consultation. I would have known, for example, if there was a recommendation that Mr. Styles be appointed to the board. But that direction, to the best of my understanding or knowledge or recollection, Sir, came from the premier's office.

MR. BUDDEN: Okay. What interest, if any, did you take in the appointments process, the qualifications of board members who were appointed?

MR. KENNEDY: Are you talking about the appointments that took place in 2012?

MR. BUDDEN: I'm talking appointments of any that took place during your tenure as minister.

MR. KENNEDY: Yeah, as minister, yeah.

MR. BUDDEN: Yes.

MR. KENNEDY: The – my recollection, Commissioner, is that there was actually a Cabinet appointment committee of – excuse me – a board appointments committee of Cabinet. That we would meet – I think either 9:30 or 10:00 on a Thursday morning. And that appointment committee would meet before that. Whether or not they were involved in this, Mr. Budden, I don't know.

Obviously, Sir, I took an interest in what was going on. But I think as I – and you said yourself, I wasn't as aware of the corporate governance issue that perhaps I am today. But we did have Justice lawyers, very good Justice lawyers advising us, Sir. We had people in Nalcor – or, excuse me, in Natural Resources advising us. So I certainly took an interest. But it wasn't – you know, I was trying to deal, Mr. Budden, with issues that were related to the project, trying to understand the project. That was my main concern.

MR. BUDDEN: Okay. We'll get to that in a few minutes. So to your knowledge, was there anybody either in government or on the board of Nalcor – to your knowledge – who would have known, say, the significance of a P-factor or

known that distinction between an aggressive schedule and a conservative schedule?

MR. KENNEDY: I – Sir, I didn’t.

MR. BUDDEN: Okay.

MR. KENNEDY: And so if I didn’t, I can’t assume my other Cabinet colleagues to know that. I mean, these issues were never brought before us.

MR. BUDDEN: And was this lack of internal expertise, which you’ve conceded, part of the reason why you felt it was important to have a good external review? A cold eyes review from time to time?

MR. KENNEDY: I wouldn’t go as far – I don’t think I went as far, Mr. Budden, to say that there was no expertise in the Department of Natural Resources. There was expertise (inaudible).

MR. BUDDEN: And I didn’t mean to imply there was no expertise. But the particular question I put to you was fairly specialized expertise. And you conceded that as far as you knew it –

MR. KENNEDY: No, we didn’t have anyone there, Sir, who would have been an expert in project management or someone who had built megaprojects. No, we didn’t have that.

MR. BUDDEN: Okay.

Were you aware – it’s a passing point, but we heard evidence from a Mr. Fred Martin earlier, who played a role in the PUB process here in Newfoundland. He was on the board of directors of the public utility in Nunavut, and he was specifically recruited to it, we understand, because of his expertise in hydroelectric development.

MR. KENNEDY: I –

MR. BUDDEN: So you weren’t aware of that obviously?

MR. KENNEDY: I don’t know – I don’t know the name, nor do I know anything about the –

MR. BUDDEN: Sure. But certainly you would concede there’s no reason why the government could not have had a person of a similar skill set on the board of Nalcor?

MR. KENNEDY: I don’t know that gentleman’s skill set. If the answer, Mr. – the question, Mr. Budden, is whether or not – again, looking back in hindsight, Sir, and it’s so easy, Commissioner, to do that out of the context of what we’re dealing with and everything we were dealing with at the time. Your points, Sir, are good, Mr. Budden. I’m not disputing that. It’s just that, unfortunately, you’ve got to put yourself in the context of the decisions that we’re making at the time and how we’re trying to handle matters.

MR. BUDDEN: Okay.

Well, anyway, I’d like to segue into some of the external reviews.

Perhaps, Madam Clerk, we can start by calling up Exhibit 00004. And I’m not sure if you have that.

THE COMMISSIONER: No.

MR. KENNEDY: What is it –?

MR. BUDDEN: It is a report of Dr. – Professor Bent Flyvbjerg. You’ve –

MR. KENNEDY: I’m not –

MR. BUDDEN: – been following this; you would’ve –

MR. KENNEDY: No, I know generally that he testified here. I –

MR. BUDDEN: He was –

MR. KENNEDY: – I haven’t had the opportunity, Mr. Commissioner, as a result of working, to watch the full Inquiry, as interesting –

MR. BUDDEN: You’re not watching us every day?

MR. KENNEDY: No, it’s – as much as I’d like to. So no, I know who you’re talking about, Mr.

– I’ve read things in the media and, you know, I know he testified.

MR. BUDDEN: Okay. Perhaps we can scroll down to page 28? There’s two paragraphs here I’d like you to read to set-up the next couple of questions.

MR. KENNEDY: Sure. Where are we, Sir?

MR. BUDDEN: We’re on our way to page – yeah, we’re at 28, and –

MR. KENNEDY: Yeah.

MR. BUDDEN: – there’s – scroll a little more, please, Madam Clerk. Yeah, the two paragraphs that begin, “In many megaprojects”

MR. KENNEDY: Yeah.

MR. BUDDEN: If you could read those for us, please?

MR. KENNEDY: “In many megaprojects” – excuse me – “government acts as both promoter of a project and the guardian of public interest issues for that project, such as protection of the environment, safety and of the taxpayer against unnecessary financial risks. These often conflicting objectives not only create conflicts of interest and principal-agent problems but also political bias.

“Project reviews and audits can surface potential political bias in projects, e.g. the suppression of bad news. For reviews to effectively provide checks and balances, the reviews and audits need to be independent ... free of political bias themselves. At a minimum, this requires reviews to be independent of any government agency overseeing a project (e.g. reviews by the national auditor), if not independent from government altogether.”

MR. BUDDEN: Sure.

That last sentence, “... reviews to be independent of any government agency ... if not independent from government altogether.” Was that sort of the standard you had in mind for the external reviews you sought out, from Ziff, for instance?

MR. KENNEDY: No, I – all I was looking for, Mr. Budden, was answers. Like I – the word “independent,” I mean anything – I knew, for example, that Nalcor and the Department of Natural Resources would have to be involved in the preparation of reports, so that would go to the term “independent” as we use it as lawyers. But we – I was looking for answers, Mr. Budden. Issues had been raised, questions were raised; all I wanted was answers.

MR. BUDDEN: Okay.

Well, let’s go to Exhibit 00727. That’s a fairly short one.

MR. KENNEDY: Which one is that, Sir?

MR. BUDDEN: That – you may or may not have it in front of you. It’s a press release following the release of the PUB report.

THE COMMISSIONER: Yeah, you don’t have that –

MR. BUDDEN: Okay, there’s a brief section on it, I wanna refer you to so –

MR. KENNEDY: Are these comments I made? (Inaudible.)

MR. BUDDEN: Well, let’s – perhaps you can tell us to some degree. No need to worry, it’s nothing inflammatory.

MR. KENNEDY: Thank you.

MR. BUDDEN: You see at the top there it’s a release –

MR. KENNEDY: Yeah.

MR. BUDDEN: – or it appears to be a press release, it’s over – from the Executive Council, also from Natural Resources, which is your department.

MR. KENNEDY: That’s correct, Sir, yeah.

MR. BUDDEN: And it basically is a response release of the PUB report. But the part I’m interested in – if we scroll down a little bit, there’s a section there where the – I don’t think quite that far – the section where they talked

about the government commissioning from Manitoba Hydro an independent review. That's the part I seem to have lost track of it there. Yeah, here we go.

MR. KENNEDY: Yeah, okay.

MR. BUDDEN: The paragraph begins, "The next steps" – if we look at the sentence beginning, "The Premier" – perhaps you can just read that for us? That one –

MR. KENNEDY: Yeah, "The Premier announced today that the Provincial Government has engaged Manitoba Hydro International, the same experts engaged by the PUB, to provide external and independent analysis of the Decision Gate 3 information prior to any decision on whether or not to sanction."

MR. BUDDEN: Okay. What did "external and independent analysis" mean to you?

MR. KENNEDY: Sir, this is a – okay, what it meant – what I understood of what MHI was going to do was to review the Decision Gate 3 information.

MR. BUDDEN: Yes.

MR. KENNEDY: But that in order to do that they had to get certain information from Nalcor. That was my understanding of it. I don't –

MR. BUDDEN: Okay, well, that's a given. I mean, if you hire a psychologist to do an assessment they obviously got to get the information. But the key thing there is – what did external and independent analysis mean? I mean, obviously, the words are in the press release; they must mean something.

MR. KENNEDY: Yeah.

MR. BUDDEN: What do you take them to mean?

MR. KENNEDY: That there would be an independent analysis, yes.

MR. BUDDEN: By some external agency?

MR. KENNEDY: Well, I think MHI was considered to be external, yes.

MR. BUDDEN: Okay.

Do you see this kind of analysis being consistent with what Dr. Flyvbjerg talked about – Professor Flyvbjerg?

MR. KENNEDY: One of the things, Sir, that – again, I'm trying to answer your question, Mr. Budden, I apologize (inaudible). But one of the things I was acutely aware of was the perception that government – this was a do Muskrat Falls at all costs. Despite the commentary, at times, that would be made publicly, I was trying to keep an open mind to assess, reassess.

The comment – what you point there, sure. I mean, Professor Flyvbjerg's comment in – just – I haven't read the full thing, but in isolation, it would certainly apply to that. But again, Mr. Budden, I got to go back to the context in which we're making decisions. One is that there has been – by the time I get there, Mr. Budden, I'm placed in the unusual role of trying to be mediator between the PUB and Nalcor. And whatever my skills may be, Sir, mediation is not my strong point, but that's who I am. There's some –

MR. BUDDEN: Hmm.

MR. KENNEDY: – harsh feelings here.

We've now got – they've had nine months. There's – the issues with Nalcor and the PUB. We've got – Commissioner, we've got Nalcor telling us we gotta meet certain timelines if we're gonna get to the DG3 numbers so we can get it into the – and we've got the premier saying we want to get into the House of Assembly. So we were under time constraints.

In a perfect world, Mr. Budden, you would be exactly right. We'd go, you'd find someone that had nothing to do with anything, and I think that's perhaps what Professor Flyvbjerg is suggesting.

MR. BUDDEN: But isn't that putting things backwards? Like, you're talking about approving a process that's being driven by the fact that they need to get the process started.

MR. KENNEDY: It was not a perfect process, Mr. Budden.

MR. BUDDEN: Fair enough. The –

MR. KENNEDY: But we were trying our best, Sir.

MR. BUDDEN: Okay. Well, the particular point, I guess, I'm concerned about here, is we go back to the previous paragraph, we see that the – and I'll just read it to save time.

MR. KENNEDY: Yep.

MR. BUDDEN: “The information available to the PUB in its review is the same information that was available to Manitoba Hydro International and the Consumer Advocate – both were able to reach a conclusion while the PUB has indicated it could not.”

So do you see any, I guess, anything odd about seeking an independent review from somebody who has already opined?

MR. KENNEDY: It would not meet the legal definition of independence. I agree with you there, Sir. But we're trying to work within the context of where we find ourselves at that point.

MR. BUDDEN: Yeah.

MR. KENNEDY: So if you look at this, in hindsight and isolation, I agree with you. But I'm –

MR. BUDDEN: But what definition of independence doesn't meet?

MR. KENNEDY: Sir, independent – I mean, when you're looking for – we're looking for answers. As a government, we're looking for answers. Tell us what – we had no – I had no assumption that Manitoba Hydro will come back and say the Decision Gate 3 numbers – everything is the –

MR. BUDDEN: But my Lord –

MR. KENNEDY: – just the way it was.

MR. BUDDEN: – you got a pretty big hint here. I mean, you know, they've already reached conclusions. You're going to them and saying: Oh, you guys reached a conclusion two days ago, we'd like you to look at the thing again.

MR. KENNEDY: But –

MR. BUDDEN: That's what –

MR. KENNEDY: – we didn't know –

MR. BUDDEN: – you're doing.

MR. KENNEDY: Yeah, but – no, Sir, I had no indication, at that point, Commissioner, that the Decision Gate 3 numbers couldn't change. We didn't know that.

MR. BUDDEN: Let's go to the –

MR. KENNEDY: I didn't know it, certainly.

MR. BUDDEN: Let's go to the next Exhibit, please, Madam Clerk. That would be 00601, which is an excerpt from *Hansard*. And, again, I don't think you have it in front of you, Mr. Kennedy, but it's – if you go to the bottom of page 7, I'm gonna read a question from MHA, Mr. Parsons, and then the answer, which your premier gave. So perhaps you can start with: “Thank you, Mr. Speaker.” And then obviously the bulk of it's on the next page.

MR. KENNEDY: Sorry?

MR. BUDDEN: Right at the very bottom there, it goes: “Thank you, Mr. Speaker.” As you can see, right at the bottom. And then the –

MR. KENNEDY: Okay, I see, yes, I do see that.

MR. BUDDEN: Yes. So: “Thank you, Mr. Speaker.” And then perhaps you can read the question through Ms. Dunderdale's answer.

MR. KENNEDY: “Almost \$1 billion has been spent on this project to date. I ask the Premier: Are you now prepared to stop spending taxpayers' money on this project until a full, independent review of all options is completed?”

“**MR. SPEAKER:** The hon. the Premier.

“**SOME HON. MEMBERS:** Hear, hear!

“**PREMIER DUNDERDALE:** Thank you, Mr. Speaker.

“Mr. Speaker, when you are looking for a full, independent analysis which is what we were trying to do with the PUB review wherein we spent nine months and over \$2 million and did not get any recommendation from the PUB, the value we got from it was the report from MHI. Otherwise, the PUB walked away from its responsibility, the terms of its mandate, to give us a recommendation. A recommendation that had already been endorsed by Navigant, by Manitoba Hydro, by the Consumer Advocate Mr. Johnson and his expert Knight Piésold, and Dr. Wade Locke. They all concur that it is the least-cost and we need the power. The PUB was not able to arrive there.”

MR. BUDDEN: So, on April 2, you’ve got the premier standing up in the House of Assembly saying that the recommendation had already been endorsed by Manitoba Hydro, that it is the least-cost option and we need the power. And the very same day, you guys are issuing a press release calling for an independent review by these same people who just said it’s the least-cost option.

So I’d suggest there’s no definition of independent that could possibly be reconciled with.

MR. KENNEDY: I guess that’s one of the issues that the Commissioner will look at, Mr. Budden.

MR. BUDDEN: Okay. So do you disagree with me?

MR. KENNEDY: I – yeah, I disagree with you because we were trying to – we were acting within certain constraints and the context in which we found ourselves at that time. So Manitoba Hydro International had been hired by the PUB, they had not been hired by government. They were hired – I don’t know if it was a request for proposals process, so that they had – were familiar with it.

We had timelines we were working under, and we recognized that if you went out to another company all together, then these timelines were gone. We were told by Nalcor, Sir – I think I referred to those notes yesterday, the notes of December 5 – that there would be – in order to keep the project on schedule – or I don’t know if

it said on schedule, I’m not sure if my notes said that. But to keep the project going, to get in there and do the work in the summer of 2012, they needed a decision on sanction.

MR. BUDDEN: So you’re taking – unquestionably taking Nalcor’s word that this was a hard deadline?

MR. KENNEDY: We accepted it, Sir – or I accepted it – you can ask the premier herself. I accepted what Nalcor told us, yeah.

MR. BUDDEN: Okay.

What, if any, comfort did you take from the MHI report that you ultimately received, this independent analysis?

MR. KENNEDY: Well, Sir, my understanding was that – and again, I really don’t have, you know, a whole – my understanding, Sir, was that the DG3 analysis looked at the various numbers, it looked at the CPW for both the Isolated Island and the Interconnected Island, and it came up with a figure, and established that Muskrat Falls was the least-cost option.

MR. BUDDEN: Okay.

And you were content with the process, as you understood it at that time, that that produced an independent analysis that verified independently what Nalcor was saying?

MR. KENNEDY: Yes.

MR. BUDDEN: Okay.

At that time you had no idea that that report, what you ultimately saw, had been edited, apparently. You had no idea.

MR. KENNEDY: No, I didn’t know.

MR. BUDDEN: Okay.

And you had no idea that the Ziff report had also been edited before it got to you.

MR. KENNEDY: I knew there was a – you know, I knew there was discussions going on, Sir. Edits, what I would refer to as edits, were –

would've been, you know, changes to ensure accuracy, grammatical, things like that.

I wasn't aware that any substantive changes had been made to the reports (inaudible).

MR. BUDDEN: Okay, fair enough.

MR. KENNEDY: And I'm still not clear on where the Ziff report is – has been edited. I mean, I – Mr. Learmonth took me through the red lines and blue lines and everything that were in the MHI report, but in terms of the Ziff report, I'm still not clear.

MR. BUDDEN: Sure.

I'm gonna try to make this a question rather than a little speech, but you – I mean there's no doubt here you worked very hard. I mean you were travelling here, you were speaking to people, you were doing all kinds of things, but do you not concede now that there were certain limitations as to what you can bring to this, even with the –

MR. KENNEDY: Yes.

MR. BUDDEN: – best of will –

MR. KENNEDY: Yes, I do, Sir.

MR. BUDDEN: – and to go into a question and answer session with Mr. Martin, when he could say something's P1, you don't know if that's good or bad or fit to eat, do you?

MR. KENNEDY: This is part, again, of the limitations, though, of – I, you know, as the minister I wanted to try to understand the departments in which I was running.

I took it very seriously, Commissioner. You know, I'm not going to – I don't know – I do know what other Cabinet colleagues did, but I took this very seriously. I tried to understand. Did I recognize the limitations upon myself? I mean, my own temperament is a limitation, Mr. Budden. I know that. You know, as hard as I tried, could I grasp this, the complexity of this project? No, we had to rely on Nalcor.

But, Sir, I feel that I was trying, in my role as, you know, as an elected official, to understand

as best I could what was going on, and to test issues that were being raised by people like your clients.

MR. BUDDEN: Sure. I challenge you there. You didn't have to rely on Nalcor. I mean, there are (inaudible).

MR. KENNEDY: No, you're – that's, look, that's – you're right on that, Sir, and I don't think –

Okay, I challenged Nalcor, and I can take you through those notes where I asked questions, Commissioner, specifically about contingencies, about overruns. I asked all the questions. I had no – Mr. Martin, Sir – again, I don't know how often I have to say it, and I guess you're going to hear from him, but I had no reason to think that Mr. Martin wasn't giving me – or anyone at Nalcor wasn't giving me all the information or that ...

MR. BUDDEN: But you had also no way of judging whether what he was telling you was correct, did you?

MR. KENNEDY: That's fair.

Yeah, I mean I'm a politician elected to the House of Assembly, I'm appointed to Cabinet. You know, that's the way our system works. And it would be ideal, Sir, in an ideal world if we could perhaps have a system where we could have an expert in, you know, megaprojects as your minister of Natural Resources, but that's not the way our system works.

MR. BUDDEN: There's no reason your system cannot have a consultation – a consultant who is an expert in megaproject development, I assume.

MR. KENNEDY: There were –

MR. BUDDEN: There's no obstacle to that.

MR. KENNEDY: There were – Sir, we had – again, it's not only Nalcor, we've got Navigant who's done a report, we've got MHI who's done a report, we've got – what I understand is we've got the federal loan guarantee people who are looking at things, we got an independent engineer, we've got all kinds of people –

MR. BUDDEN: Some of that came later though. That's much – some of that is post-sanction.

MR. KENNEDY: Oh, yeah, that's –

MR. BUDDEN: Yeah.

MR. KENNEDY: Yes, some of it did, yeah.

MR. BUDDEN: Yeah. But you also had the Joint Review Panel saying the information is not adequate to make a determination.

MR. KENNEDY: And that concerned me.

MR. BUDDEN: That was a red flag.

MR. KENNEDY: If you look at, Sir, October 13, 2011, the election – I mean I probably should've taken a couple of days off. I'm not even appointed to Cabinet; I must know I'm going there. And two days after that I'm reading the environmental assessment report. On December 30 I'm meeting with people, on January 3 I'm meeting with the consumer – I'm trying, Sir, to understand these issues.

MR. BUDDEN: Sure and the PUB was a red flag.

MR. KENNEDY: Oh, definitely.

MR. BUDDEN: Sure. And the writings of Mr. Vardy and others, they were red flags.

MR. KENNEDY: We had those tested, Sir.

MR. BUDDEN: And I guess my final question in this vein before we move on is –

MR. KENNEDY: I thought it was your final question.

MR. BUDDEN: No, sorry, there's a few more yet.

Can you not see how you were perhaps – while no doubt doing what diligence you could on a personal level, you – your role in terms of putting in place systemic oversight was perhaps lacking. Do you concede that point?

MR. KENNEDY: Certainly.

MR. BUDDEN: Okay.

MR. KENNEDY: I mean what we find – Commissioner, I've been involved in a couple of inquiries, there are always systemic issues. That's – or not always, I mean there are personal issues but there are – I – inquiries generally identify systemic issues. So everything you've raised from the composition of the board, Mr. Budden, to some of the other issues in terms of the review – independent reviews, things like that, they're systemic as opposed to endemic, I would suggest.

MR. BUDDEN: Okay.

I have a couple of wrap-up questions. One thing I'd like to put to you is an excerpt from the testimony of Mr. Andrew Wells, Andy Wells.

MR. KENNEDY: Yeah.

MR. BUDDEN: And I – it's not an exhibit but I've highlighted the part that is the most interesting. It's from October; it's copied from this (inaudible). It's from October 25 and the bit I've highlighted I think you can see beginning at the bottom of page 64. Could you perhaps read that in the record, then I'm going to have a question or two on it for you.

MR. KENNEDY: “**MR. LEARMONTH:** So why did you feel it appropriate to comment in the media with respect to a reference that was before the board but had not yet been decided? Why did you feel justified in doing that?”

“**MR. WELLS:** Well, this – the board is, as everybody knows” – excuse me – “a quasi-judicial tribunal and it has, you know, it has the status for regulatory decisions of a lower court, subject to appeal, and had this matter been a regulatory matter where we would have been rendering a decision, I would have had absolutely had no comment whatsoever to anybody, but we were rendering – we were giving an opinion here.”

“So, I took a bit more of a relaxed approach to it and what I was expressing here, finally, after what, this was probably at least six months, close to six months, probably seven months because it's January 10, expressing extreme procedural frustration.”

“I mean, here we are – you said June 17 was the OC and this is January 10. Well, I’m still complaining on behalf of the board, and rightfully so. As of January 10 we still had problems, procedurally, dealing with Nalcor and for that matter dealing with the government – let’s be clear here, what we’re talking about.”

MR. LEARMONTH: So, because this was a reference as opposed to a decision-making process, you felt that “there was a distinction ... that entitled you to comment in public?”

“Yeah, I mean, all we were trying to do was: Look, please, you know, pay attention. Will you abide by the rules of engagement? Provide the information. Give us the necessary, you know, the RFIs and the reports that we have obsessively, I would submit, I mean, our staff were far more patient with respect to this than I would have been, but I listen to people and I’m – you know, I don’t get credit for it, but I do. And I – but I thought it was appalling the way the board, procedurally, was being treated by Nalcor – and for that matter, as I say, the government.”

MR. BUDDEN: Okay.

What I’m interested in here – and I’m mindful of some comments you made in your interview – is the distinction between the board acting in a quasi-judicial role and then acting with regard to this reference question.

MR. KENNEDY: Yeah.

MR. BUDDEN: What do you have to say about that?

MR. KENNEDY: Well, one of the issues – the issue of the quasi-judicial role is my understanding, Sir – and again, Commissioner, the knowledge I possessed at the time versus the knowledge I possess today – but that a board, such as the regulatory board, can do their quasi-judicial decision-making function where they’re actually making decisions, for example, on rates, things like that. And then they can be involved in policy or investigative reviews such as the automobile insurance review or in this particular case where there’s a reference to that.

So there was – I think that there’s a distinction – Mr. Wells’s distinction here is correct between

the quasi-judicial capacity that they exercise at times, versus the policy –

MR. BUDDEN: Okay, thank you.

MR. KENNEDY: – or investigative review.

MR. BUDDEN: Yeah. No, I was struck by your comment so I just wanted to explore that a bit with you.

Perhaps we can bring up Exhibit P-00014, Madam Clerk. That’s Grant Thornton which you probably have.

THE COMMISSIONER: Yes.

MR. KENNEDY: Yes, it’s certainly here somewhere, Mr. Budden.

THE COMMISSIONER: P-00014, tab 127.

MR. BUDDEN: Page 24, Madam Clerk, is the CPW table, yeah.

MR. KENNEDY: Okay. So do – sorry, Commissioner, do you –

THE COMMISSIONER: Tab 127, so it’s in book 3.

Binder 3 and tab – well, 127, but it’s marked 27.

MR. KENNEDY: Book 3?

THE COMMISSIONER: Yeah.

MR. KENNEDY: Okay. Thank you very much there, Commissioner.

MR. BUDDEN: Okay.

The column I’m interested in –

THE COMMISSIONER: (Inaudible.)

MR. BUDDEN: I’ll let you find it first.

MR. KENNEDY: I got it, Sir, yeah.

MR. BUDDEN: Yeah. When you get to page 24, Mr. Kennedy, just let me know.

MR. KENNEDY: Twenty-four red or 24 at the bottom of the page?

MR. BUDDEN: Twenty-four red.

MR. KENNEDY: Twenty-four red. Okay.

MR. BUDDEN: Old 21, red 24.

MR. KENNEDY: Yeah, okay.

MR. BUDDEN: Chart.

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

MR. BUDDEN: Yeah.

The column I'm interested there is the Hydro-Québec one. And perhaps under risks and reliability you could just read what's noted there?

MR. KENNEDY: Okay, so in – under the “Imports from/via Hydro Quebec”?

MR. BUDDEN: You got it.

MR. KENNEDY: Okay. And where is it you want me to read, Sir?

MR. BUDDEN: Just where it says risk. If you read across from the right, it says: Ability to secure.

MR. KENNEDY: Okay, where –

MR. BUDDEN: If you can read that, yeah.

MR. KENNEDY: Risk – okay, yeah: “Ability to secure long-term firm supply; Market price volatility.”

MR. BUDDEN: And then for reliability as well?

Interconnected –

MR. KENNEDY: “Interconnected to the North American Grid however, continuity of supply not assured.”

MR. BUDDEN: Okay.

I was questioning the – Mr. Bennett the other day on this very topic about the – what efforts, if any, Nalcor had made to import hydro power when Quebec apparently was at this very moment applying to export power to the US. And Mr. Bennett's answer was that nobody at Nalcor saw fit to contact to Hydro-Québec to see if they're prepared to sell power to Newfoundland.

And I guess my question to you: Was there any policy, official or otherwise, within the government, within your department prohibiting the – Nalcor attempting to purchase hydroelectric power from Quebec?

MR. KENNEDY: Not that I'm aware of, Sir, no. In fact, I think on a couple of occasions when that issue had arisen, later on in my notes I address the issue with – I make notes, I got – this is an issue and I thought I addressed the issue with Nalcor and I thought that they had actually had discussions as, in fact, I thought Emera had. I thought I read somewhere that Emera had discussions with Quebec about importing power.

MR. BUDDEN: Okay. So if there was any such policy on the –

MR. KENNEDY: There's no policy that I'm aware of, no.

MR. BUDDEN: Okay, so there's certainly nothing emanating from government.

MR. KENNEDY: No, it would be politically unpalatable to a certain extent, but at the end of the day if it could be done – if a deal could have been done with Quebec, certainly.

MR. BUDDEN: Okay.

So if power were available for purchase from Quebec – reliable power that would last us 'til 2041 – you saw no obstacle, politically, to Nalcor purchasing that power?

MR. KENNEDY: Again, Commissioner, I –

MR. BUDDEN: Those are big ifs, I know, but if those – but if the power were available.

MR. KENNEDY: I'm just trying to think now because I had reviewed, Mr. Budden – prior to even becoming the minister of Natural Resources, I had reviews on – I had looked at issues of recall power where we obtain legal opinions. I had dealt with the issues of the good faith action with the lawyers in Quebec. I had looked at the issue that was proposed by someone; and then – so in terms of – I'm trying to remember if there was any prohibition, in legislation or otherwise, which would not allow us to import power from Quebec.

Commissioner, I can't be totally (inaudible) but I don't think there is.

I don't think – I don't think there would be anything that would prohibit that, no.

MR. BUDDEN: Okay. While on that topic, are you aware of any reason – we're now in a post-2041 world, when the contract – you know, the infamous contract has ended – are you aware of any reason why Newfoundland could not at that time purchase all the power it needed at market prices from Churchill Falls?

MR. KENNEDY: Do you mean in 2041?

MR. BUDDEN: In 2041.

MR. KENNEDY: Yeah, in 2041 – I was surprised by this, Commissioner, when I – 'cause I had done a lot of reading, I'd read Philip Smith's book, I'd read Jason Churchill's articles, Feehan and Baker.

And I'm always of the impression that in 2041 we would get the power back. It was our power. But apparently, because the power – again, I'm going by memory – I think it's owned, or CF(L)Co owns the plant, CF(L)Co is owned by the provinces of – it's either the Provinces of Newfoundland and Quebec or Quebec Hydro Newfoundland and Labrador. Or Hydro.

MR. BUDDEN: No, you're basically right, it's –

MR. KENNEDY: So that there would still – it wouldn't be free power; we would have – still have – Quebec would still have an interest in it. So that was what struck me most about the 2041, Sir.

MR. BUDDEN: Sure. You can think of no – there's no reason you're aware of why Newfoundland could not buy power at market rates in a post-2041 world?

MR. KENNEDY: No, the only problem I had, Sir – what I was made aware of, Commissioner – was that we wouldn't have any lights by 2020 if we didn't do something. That's – I mean, that's the reality of the world that we were living in as a government, Commissioner.

We were told – again, Mr. Budden, I know you're going to say: you could check, but – you know, we were told in 2015 there would be, I think – ah, I get these terms confused – there would be one capacity deficit, and then by 2020, we simply would not have enough energy. That's the information we relied upon, Mr. Budden.

MR. BUDDEN: Okay. Last question, or a couple of questions. Could we call up Exhibit P-00067? You've looked at this one before. Another five minutes.

MR. KENNEDY: Oh –

THE COMMISSIONER: 121

MR. KENNEDY: Okay, sorry. Yes, I'm familiar with that, Sir.

MR. BUDDEN: Sure. This is a – as you know, the Cabinet paper on sanction. And there are a couple of drafts here – perhaps we could scroll down to page 34.

MR. KENNEDY: You say there's drafts?

MR. BUDDEN: Yeah, and there's a couple of – I think there's a non-signed one and then there's the one where everybody has autographed –

MR. KENNEDY: Okay.

MR. BUDDEN: – so, what I'm interested in here is the paragraph, it's down a tiny bit further, please. Yeah, just go back a tiny bit please. Yeah. The paragraph there I'm interested in, it's the financial analysis of – would you just read that paragraph to us.

MR. KENNEDY: “The financial analysis also shows that the free cash flow,” –

MR. BUDDEN: Yes.

MR. KENNEDY: – “that will be returned to the Province through dividends from the Muskrat Falls project will be more than sufficient to meet the debt servicing requirements. The Muskrat Falls project will diversify the province’s revenue base with a renewable stable revenue stream.”

MR. BUDDEN: Okay. Free cash flow – in that context – what is meant by free cash flow?

MR. KENNEDY: I’m not sure what free would – free means there, Sir. I think it’s referring to cash flow, the – my understanding, Commissioner, is that whatever the rate – excuse me – whatever the rate that’s set for the ratepayer – whether it be 14.3 cents, 16.4 cents – it includes operating and maintenance expenses, includes debt servicing, 15 per cent contingency and the 14.3 and an 8 ½ per cent return on equity so that the equity would be – that there would be moneys that would come to the province.

MR. BUDDEN: Okay.

MR. KENNEDY: And that those moneys could then – excuse me – would come to Nalcor along with any export if there were export markets – any excess cash would go to Nalcor as a corporate – into their corporate bank accounts – I don’t know if they have bank accounts – and then out to the province as a dividend.

MR. BUDDEN: Okay. So, and this is presumed – I would assume this whole financial analysis is presumed on a sanction price of \$6.2 billion.

MR. KENNEDY: Everything’s that – Mr. Budden – that’s what we sanctioned – based on 6.2 – that’s the point I’ve been trying to make for, I guess, for the last couple of – we sanctioned based on \$6.2 billion, Sir.

MR. BUDDEN: So, as the costs go up the flow starts to become more of a trickle.

MR. KENNEDY: Yes, and the cost to the ratepayer becomes higher.

MR. BUDDEN: Yeah. And if, of course, the costs hit a certain point, this cash isn’t flowing in. The cash is flowing out.

MR. KENNEDY: I think that was the point I was trying to make to Mr. Simmons somewhat inarticulately today, Sir, is that – even if it was the least-cost option we still – it would reach a point where you’d have to consider – is the impact on the ratepayer such that we have to find a way to mitigate rates if we’re going to proceed or what do we do. But you’re right. That’s the whole point – if the cost of the project goes up – that’s why, Mr. Budden, we tried to hammer down, really, like the cost – the certainty which Nalcor can give us in terms of that 9 per cent equity that they – excuse me – 9 per cent contingency that they had in there.

MR. BUDDEN: Okay.

MR. KENNEDY: So everything you said is correct. Yes.

MR. BUDDEN: Well, on that note I’ll end my questions. Thank you.

MR. KENNEDY: Thank you very much, Mr. Budden.

THE COMMISSIONER: Right. Let’s take our 10 minutes and then next will be Edmund Martin.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

MR. LEARMONTH: Just before we start, I have an exhibit to put in that was – Harold, could you turn off your mic just for a second.

MR. SMITH: Oh, sorry.

MR. LEARMONTH: Thanks.

This was a DG3 technical briefing note that Mr. Kennedy referred to in his evidence but it wasn’t there; it was attached to his notes, I think it is.

Anyway, I'd like to have it entered as Exhibit P-01535.

Thank you.

THE COMMISSIONER: All right. That'll be marked.

Okay, Mr. Smith, just flick on your mic there now and you're all set to go.

MR. SMITH: Thank you, Commissioner.

Harold Smith for Ed Martin.

I'm just listening intently to your testimony over the last day and a half, two days, and I'm wondering did Mr. Martin guarantee that the project would come in at \$6.2 billion in his discussions with you or Cabinet?

MR. KENNEDY: Mr. Smith, we were always aware of risk. What we were trying to do is get the best estimate. The best estimate that Mr. Martin gave us was the 6.2 billion with a 9 per cent contingency. Did he guarantee it? No, I can't say there was ever a guarantee, Sir.

MR. SMITH: Did he – during his presentations or discussions that he had with you or with Cabinet, or meetings that you were present at, did he discuss the nature of some of the risks that could happen in the project?

MR. KENNEDY: Do you mean before or after sanction?

MR. SMITH: Before sanction.

MR. KENNEDY: Before sanction – no, do you mean the risks that could occur before sanction or the risks that could occur after sanction?

MR. SMITH: Well, maybe a better way to put it is the risks that could occur in the construction of the project.

MR. KENNEDY: There was discussion of risk, Mr. Smith, all the time. And that's why as we moved to October – September-October 2012, there were specific discussions as to the risks.

What we were trying to do is get the best estimate. I mean, no one can predict the future

with a hundred per cent certainty so there were – we knew there were issues, Sir. There's always issues with labour, especially at this point in time I think there were a number of bigger projects going on in Newfoundland and Labrador. So I don't remember, for example, any specific examples given by Mr. Martin but, certainly, I wouldn't dispute – if he said that he did, I wouldn't dispute that, yeah.

MR. SMITH: Now, I'd like P-00130, page 287.

THE COMMISSIONER: P – why don't you just give us the number again, please? Sorry.

MR. SMITH: 00130, 287 is the page number.

THE COMMISSIONER: Thank you.

MR. SMITH: P-00130.

THE COMMISSIONER: That's on the screen.

MR. KENNEDY: That, Sir ...

THE COMMISSIONER: It's not in your book.

MR. KENNEDY: Oh, okay.

MR. SMITH: It's up there on the screen, Mr. Kennedy.

Now, this slide is from the Westney report that you were brought to by Commission counsel. And it references 497 million, the Westney report. Do you know when this report was completed and filed with Nalcor?

MR. KENNEDY: From what Mr. – what my recollection, Sir – excuse me. From what Mr. Learmonth – when he showed me this report in the interview process – this was either May or June, 2012. I don't know if that's correct or not. I thought I remember two – I thought there was two reports, Sir. I thought there was one on tactical risk and one on strategic risk and they would –

MR. SMITH: But you can tell from this one, this is a strategic risk one, so.

MR. KENNEDY: Based on what I know today.

MR. SMITH: And your recollection is that was sometime in May or whatever of 2012?

MR. KENNEDY: I've never seen the report apart from Mr. Learmonth –

MR. SMITH: Yeah.

MR. KENNEDY: – showing it to me –

MR. SMITH: Okay.

MR. KENNEDY: – in the interview process. So I would have seen the report, Commissioner. Mr. Learmonth would have shown me the report and I would have looked at the front, the cover page. So I don't know.

MR. SMITH: Perhaps we could go back to page 1 to show the date. Scroll down a bit. The date when it was signed off by Mr. Bennett is shown to be October 1, 2012. Okay?

MR. KENNEDY: I see the date there, yes.

MR. SMITH: And when was the House asked to sanction the project?

MR. KENNEDY: I think it was December – like the Cabinet paper was dated December 5, is it?

MR. SMITH: Okay. Yeah. Now, between the October date of when it was – this DG3 document – perhaps we could go down again, if you could, to 287, page 287 and come back to show where the date of the report itself, the strategic – no, scroll up please. Keep going. I'm just trying to get to the beginning of this particular – there it is there. Okay?

So it's the analysis of the management reserve lender owner contingency for the Lower Churchill Project May 23 to June 4.

Now, at that particular point in time, when this was produced – so this document, even though it shows up in documents in October, was actually done in the May 23 to June 4 time frame. During that time frame, do you know if the collective agreement for the special project of the Churchill Falls Project was signed?

MR. KENNEDY: No, I don't know when that would have been signed, Mr. Smith, no.

MR. SMITH: Okay.

And would you agree with me that the collective agreement is for the skilled labour on the project?

MR. KENNEDY: I know there's – what – whichever agreement is signed, Mr. Smith, which guarantees no strike in the ...

MR. SMITH: Yeah.

MR. KENNEDY: It would relate to labour, skilled labour, yes.

MR. SMITH: Yes.

MR. KENNEDY: Yeah.

MR. SMITH: It would relate to the skilled labour on the site, and these are – this – it's a special project order that was –

MR. KENNEDY: Yeah, started with the labour resource council – whatever those –

MR. SMITH: Right, yes.

MR. KENNEDY: – or yeah, the 16 groups of trade –

MR. SMITH: Resource development.

MR. KENNEDY: Resource development, yeah.

MR. SMITH: Okay.

So we know that the collective agreement – by the time this matter was being prepared, according to evidence already before the Commission was that the collective agreement didn't get completed until late May of 2012.

MR. KENNEDY: I don't know that, Sir. That – if you telling me, I have no reason not to –

MR. SMITH: Right.

MR. KENNEDY: – accept.

MR. SMITH: So if we go – again, Madam Clerk, if we go to page 287, because one of the things we’ve learned in this Commission of Inquiry is there’s a heck of a lot of contextualization. This is a huge project with multiple thousands of moving parts. We’ve learned that. Now, when we look at this, we have to contextualize what 497 million really means.

Now, if we look at the potential skilled labour completion bonus of \$82 million, and by the time the DG3 package went, you know, through to the Gatekeeper, \$82 million for the completion bonus evaporated because there is no completion bonus in the collective agreements for the skilled labour. That would mean that that number, 497 million, is not accurate. Would it not?

MR. KENNEDY: Again, Sir, I’ve never seen this document, if you’re –

MR. SMITH: I’m only asking you to look at the document and –

MR. KENNEDY: You asked me to do simple math and –

MR. SMITH: – look at the facts.

MR. KENNEDY: If you – well, I don’t know any of that, Sir. If you have asked me –

MR. SMITH: Okay.

MR. KENNEDY: – to do simple math and you say that there – if you take off 82 million, it would be less, yes.

MR. SMITH: Right.

So the purpose of this document, was that ever explained to you what Westney was really being asked to do with respect to the May-June time frame of 2012?

MR. KENNEDY: It’s – Sir, all – as I’ve said on – excuse me – on a number of occasions, Commissioner, I’ve never heard the terms tactical or strategic risk.

MR. SMITH: Right.

MR. KENNEDY: They were not – we were aware of risk, you know –

MR. SMITH: Yeah.

MR. KENNEDY: – what you call contingency, overruns, extra costs, increased costs for the project. So it was never explained to me. I don’t know – I don’t –

MR. SMITH: Did you ever hear, in terms of discussions with Nalcor officials, the concept of critical path or pinch points –

MR. KENNEDY: No, I –

MR. SMITH: – in the process of construction?

MR. KENNEDY: Those terms mean nothing to me, Mr. Smith. Whether or not they could’ve been in a –

MR. SMITH: Okay.

MR. KENNEDY: – Nalcor presentation deck or something, I’m not – I don’t know that.

MR. SMITH: It’s quite confusing, you know, to my client, particularly, to have you say that this was a great concern and, you know, and disappointing to see that this document – when it’s relatively clear that this was not something that you had intimate knowledge of. Yesterday, in your testimony, I’m referring to.

MR. KENNEDY: Mr. Learmonth put certain documents to me, asked me should I have been aware of them. I said, yes.

MR. SMITH: Yeah, okay.

Now, why should you have been aware of it if the information contained in it was – quote unquote – not current or valid?

MR. KENNEDY: What Mr. Learmonth said to me, Sir, in the interview process, Commissioner, in – that I could take what was in that document, or what he was telling me as being fact, that this document had not been disclosed to anyone. So I can – when Commission counsel told me these things – and, again, yesterday he puts it forward, so I have no reason to not accept what Mr. Learmonth’s telling me, Sir.

MR. SMITH: So, effectively, you relied completely on the characterization of this document by –

MR. KENNEDY: No, I'm not, Sir.

MR. SMITH: – from Mr. Learmonth.

MR. KENNEDY: No, I don't know what the document is, Sir, but I can point you specifically to discussion with Mr. Martin on October 18, 2012, where I have extensive notes, where I go through in great detail the costs of the project and why he thinks the 9 per cent contingency will work.

I would've expected, Sir, that if there were any other costs or potential costs is what – which is what we're talking about I would've been told about that. I wasn't.

MR. SMITH: But if Mr. Martin, at the October meeting, was of the view that these risks that are identified in this document had been mitigated, then he would have no reason, from his perspective, to discuss them with you, would he, if he believed that they were mitigated.

MR. KENNEDY: Mitigated or eliminated, I'm not sure which one you're talking –

MR. SMITH: Well –

MR. KENNEDY: – about, Sir.

MR. SMITH: – I'm gonna start with mitigated, because –

MR. KENNEDY: Well –

MR. SMITH: – we all recognize that mitigation was the – is the key element of dealing with strategic risk – mitigation.

MR. KENNEDY: Again, Commissioner, you will hear from Mr. Martin, but if you're suggesting to me that I'm – that these are issues I should've been aware of, no one told me.

MR. SMITH: I'm suggesting to you, Sir, that the only reason you feel that they – you should've been aware of them is they've been portrayed to you as factual and correct.

MR. KENNEDY: Sir, Commission counsel have told me, have put forward a position – Commissioner, I – they put forward a position saying that this document is factual.

MR. SMITH: Yeah.

MR. KENNEDY: So if that's the case, I don't know what I could do, Mr. Smith.

MR. SMITH: And if the evidence, Sir, discounts that it is factual – in other words, it's not factual, okay – would you have a different view?

MR. KENNEDY: Well, Sir, what I said yesterday, on a number of occasions, you're gonna have to – you know, you'll have to wait and hear from Mr. Martin, or Mr. Martin will put forward his position.

MR. SMITH: So you think it is important that Mr. Martin – at least have his side of the story before we make that conclusion, a final conclusion.

MR. KENNEDY: Certainly, Mr. Smith, I indicated on numerous occasions that I had trusted Mr. Martin, that I was never aware of any time that I suspected he was misleading me or not giving me full information. That's why I was so surprised when these documents were put to me as something that I should've been – you know, should've been aware of – government should've been aware of.

So I've never said that these are issues that Mr. Martin shouldn't have his opportunity to explain. Obviously he will have his opportunity to explain. The way it's been put to me is this is a number – a document which was never provided to government, which I think is acknowledged.

And is it something I should've been aware of? Well, the way I think yesterday Mr. Learmonth described it Commissioner, is it would relate to increased costs, and then he gave a number of examples of how there could be increased costs. Well, these would come within, Mr. Smith, and my definition of overrun or extra cost for the project which would come under the contingency.

MR. SMITH: Do you – you don't recognize the difference between contingency developed for tactical purposes as opposed to strategic purposes? You don't recognize the difference?

MR. KENNEDY: Those terms were never used, Sir.

MR. SMITH: Never used?

MR. KENNEDY: Not that I – I'm not saying that in some presentation that Nalcor provided that these terms might not have shown up. They were never explained to us – like, the P-factors were never used to explain to us what was going on. Like, there was – we would operate on the basis, Sir, that there would be first power as scheduled. So we were going on what we were told, Mr. Smith.

MR. SMITH: Did you consider the 497 million, which is put forward in this document that you were shown by Commission counsel and the P1 schedule as two separate issues that you needed to be aware of?

MR. KENNEDY: They would be separate but interrelated, obviously, in terms of anything that goes to the increased cost of the project as something we should've been aware of – yeah.

MR. SMITH: I put it to you Sir, that, you know, this document incorporates P1 schedule view of Mr. Westney – or the Westney group, I should say.

MR. KENNEDY: You'll have to explain that to me, Mr. Smith. I don't know that.

MR. SMITH: No, in other words, the potential scheduled risk is listed as number one in the first issue, and the P1 reference is, I believe – I thought it was in the little box but I don't see it there now, but anyway.

MR. KENNEDY: I just find it odd, Mr. Smith, that in all the meetings we had in October – September and October 2012, these issues we're brought to our attention. They weren't brought to our attention, for example, that there is an issue of timing. That's my point here.

MR. SMITH: There were an issue – or was an issue, rather – of the potential for cost overrun.

MR. KENNEDY: Again, Mr. Smith, the best – you got to –

MR. SMITH: I agree you found that it was the best – budget, or if you will, cost – it was – you had discussions and were satisfied from Mr. Martin and others that this was the best – costing for the project. However, I also suggest to you that even with the best, there are risks of cost overruns.

MR. KENNEDY: Sir, I've never said that there weren't risks of cost overruns. What I've said on numerous occasions is that we tried to mitigate and minimize the risk of those cost overruns, Sir.

MR. SMITH: Right, and that's –

MR. KENNEDY: If look you at –

MR. SMITH: And that's exactly what mitigation of the strategic risk does. It mitigates against the cost overruns.

MR. KENNEDY: But, Sir, when we're asked on a number – when there's a numbers of occasions – and, Commissioner, I don't know, Mr. Smith, if you want me to this, but I've referred to this note on numerous occasions, no one has asked me to look at it, but the meeting with myself and Ed Martin on October 18, 2012 where – it's in tab 145, pages 22 to 23.

Now, I don't know if Mr. Bown is present, but, at this point – my point, Mr. Smith, is that Mr. Martin appears to have such a grasp of the project. He's breaking down the cost of the concrete, the cost of the steel, the cost of the change gates. And this is all in the context of: Ed, how can you assure us that the 9 per cent contingency is enough?

That's all it was, Sir, and he seemed to – my notes indicate that there's a degree of certainty that he has now as a result of the extensive engineering (inaudible).

MR. SMITH: And how did – how did he explain the contingency number arrive – how did that arrive?

MR. KENNEDY: How he came up with 9 per cent?

MR. SMITH: Yeah, (inaudible).

MR. KENNEDY: My recollection, Commissioner, and I could be wrong on this, is that there was a figure somewhere, I remember seeing in one of the charts, there was a figure of 750 million that equated to 8.5 to 9 per cent contingency. That would've been in the DG – it could've been the DG3 alignments numbers or the technical briefing, Sir, I'm not sure.

MR. SMITH: Nine per cent of \$6 billion is only 540 million. So where did the 6 – 700 million come from?

MR. KENNEDY: Okay, well, let's go – if I – there's one or two places that shows up, Sir, because I remember circling it, so it either has to be the August – August 3rd – DG alignment numbers, there was a meeting with the DG alignment or it has to be the October 31st technical briefing. That's the number that's there and –

MR. SMITH: Well, that exhibit was just placed into evidence.

MR. KENNEDY: No, the – my – the DG 3 alignment numbers, Sir, are a different thing.

MR. SMITH: No, I meant the tactical briefing.

THE COMMISSIONER: I don't think –

MR. SMITH: That just went in, yeah – technical briefing I should say, not tactical.

MS. O'BRIEN: P- 01534?

MR. SMITH: (Inaudible.)

MR. KENNEDY: If you just leave that for a second, you go to tab – again, I'm a bit lost, Commissioner, because of the numbers.

THE COMMISSIONER: Just in light of the time, might that not also be the 9 per cent and as well the issue of escalation, because, I think, that's what we talked about earlier?

MR. SMITH: I thought so too, Mr. Commissioner. That the 700 included both the –

THE COMMISSIONER: 750 million.

MR. SMITH: – the contingency and the escalation costs.

Does that ring a bell to you, Mr. Kennedy?

MR. KENNEDY: I've got to – I need to find, Sir, there's the DG alignment numbers of Muskrat Falls meeting on August 3, 2012 and then there's technical briefing numbers and in one of those, I think it's the August 3rd. If we could find that exhibit, in the August 3rd there's a figure, if my recollection is correct of \$750 million and I've circled it.

MS. O'BRIEN: If we could just go – I'm sorry to interrupt – but if we could on the – to page 4 of the document up on the screen, I may be able to assist you, Mr. Kennedy. This is the technical briefing August – sorry, October 30, 2012, scroll down the page and this is the one you had referred in your notes earlier today, so I actually went and got the slide deck and it was put into evidence.

MR. KENNEDY: Yeah.

MS. O'BRIEN: This slide here that's now up on your screen on page 4, I don't know if this will help you but it does show there, the second last part from the end, the \$730 million and underneath it says contingency and escalation. I don't know if that's of assistance but in case it is.

MR. KENNEDY: My recollection -

MR. SMITH: It's on the screen in front of you.

MR. KENNEDY: Yeah my recollection was 750 but 730, okay Sir, yeah.

MR. SMITH: So in the context of the 700 and – or sorry 474 – sorry 497 million in that context, the first time you saw it was when you were interviewed by Commission Counsel?

MR. KENNEDY: That's correct, yeah.

MR. SMITH: And, in relation to that document as a concern or should have been provided to you, you're saying that on the basis that, Mr. Learmonth or the Commission Counsel should have or asserted to you that those numbers were valid, serious numbers at sanction

MR. KENNEDY: Sir – Commissioner, I can only tell you what the record will show, I mean, of what, how Mr. Learmonth put the question to me yesterday. My understanding was that the numbers that had been put forward there were the strategic risk – he outlined a couple of examples – and that it was a number that we should have been aware of, yeah.

MR. SMITH: And you would only want to be aware of it if it was real, correct?

MR. KENNEDY: Well, I mean, you refer to the fact there was a time extension there, Sir, that you say refers to the, in the \$497 million, and there's \$184 million or something. Well, I would like, Mr. Smith, if there – as a government, when we're making a decision, if there is a no realistic possibility of first power being delivered in 2017, I would have liked to have been aware of that.

I would have also liked to have been aware of when will the power be delivered and what is the real cost of that delay, because that will go to the increased cost of the project about which we're trying to make a decision.

It may not, at the end of the day, determine the least-cost option, but we're trying to know all of the – to understand all of the numbers. We've got to rely upon Mr. Martin and Nalcor to provide us with those numbers, Sir.

MR. SMITH: I understand, Mr. Kennedy, but the purpose of having those numbers is to have belief and faith in those numbers that they are accurate and ongoing. That strategic risk had not been modified or (inaudible) mitigated at all, or in fact in some cases totally eliminated.

MR. KENNEDY: When I expressed, or I said I was disappointed, it was based on the fact that the way – I understood, Commissioner, the numbers were being put to me that these are numbers that were real, for lack of a better term, and I expressed surprise that, and disappointment, that Mr. Martin wouldn't provide those – that he hadn't provided those numbers, because it was inconsistent –

MR. SMITH: With his –

MR. KENNEDY: – with my dealings with Mr. Martin. So if you're offering another explanation, then, Mr. Martin will have his opportunity to explain and the Commissioner will make a determination. But if you're right on that, Mr. Smith, that there, you know, that this is, I guess for lack of a better term, not real, well then obviously it's not an issue. What I want are the numbers. I don't want the (inaudible) numbers that, you know, are theoretical or hypothetical. What are the, what is the cost of the project, which we're going to the province of, or going to the people with? So –

MR. SMITH: What costs do we know will be incurred?

MR. KENNEDY: So what I should have said, Commissioner, I guess the way I should have phrased my answer was, I would be disappointed if those numbers turn out to be real, or if there's no explanation offered by Mr. Martin which is accepted by the Commissioner, then I would be disappointed. Obviously, if what you're putting forward is the situation, well, I have no reason to be disappointed if they had no impact on the 6.2 billion figure or if they are not, Sir, going to increase the cost of the project.

MR. SMITH: And the final question – you mentioned in your testimony that one of the key elements, from your perspective, when comparing the Isolated and integrated options, okay, was to have apples and apples to vastly different projects?

MR. KENNEDY: That's the way it was described to me, Sir.

MR. SMITH: Right. Yeah. And does that make sense, or did it makes sense to you at the time?

MR. KENNEDY: Well, I understood that the CPW analysis was that you take – I mean, cause they're obviously different projects –

MR. SMITH: Yeah.

MR. KENNEDY: – where you've got a – you're building a transmission line; you're building a dam, as opposed to a – refurbishing Holyrood, which would be based on the price of oil, which was very difficult to predict. So the way it was explained to me, that it would be a

comparison of vastly different projects, that the CPW analysis allows you to compare vastly different projects.

MR. SMITH: And did you hear anything about strategic risk with respect to the Isolated Island project?

MR. KENNEDY: I never heard anything about strategic risk, period.

MR. SMITH: (Inaudible), just risk? That's what was –

MR. KENNEDY: Risk was –

MR. SMITH: – discussed.

MR. KENNEDY: – always – I mean, it would be a rather – I mean, Commissioner, I said to Mr. Learmonth in my interview, I'd – as the President of Treasury Board, we – we're aware of risk in every project, I mean – so I had not heard of strategic risk, period, but I was acutely aware, in terms of performing your CPW analysis or looking at your least-cost option, that just as the cost of Muskrat Falls could go up, so could the cost of the – for some of the similar reasons, the cost of the Isolated Island project.

MR. SMITH: Thank you. That's all the questions.

THE COMMISSIONER: Okay.

Kathy Dunderdale?

MS. E. BEST: Good afternoon, Mr. Kennedy.

MR. KENNEDY: Good afternoon.

MS. E. BEST: I'm Erin Best. I'm counsel for Kathy Dunderdale.

MR. KENNEDY: Ms. Best.

MS. E. BEST: I won't keep you too long.

I'm going to bring you back to what you said earlier about your contrarian approach.

MR. KENNEDY: Some would say contrary, but I –

MS. E. BEST: Contrarian.

MR. KENNEDY: – contrarian is probably the way I would use it.

MS. E. BEST: You were known for that, right?

MR. KENNEDY: Yes, I was.

MS. E. BEST: Yes.

I have some *Hansard* here, and I'd just like to read some of it out to you. This –

THE COMMISSIONER: Is this an exhibit?

MS. E. BEST: So this particular excerpt is not. There is some *Hansard* I have here that has been entered as an exhibit, but this particular one, if it's all right, I will –

THE COMMISSIONER: Sure.

MS. E. BEST: – just read it.

This is from December 5, and it's you speaking, Mr. Kennedy. You indicate: "I was appointed the Minister of Natural Resources approximately thirteen months ago, and during that time, I have immersed myself in Muskrat Falls."

Does that sound right?

MR. KENNEDY: As best I could, Ms. Best, yeah.

MS. E. BEST: Okay.

"Mr. Speaker, based on my legal training, I adopted what I would refer to as a contrarian view. I set out to disprove the premise, or to prove it, whatever way you would look at it. I asked questions about Muskrat Falls, Mr. Speaker, unending questions, did not accept obvious answers, and looked at all aspects."

Does that sound like what you did?

MR. KENNEDY: That's what I tried to do, Ms. Best, yes.

MS. E. BEST: Thank you.

“We will hear, Mr. Speaker, at times people accuse us of going to do Muskrat Falls at all costs. Well, I can tell you that that is not the way our Premier and our government has approached this question.”

Do you still believe that to be true?

MR. KENNEDY: Absolutely.

MS. E. BEST: Now, you said there that you immersed yourself. Did you immerse yourself in every project or did you immerse yourself in a special way – did you pay special attention to this Muskrat Falls Project?

MR. KENNEDY: In other projects, for example, in the Department of Health it would’ve been overall health care. In Justice, I was very – excuse me, I was very involved in the – in looking at certain aspects of the good-faith clause. In Finance, a number of times I had to deal with the unions, but my last time in Finance I had immersed myself in the unfunded pension liabilities and things like that. But nothing compared to the way that I had immersed myself in Muskrat Falls.

MS. E. BEST: Okay.

Now, I’ve read through, actually, most of the *Hansard* where you – from that quarter where you discuss Muskrat Falls. Seems to me that you kind of tore the whole issue apart, figured it out and put it back together again.

Does that sound about right?

MR. KENNEDY: I tried, Ms. Best.

MS. E. BEST: Do you think you achieved that to your own satisfaction?

MR. KENNEDY: Obviously, Commissioner, we’re sitting here today so – you know, I might have tried my best and I certainly looked at every option, but it didn’t work out the way, at this point, the fact we’re here, it hasn’t worked out the way I’d hoped.

MS. E. BEST: Well, I guess I’m not asking you in hindsight –

MR. KENNEDY: Okay.

MS. E. BEST: – I’m asking you what your perception was at the time.

MR. KENNEDY: At the time, yes, I – you’ve actually described – I set out, and in a Cabinet setting, people would’ve thought that I did not support Muskrat Falls, I was so critical of the process. I was so critical of all aspects of it. That’s not the public persona that I put out there. And I set out – and I think, Mr. Commissioner, I gave the example of sitting in an office in Westminster on July 2, 2012, when the light came on, on the Maritime Link. So it – I certainly tried, Ms. Best, yes.

MS. E. BEST: So just to finish your thought; you were very critical in Cabinet, but then you reviewed everything and you came around to support the project, is that right?

MR. KENNEDY: Yes, I did.

MS. E. BEST: Thank you.

Now, you were known for this kind of detailed approach to things, right?

MR. KENNEDY: That’s – I think that’s fair to say, yes.

MS. E. BEST: And it was Premier Dunderdale who appointed you to the Natural Resource’s portfolio, is that right?

MR. KENNEDY: She did.

MS. E. BEST: Okay. And do you think that was because she felt that she really wanted a critical approach?

MR. KENNEDY: Premier Dunderdale knew what I was like. She knew how I tended – how I approached things and I think that’s exactly what she wanted. I’m trying to remember when she – when I was appointed, but that’s why – my recollection – why I was put there.

And throughout that whole time, Ms. Best, every time I went to the premier and criticized something and said: I want to do this or I want to do that. She was totally supportive. Not once did the premier’s office say to me: Well, don’t do this because you might find an answer. Like whether it be wind, natural gas. When I’d go up,

you know, I'd say: Let's look at these various options. No, she was totally supportive.

MS. E. BEST: Okay.

And this was all part of the government's oversight role, would you agree?

MR. KENNEDY: Again, we tried very hard, Ms. Best, yes.

MS. E. BEST: Sorry. So this approach that you took of analyzing everything, to the best of your ability, this was part of the government's oversight role, would you agree?

MR. KENNEDY: Yes, is was at – because it reached the point in Cabinet where at times I was insufferable because of my – what appeared to be – unending criticisms. And it's quite – you know, where people wonder, like where's this project going?

So I really tried, in terms of oversight, the premier was involved all the time, we had our officials involved at Natural Resources, we had officials in the premier's office. We certainly tried to engage in an oversight role.

MS. E. BEST: Thank you.

Another line here from the December 5 *Hansard*: "... our Premier has demonstrated, especially over the last couple of weeks, that Muskrat Falls would only proceed if it met that test."

MR. KENNEDY: Yeah.

MS. E. BEST: And "that test," is that the test of it being the lowest cost option?

MR. KENNEDY: And in the best interest of the people of the province.

MS. E. BEST: Yes, sorry, I meant to say that as well.

And it did – and you were satisfied that it did meet that test?

MR. KENNEDY: And all the information we had at the time when we made the sanction decision I was, yes.

MS. E. BEST: Now, Nalcor's counsel, Mr. Simmons, he put some considerations to you when he was questioning you; that, I think he suggested, government had in mind at the time of sanction – power for mines, environmental benefits – and you, generally, agreed that these were concerns of government at the time.

However, what I want to ask you is: These concerns – the power for mines and the other benefits, the environmental benefits that – they didn't trump the requirement that the project must be the least-cost option and in the best interest of the shareholder –?

MR. KENNEDY: No. This was – and I've said this, Commissioner, on numerous occasions. There were two main questions I looked at from day one and I continued to look at 'til the day of sanction: Did we need the power, and secondly, was Muskrat Falls the least-cost option? If Muskrat Falls was not the least-cost option, it would not have been sanctioned.

MS. E. BEST: Thank you. So that's what I was going to say next.

In fact, I was going to say: It was actually the other way around, wasn't it? If Muskrat Falls hadn't been the least-cost option, that would've been the deal breaker; it wouldn't have been sanctioned. End of story, regardless of the other benefits. Is that right?

MR. KENNEDY: From my perspective, absolutely. Because I – it was almost like a mathematical exercise I was engaged in, to a certain extent.

MS. E. BEST: You mentioned something this morning that I wanna go back to, and again, it's mentioned in this December 5 *Hansard*. So I'll just read it and see if it jogs your memory. It has to do with Premier Dunderdale, potentially, walking away from the project at certain points, kind of late in the game.

It says here: "... over the last couple of weeks I have had the opportunity to watch our Premier in action, in time of stress, in dealing with the federal loan guarantee, and, Mr. Speaker, on two separate occasions I have seen her willing to walk away from the federal loan guarantee

unless she achieved the benefits that were in the best interests of the people of our Province.”

Do you recall, or can you tell us about Premier Dunderdale’s willingness to walk away from – not just the federal loan guarantee, but the project if it was not the least-cost option and in the best interest of the people of Newfoundland and Labrador?

MR. KENNEDY: The example I gave earlier today – and I’ve forgotten – I haven’t read *Hansard*, so I’ve forgotten I had said that. But the example I gave today was, I remember so clearly, was: I’m going to hockey. It’s 8:20 on a Thursday night. This is where I’m parked. And the call came through; it looked to me – and I can’t remember the details, but the federal loan guarantee is not gonna happen. It looks like the deal is dead.

So Muskrat Falls was based, to a great extent, on the federal loan guarantee, in terms of reducing the cost. So that was one example. And the least-cost option, I mean, that was the issue that we were – that we had to deal with. How can we sanction Muskrat Falls if it wasn’t the least-cost option?

So I remember that one. The second one you referred to in *Hansard*, I don’t have a specific recollection of there being a – that one is pretty powerful in my mind.

MS. E. BEST: Okay. But you knew that the approach of –

MR. KENNEDY: Oh, yes.

MS. E. BEST: – Premier Dunderdale was that if it was not the least-cost option it would not be sanctioned.

MR. KENNEDY: Yes, and I think that’s somewhere in my notes that that same comment is made.

MS. E. BEST: Something that has come up and was triggered in my mind by reading the December 12 *Hansard* was – it says here – you say: “Without Muskrat Falls, between 2016 and 2030” – power rates would go up to – “\$82 a month. The increase in rates will double without Muskrat Fall.”

And earlier you said: “Between 2000 and 2011, Mr. Speaker, the average ratepayer on the Island or the ratepayer who burns approximately 1,500 kilowatt hours of energy saw an increase of 32 per cent or approximately \$45 per month over that time frame. That was between 2000 and 2011. People did not notice it as much, Mr. Speaker, because it was not on top of mind.”

Just speak to us about what would’ve happened with power rates or electricity rates regardless of Muskrat Falls.

MR. KENNEDY: Yeah. I can’t tell you off the top of my head. I’d have to go look at my notes. I’ve got extensive notes on that. There was an electricity rates paper and I think that’s what I’m referring to in that *Hansard*.

But my understanding, Ms. Best, was that power rates were going up anyway. That’s, I think, sort of what’s – one of the things, Commissioner, that’s become a little – and it may be forgotten or somewhat confused. Power rates were going up anyway, so what – we were gonna need power, so what do we do? So my recollection was – and again I can get you the exact details if you want – is that power rates would go up; there would be a spike in the beginning and then they would start to level out without Muskrat – with Muskrat Falls because of the higher capital cost expenditures upfront. Then it would level out. That the Isolated Island perspective would go up so that in 2030, I think the time frame that was being utilized – there would be much higher rates without Muskrat Falls.

MS. E. BEST: Okay. Thank you.

You mentioned yesterday, and you mentioned it in *Hansard* again, and I believe Mr. Simmons pointed it out again in the Cabinet paper – about the federal government doing a review of the Muskrat Falls numbers. And I’ll put to you that my client recalls that as well: a rigorous testing of the numbers by the federal government. And I have found a copy of the federal government report – actually, it was done by the Department of Natural Resources –

MR. KENNEDY: That’s right.

MS. E. BEST: – at P-00054.

And I put to you that the federal Department of Natural Resources found that the Muskrat Falls alternative was found to be the lower cost than the Isolated Island alternative. Does that sound right to you? Does that –

MR. KENNEDY: That sounds consistent with my recollection, Ms. Best. Both Mr. Bown – Commissioner – or Mr. Martin would certainly be able to give you more details on exactly what took place. Because I think they were on that committee dealing with the federal loan guarantee.

MS. E. BEST: Okay.

And I believe that this actually came out of the JRP recommendation –

MR. KENNEDY: Oh yes, okay. No, there was two – there was a couple of different – yeah, sorry. There's a couple of different processes that were involved. The – more the financial review, is my understanding, Commissioner, in the federal loan guarantee. But again, I'm not absolutely certain of that. But NRCan had done a review at some point where they –

MS. E. BEST: Review of –

MR. KENNEDY: – accepted that Muskrat Falls was the lower cost option, yeah.

MS. E. BEST: Right, and they did a full economic analysis. Is that what you recall?

MR. KENNEDY: I don't have specific recollection of that but I certainly – it does make sense to me, yes.

MS. E. BEST: Okay.

Do you recall anything else about that process, about the back and forth that occurred between NRCan and the Government of Newfoundland and Labrador or Nalcor when they were going through this process?

MR. KENNEDY: No, I don't, Ms. Best.

MS. E. BEST: Okay, 'cause you indicated that it was rigorous in *Hansard*.

MR. KENNEDY: Yeah, and I certainly, if I used the word "rigorous" in *Hansard* I would've had certainly had more knowledge of it at the time, but I don't have any specific recollection at this point.

MS. E. BEST: Okay.

Yesterday you described Ed Martin writing on a big pad of paper, I think –

MR. KENNEDY: It's one of those flip (inaudible).

MS. E. BEST: Flip chart, yeah.

MR. KENNEDY: Yeah.

MS. E. BEST: Yup.

I just wanted to check with you: Did you mean, when you gave that evidence, that not all Nalcor presentations had a slide deck, that there might've been some presentations without slide decks?

MR. KENNEDY: I don't know – there was formal presentations, Commissioner, where there would be presentation decks. There's no question about that.

Now, I do remember, and I have this vivid memory of Mr. Martin going through this flip chart-type thing and turning over these big white pages and making notes. Whether or not that accompanied a formal presentation or whether it could've been a more – for lack of a better term – informal discussion, I don't know.

MS. E. BEST: Okay.

Last area of questioning; this has to do with the selection of MHI to do the DG3 report. Was part of the thinking in selecting MHI at the time, that MHI would be beyond scrutiny because –

MR. KENNEDY: I think that's what we thought, yeah.

MS. E. BEST: – PUB had selected them. The PUB had decided that they were independent enough – they were good enough for them, they were independent enough for them and,

therefore, the thinking was that they must be beyond scrutiny.

MR. KENNEDY: That was part of our thinking, yes.

MS. E. BEST: Okay. Thank you.

Those are my questions.

THE COMMISSIONER: All right.

Julia Mullaley, Charles Bown?

MR. FITZGERALD: Mr. Kennedy, Andy Fitzgerald, I represent Charles Bown and Julia Mullaley.

MR. KENNEDY: Good afternoon, Mr. Fitzgerald.

MR. FITZGERALD: You're familiar with both those individuals?

MR. KENNEDY: Yes, I am.

MR. FITZGERALD: In different capacities?

MR. KENNEDY: Yes, I am. Yeah.

MR. FITZGERALD: Okay.

Now, I guess, before I begin, over the last day or so I've heard you make comments about the civil servants in general – Mr. Thompson and Mr. Bown – approvingly, I would suggest. How would you describe your working relationship with Charles Bown?

MR. KENNEDY: I thought it was excellent.

MR. FITZGERALD: Elaborate on that a bit?

MR. KENNEDY: Yeah, Mr. Bown – Commissioner, I – he was – sometimes what's – I found necessary with me when I'm working in government, is having regard to my nature, someone who offsets that nature, temperamental, with a more calmer, logical approach. And I'd always had someone in government – Justice Burrage played that role at one point with me in Justice, Commissioner; Mr. Bown played that; I had people in Health who played that. So that I

certainly came to trust Mr. Bown, I respected his integrity and his honesty and his intelligence.

MR. FITZGERALD: And you worked with Mr. Bown – Charles Bown, sorry, for, I guess, a number of years.

MR. KENNEDY: Well, I would have been – I would have known him, obviously, as a senior civil servant in my previous capacities. But in terms of working closely with him, almost on a daily basis, would have been from the time I became minister of Natural Resources, October 28 until the day I left in January 6.

MR. FITZGERALD: Would it be fair to say you worked with public servants in the past – and I don't ask you to name any names, but the – you never had a good working relationship with them for whatever reason and, for whatever reason, they no longer worked with you in the past.

MR. KENNEDY: I don't fully understand your question, Sir. I – the way I worked with people is that you had to have a certain – you had to have a good work ethic, you couldn't be afraid to tell me when I was wrong or you thought I was wrong.

MR. FITZGERALD: This is what I'm getting at.

MR. KENNEDY: That you – you know, you couldn't be timid in terms of dealing with me. And I certainly accepted and wanted people to tell me if I was either taking a position that was contrary to the evidence or one that was simply untenable.

MR. FITZGERALD: In the Department of Natural Resources, was Mr. Bown's office next to yours?

MR. KENNEDY: Yes, yeah. My – I'm trying to remember now, Mr. – I was in so many departments or ...

MR. FITZGERALD: Fair enough.

MR. KENNEDY: There was a boardroom and Mr. Bown's – yeah, he would have been very near me. Yeah.

MR. FITZGERALD: That's my understanding.

MR. KENNEDY: Yeah.

MR. FITZGERALD: And would he frequently discuss issues with you that would come up? Everything wouldn't be by email or text message, would it?

MR. KENNEDY: No, there would be lots of discussions.

MR. FITZGERALD: Yes. And in terms of – now, Ms. Best went through this. It's generally your practice to dig down into a portfolio. You dive into it, don't you?

MR. KENNEDY: I try, Sir.

MR. FITZGERALD: Yes.

MR. KENNEDY: I tried.

MR. FITZGERALD: And, yesterday, Mr. Learmonth brought you to an exhibit that had to do with the JRP – you just talked about that – before you were even minister of Natural Resources you were into that taking copious notes, weren't you?

MR. KENNEDY: Yeah, I started that, Sir, on October 13. I even – it seems to be a couple days after the election, I started reviewing that.

MR. FITZGERALD: Okay.

And, obviously, when you dig down into issues, we know from your evidence that you take copious notes, you have – there's more notes in this Inquiry, I would suggest, Mr. Kennedy, from you than from anybody else.

MR. KENNEDY: That doesn't surprise me.

MR. FITZGERALD: Prior to becoming a politician, you were a criminal lawyer?

MR. KENNEDY: That's correct, Sir.

MR. FITZGERALD: And I believe as – that when you – as you were a contrarian when you went about looking at Muskrat Falls, I would suggest you approached this as a criminal lawyer – and we're all lawyers in the room, or not even

a criminal lawyer. And you wanted all the information upfront so you could deal with any issues that would arise. Would that be a fair characterization?

MR. KENNEDY: That's fair to say, yes.

MR. FITZGERALD: As, ultimately, it was going to be you who were on the hook to the public and in the House of Assembly.

MR. KENNEDY: That's correct, yes.

MR. FITZGERALD: And if you don't have all the information coming from Mr. Bown, or Mr. Thompson, or whoever else, you're going to be hampered in your ability to do your job.

MR. KENNEDY: That's a general comment that would relate to all departments, but it was certainly magnified in relation to Muskrat Falls.

MR. FITZGERALD: And as lawyers you know the importance – you would know the importance of knowing all the information. Because if a client doesn't tell you all the information and you're surprised in court, that's one of the worst things that can happen to you, isn't it?

MR. KENNEDY: Yes and – that's correct, Sir, but in this context I was also aware of my own limitations, in terms of – you know, I was not a – when I was in Health, I was not a medical –

MR. FITZGERALD: A doctor. Yeah.

MR. KENNEDY: – doctor. So I had to recognize that I needed the assistance of staff, of, Commissioner, consultants and experts and – to try to assimilate the information they gave me and then determine opinions and how to proceed.

So I recognize, Commissioner, that my role in terms of – even though I had previous training in certain areas, that that didn't necessarily translate into understanding how the health system worked or how the Muskrat Falls would be built.

MR. FITZGERALD: No, no, I accept that and we all rely on our experts.

Yesterday in your testimony – and I have a copy of the transcript here – in reference to Charles, Mr. Bown, you said: “Mr. Bown, generally, he knew the way I operated and he generally brought things to my attention, Sir.”

I would suggest that the way you operate is that you want to know all the pertinent facts.

MR. KENNEDY: Yes, I want to know the – I can’t know everything that’s going on –

MR. FITZGERALD: No.

MR. KENNEDY: – in every piece of work, but if there’s something important going on. What I found with Mr. Bown, he knew the role that he played in terms of what he could – decisions he could make on his own or things he could do and when it crossed over into the boundary where the minister should be made aware, or where the premier should be made aware, or whether it was a political decision that he probably shouldn’t be involved in.

MR. FITZGERALD: And he was aware of – and, Mr. Kennedy, I’ve never had a run-in with you. He was aware of your temperament and he was aware of your personality, wasn’t he?

MR. KENNEDY: Yeah, all you had to do was watch the House of Assembly for a half-hour and you’d become aware of that, Sir. Yeah.

MR. FITZGERALD: And I would suggest that because he was aware of the way you operated and he – and you knew – according to your evidence yesterday, he knew how you operated, things were brought to your attention because he wanted to make sure he was doing his job properly and you were fully informed to the best of his ability.

MR. KENNEDY: That’s – was my understanding, Sir, yes.

MR. FITZGERALD: You don’t have any evidence of your time working with Mr. Bown, of him going rogue or doing things inappropriate or anything like that?

MR. KENNEDY: Not at all.

MR. FITZGERALD: It’d be quite the contrary, wouldn’t it?

MR. KENNEDY: It would be the opposite, yeah.

MR. FITZGERALD: And there’s no evidence in his time working with you that he exceeded any authority, is it?

MR. KENNEDY: Not at all. No.

MR. FITZGERALD: Yesterday, in your testimony and your transcript in responding to Mr. Learmonth, you indicated: “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.”

So that was your evidence yesterday.

MR. KENNEDY: Yeah, that’s –

MR. FITZGERALD: You’re in charge.

MR. KENNEDY: Yeah, but I’ve got to – as the minister, the premier has to rely upon me –

MR. FITZGERALD: That’s right.

MR. KENNEDY: – so when I say it’s ran out of the premier’s – I don’t mean the premier makes every decision; I don’t mean the premier makes every direction. In Muskrat Falls, there was a relationship between the premier’s office –

MR. FITZGERALD: Yes.

MR. KENNEDY: – in certain dealings with Nalcor –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – but there was also the minister – I had certain responsibilities that I would then go to the premier with.

So, there was a relationship that went up and down.

MR. FITZGERALD: Yes, there was a line of command.

MR. KENNEDY: There's always a line of command.

MR. FITZGERALD: Yes, and ultimately, when it comes to making decisions in government, the public servants don't have the authority to make those decisions – those big policy decisions, do they?

MR. KENNEDY: No, and for example, when it came to even, like, I was going to explore natural gas, Commissioner, I just didn't decide to – I'm gonna go out and explore natural gas. That's something I would have discussed with the premier, or the premier's office, for sure – at least the chief of staff. The reports that we obtained – this is the way this worked, Commissioner. The premier had to be – the premier's office had to be aware. I just couldn't – you couldn't have ministers just deciding they're going to go out and do whatever they want to do.

So, there was a line of authority, yeah.

And that I'd suggest would be whatever – my understanding, Sir, is whatever premier would be there.

MR. FITZGERALD: Yeah.

And you just responded to a question a minute ago – you said there would be meetings in the premier's office all the time, but you wouldn't always be at every meeting, would you?

MR. KENNEDY: Well, I don't know that – I mean, I know that –

MR. FITZGERALD: You might have been.

MR. KENNEDY: – I was at a lot of meetings, and if the – if I was around, for example, and there – and I was needed, the premier would – now, Natural Resources – we were down Elizabeth Avenue, so I can remember beating it back and forth to Confederation Building quite a lot, yeah.

So, I can't tell you whether meetings took place without me being there; all I can tell you is I was present at a lot of meetings.

MR. FITZGERALD: So, from what I get from the testimony I've heard in the Inquiry, the premier's office, whether it was Mr. Williams and subsequently Ms. Dunderdale, had a significant amount of involvement in this file, and important decisions that needed to be made would come from the premier's office.

MR. KENNEDY: Yeah, I wouldn't have been as familiar as much when –

MR. FITZGERALD: Yes.

MR. KENNEDY: – Premier Williams was there because I would have been in other departments, but when I was there, the premier's office – but there were no – you know, decisions – there – this was a collaborative approach. There were discussions made, and you'll see from a couple of my notes, we made decisions.

So, there – it wasn't simply, like, one person determined how everything was gonna proceed.

MR. FITZGERALD: No, and that's important for two reasons.

Would you agree with me that we, in the context of a government, are the elected officials making decisions?

MR. KENNEDY: Yeah. Yes.

MR. FITZGERALD: And, in terms of one person making a decision, it certainly wasn't Charles Bown that said, this is what we're gonna do; we're gonna make Muskrat Falls happen.

MR. KENNEDY: No, Charles would – like, a lot of the civil servants – they would give advice. Charles was very good, as were other deputy ministers, Commissioner, that I worked with. They would give advice.

It was then up to the politicians, whether it be the minister and/or it would work its way up to Cabinet, but ultimately – the ultimate decision-maker was Cabinet. Even though the premier, you know, was the leader, it's – the way I saw it

work, there were consensus decisions made in Cabinet.

That didn't mean necessarily that everyone in Cabinet sat around and held hands and, you know, and got along well. It means that there were very fulsome discussions where not everyone agreed. And oftentimes I've seen premiers who changed their mind as a result of the conversation that took place in Cabinet. I remember a number of instances with Premier Williams where that happened. And I remember it with Premier Dunderdale.

MR. FITZGERALD: Would you agree with me that's a healthy process?

Debating at –

MR. KENNEDY: It is the –

MR. FITZGERALD: – the Cabinet table. I know you might not think it at the time.

MR. KENNEDY: – it is the process, Sir, but again, I have to accept, like – for example in this particular case, Mr. Commissioner, I'm the lead minister. So my colleagues, they're so busy doing what they're doing – they have the, you know, the expectation that I'm going to give them the information that's accurate so that when they make a decision, it's based on information that's accurate and that they have everything in front of them that they need to make that decision.

MR. FITZGERALD: And if you disagree at Cabinet I take it – I mean Cabinet's a consensus in the end, isn't it? If you disagree with Cabinet you're going to be out of Cabinet, aren't you?

MR. KENNEDY: The way that the process works, Commissioner, is that – and I was a dissenter on numerous occasions, but when I left that room, Commissioner, that decision of Cabinet was also my decision.

MR. FITZGERALD: Yes.

MR. KENNEDY: In fact, it was our decision as a Cabinet. So the place – if you didn't agree with what was taking place, the time and place to express that disagreement was during – in the Cabinet room when there were discussions or in

the committee meetings that – to – that's the time to express that dissatisfaction or disagreement.

MR. FITZGERALD: And would you also agree with me – I mean I know we're not in a presidential system, but ultimately Cabinet comes to a consensus and it's the decision of the government then. It's not a decision of a minister, it's not a decision of the premier; the government would make a decision, wouldn't it?

MR. KENNEDY: Yeah. And that's like – I think on a number of occasions I said even though decisions were made that I might not have been involved in –

MR. FITZGERALD: Mm-hmm.

MR. KENNEDY: – they're government decisions. As a member of government, I, you know, I was there when decisions were made.

MR. FITZGERALD: And you would stand by your decisions at the time?

MR. KENNEDY: Yes.

MR. FITZGERALD: Yes. Exhibit P-00259 please.

THE COMMISSIONER: Tab 130.

MR. FITZGERALD: If we can just scroll down to the bottom there. Okay, we can scroll up to page 1 just up above here. Okay.

Mr. Bown receives a – “Hello Charles, I can call you tomorrow once I return to the office.”

MR. KENNEDY: Yeah.

MR. FITZGERALD: “Paul Wilson.” This has to do with the scope of work. Mr. Bown – if we continue to go up. Stop right here. There's a scope sent to Gilbert Bennett. There's an exchange there. And then this goes to Don Burrage.

Mr. Burrage comments up above above, “The Minister did indicate (and Brian agreed)” – who was Brian?

MR. KENNEDY: That would be Brian Taylor I'm assuming, Sir – the chief of staff.

MR. FITZGERALD: “That we have ‘moved on’,” – quotations – “from the least cost option question, so item 1 may not be where gov is. Rather a due diligence on the DG 3 numbers.”

MR. KENNEDY: Can I see question 1, Sir?

MR. FITZGERALD: Oh yeah, I was just gonna bring you down to it in a second, Mr. Kennedy. It was –

MR. KENNEDY: That really – that comment doesn't make a lot of sense to me.

MR. FITZGERALD: Yeah, and here it is here. Here is comment 1: “The Consultant will review and report to the Client, in respect of the ‘Projects’ and the ‘Isolated Island Option’ being whether the Projects represent the least cost option for the supply of power to Island Interconnected Customers over the period of 2011-2067, as compared to the Isolated Island Option.” It's a mouthful.

MR. KENNEDY: That's the issue though –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – so I don't know what Mr. Burrage's comments may – mean, because we never moved on from that issue – that was still the issue.

MR. FITZGERALD: I guess, for my purposes, the scope of work comes in to Mr. Bown, and he sends it off to the deputy minister of Justice at the time; the scope of work – this particular scope of work – and there's some comments received then from Mr. Burrage as he was then.

MR. KENNEDY: And there was, yeah.

MR. FITZGERALD: Yeah, so there was a consultation with Justice, at least at that level at the very beginning.

MR. KENNEDY: There appears to be, yes.

MR. FITZGERALD: Yes. And the Brian in that email is Brian Taylor?

MR. KENNEDY: Yes.

MR. FITZGERALD: And Mr. Taylor I believe is the premier's chief of staff.

MR. KENNEDY: He was, yes.

MR. FITZGERALD: So this would still be consistent with the premier's office being in the loop on Muskrat Falls issues.

MR. KENNEDY: Certainly, yes.

MR. FITZGERALD: Yeah. And it would also be evidence that the premier's office was in the loop on the issue of the scope of work in MHI. Mr. Taylor would know –

MR. KENNEDY: Yes.

MR. FITZGERALD: – this was coming in.

MR. KENNEDY: Yes. I'm just saying that that particular comment doesn't make a lot of sense to me because we never moved on from that issue. I don't know – that was still the – always the issue.

MR. FITZGERALD: Yeah, it doesn't make any sense to me either, Mr. Kennedy, but that wasn't the purpose I was bringing it up.

MR. KENNEDY: Okay, so –

MR. FITZGERALD: I was bringing up the process.

MR. KENNEDY: – just that there was involvement of the premier's office – yeah.

MR. FITZGERALD: Yes, premier's office and Justice –

MR. KENNEDY: Department of Justice.

MR. FITZGERALD: – and the Department of Justice.

Now P-01237, please.

THE COMMISSIONER: Tab 37.

MR. FITZGERALD: Oh, I'm sorry, Mr. Kennedy.

MR. KENNEDY: Yeah, okay, we've reviewed this note a couple times.

MR. FITZGERALD: Yeah, Mr. Learmonth brought this to you yesterday. This is an April 1, 2012, "Meeting re: PUB report."

MR. KENNEDY: That's correct, Sir.

MR. FITZGERALD: And the individuals at this meeting are: Robert Thompson, premier, Brian Taylor –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – Glenda who?

MR. KENNEDY: Glenda Power was the director of communications at the time.

MR. FITZGERALD: With the premier's office?

MR. KENNEDY: Yes, that's correct – yeah.

MR. FITZGERALD: Ed Martin.

MR. KENNEDY: Yes.

MR. FITZGERALD: Charles Bown, and yourself.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Okay, when asked yesterday by Mr. Learmonth why Ed Martin was there, you indicated he was there because he had knowledge of the project, which makes perfect sense to me. You needed to talk to Mr. Martin –

MR. KENNEDY: Yes.

MR. FITZGERALD: – to get specifics of what was going on, didn't you?

MR. KENNEDY: Certainly nothing unusual about Mr. Martin being there.

MR. FITZGERALD: And so there was a reliance on Mr. Martin's knowledge and assurances, wasn't there – throughout this whole process?

MR. KENNEDY: Absolutely.

MR. FITZGERALD: He was your CEO.

MR. KENNEDY: Yup.

MR. FITZGERALD: I wouldn't say your CEO, but government – the CEO of Nalcor.

MR. KENNEDY: That's correct.

MR. FITZGERALD: He was appointed there by Cabinet, wasn't he? CEO of Nalcor, was that –?

MR. KENNEDY: Someone mentioned that earlier today. I'm not quite certain, but that makes sense. He was appointed by government.

MR. FITZGERALD: Yes, government.

So – and government would have put a lot of trust and reliance upon Mr. Martin in that position I take it?

MR. KENNEDY: Absolutely.

MR. FITZGERALD: I'm not saying there's anything wrong with that –

MR. KENNEDY: No, I'm just saying that –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – it's consistent, yeah.

MR. FITZGERALD: At the bottom of the email it says we decided to hire the same experts PUB wants us to.

MR. KENNEDY: Okay, you're going back to the email.

MR. FITZGERALD: No, sorry the bottom of the –

MR. KENNEDY: Yes.

MR. FITZGERALD: – the note.

MR. KENNEDY: Yeah, DG3 –

MR. FITZGERALD: Right here.

MR. KENNEDY: – numbers need a complete a package, June time frame, MHI review, we

decided to hire the same experts PUB went to, yeah.

MR. FITZGERALD: Mr. Simmons brought you through this; the “we” there is the government. Yourself and Ms. Dunderdale had the power to make that decision?

MR. KENNEDY: Certainly, yeah.

MR. FITZGERALD: Yeah. And that comes through later we’ll see.

MR. KENNEDY: The other people in the room would give advice.

MR. FITZGERALD: Absolutely.

MR. KENNEDY: But the decision-making process would be that of the politicians.

MR. FITZGERALD: Yes.

It may seem like a simple point, but I think it needs to be made.

With respect to this note as well: we need a complete package, June time frame. So this is just after the PUB report has been issued, and it seems that, at this meeting, right at the outset there was an issue of June time frame.

MR. KENNEDY: Yeah.

MR. FITZGERALD: So you needed the June time frame for the House of Assembly debate?

MR. KENNEDY: And for Nalcor to do – get in, do their work.

MR. FITZGERALD: Yeah, and I’ll get into that piece.

But those were the two primary issues that you were focused on with respect to getting MHI retained and moving forward?

MR. KENNEDY: Well, there was also a number of other issues, Sir. One that the PUB had had the nine months; they had been involved –

MR. FITZGERALD: Oh yeah.

MR. KENNEDY: – for nine months. There were other reviews of the report that – but the two issues in terms of the timelines set – in the context, Commissioner, for the way we were operating at that point, the time frames, in terms of the – getting into the House of Assembly and getting the decision made on sanction before there was too much money spent.

MR. FITZGERALD: Now, I recognize in your evidence, Mr. Kennedy, that you had no knowledge of a P1 schedule and that the power couldn’t be provided as of July 2017?

MR. KENNEDY: No, I had no knowledge of that, Sir.

MR. FITZGERALD: No. My client’s evidence will be similar.

With respect to strategic risk and 497 million – I know Mr. Smith took you through that – but at the time you didn’t have any idea about that either, did you?

MR. KENNEDY: Never brought to my attention.

MR. FITZGERALD: No.

Would you agree with me that when risk was being discussed, whether it was a Cabinet presentation by Mr. Martin or Mr. Bennett, it was discussed in general terms, i.e., the risk is being mitigated, the risk is being managed, the risk is being handled?

MR. KENNEDY: Yes, that’s correct.

MR. FITZGERALD: That’s how it was put to you, wasn’t it?

MR. KENNEDY: Yep.

MR. FITZGERALD: It wasn’t sitting down, putting out to you a chart and saying contingent equity, contingent risk, strategic risk. That’s not how this was – this message was put to you by Nalcor, was it?

MR. KENNEDY: No, and it lead to the meetings in September and October whereby we started getting down into – this is the – why the DG2 numbers have increased in terms of DG3

with specific numbers given in terms of increased –

MR. FITZGERALD: Yes.

MR. KENNEDY: – costs, the steel, concrete, gates, et cetera. So that – then how do you – so by – at that point, it was a certainty. So risk was talked about in a general way, but we were trying to, as a government, Sir – and I was trying to, certainly, as a minister – to identify specific risk, and basically saying: How can 9 per cent contingency – is that enough? That’s basically what I was saying.

I wanted to know – and I think somewhere in my notes, Commissioner, we went through yesterday – is what is the true number? And I think I’ve got – and I think I indicated, Commissioner, I can hear myself saying: What is the true number? Is it 8 or 9 billion? And then we come below that, and there’s reference to: no, there’s a degree of certainty as a result of the work that we’ve done on the engineering.

MR. FITZGERALD: I accept that, but the continuous message you were getting from Nalcor, Mr. Martin and Mr. Bennett was the risks are being managed or – a common word I’m hearing is mitigated. Would you – you hear that phrase used throughout your time there?

MR. KENNEDY: I would have heard that term, Sir. I also minimize –

MR. FITZGERALD: Minimize.

MR. KENNEDY: – would probably be my term. Mitigated would’ve been a term that I would’ve heard about, yeah.

MR. FITZGERALD: Okay. So – and you were receiving assurances and reassurances, I would suggest, from Nalcor and from Mr. Martin and sometimes Mr. Bennett, maybe, that this was under control.

MR. KENNEDY: Sir, we went through it in great detail.

Those meetings in – you know, in those meetings in September and October, we were specifically reviewing this issue of identifiable risks. So in – on one hand, say, well, there’s risk.

There’s always risk with everything we do in terms of determining what’s going to happen in the future, but in terms of a project like this, Commissioner, where there had been so much so much work done, so many different engineering firms, so many people in there, and we’re told we’ve increased our certainty as a result of the work we’ve done in DG3. This was a situation where we were told we can say to you, with some degree of certainty, that 9 per cent will work because –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – of all the work we’ve done. And that was the message, Commissioner, that was given to us. You know, and I – again, you’ll hear from Mr. Bown and the premier, but that was the message that was given to us, continuously.

MR. FITZGERALD: Exhibit P-00739, please?

THE COMMISSIONER: Tab 129.

MR. FITZGERALD: Oh, apologies.

Mr. Simmons saved me some work this morning when he asked you about this, but he created a lot more work for me as well.

With respect to this email, Mr. Kennedy, there’s no recommendation in this email, is there?

MR. KENNEDY: Mr. – from my recollection of reviewing it earlier today that Mr. Bown simply wanted to talk to Mr. Wilson, that he was having difficulty contacting Mr. Wilson, and Mr. Bennett was facilitating that contact. That’s my understanding.

MR. FITZGERALD: Nothing irregular about that in your opinion?

MR. KENNEDY: No, because when I look at that last email, Mr. Bennett would have had previous contact, I assume, with Mr. Wilson of MHI.

MR. FITZGERALD: Yeah. In – and that goes back to the PUB report. MHI was doing the PUB report, and –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – MHI and Nalcor were going back and forth during that process. You're familiar with that?

MR. KENNEDY: Yes, they were, yeah.

MR. FITZGERALD: Yeah.

And this occurs after decision has been made, and we looked at your note – that meeting on April 1 –

MR. KENNEDY: Mr. Bown would have known whether or not we'd had the meeting that morning –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – or he – the message would have been delivered to him. He knew that this decision – my only issue, Commissioner, was the timing of the email at 10 o'clock in the morning. Would we have met before that? But we would – no question we met sometime that day, that Mr. Bown would not have gone off and hired MHI, Sir, without the premier or myself having said to him or the chief of staff saying – telling him to contact – premier wants him to contact MHI.

MR. FITZGERALD: And I believe, too, this morning, you even indicated that there might have been a conversation the night before or something, saying: Look, we might want to get him –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – MHI's contact info 'cause –

MR. KENNEDY: That's right.

MR. FITZGERALD: – we're gonna have a meeting tomorrow and it wouldn't hurt to have.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Would that be something that would possibly happen?

MR. KENNEDY: That was possible too, yeah.

MR. FITZGERALD: Exhibit P-00741, please.

That is –

THE COMMISSIONER: That's not on our list.

MR. FITZGERALD: I don't think it's on the list.

This was the first scope of work that was – I'm trying to bring you to some context – context – Mr. Kennedy, before I ask you some of these questions because it's important.

This is the first scope of work that was sent to Mr. Bown on April 2. And Mr. Learmonth brought you through this, and this included that risk analysis that disappeared, if you recall being questioned by that.

MR. KENNEDY: I do recall.

MR. FITZGERALD: Yes.

If we can go to P-01178, please?

THE COMMISSIONER: Tab 41.

MR. FITZGERALD: Tab 41, page 2. My apologies, Commissioner.

Page 2, please.

And if we can just scroll down a little bit?

Okay, right here.

It's from Mr. Bown, having received the scope of work. He sends to it Mr. Bennett and Mr. Crawley. You see that there, Mr. Kennedy?

MR. KENNEDY: Yes, I do, yeah

MR. FITZGERALD: Yeah. And if we can go to page 1. What is the date of Mr. Harrington's response here to the project team and Mr. Crawley and Mr. Bennett?

MR. KENNEDY: April 4, Sir.

MR. FITZGERALD: Could you please read the first paragraph of this email?

MR. KENNEDY: "Please find my comments to the MHI proposal – In order for this to be

performed in the time available” – excuse me – “it has to be focussed on what is needed, we do not want to have MHI tell us about reliability and NERC adn return periods” – I’m assuming that’s and – “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” – (inaudible) – “so the expansion plan used in this review has also to exclude the Maritime Link as per the DG2 review. This will made this review more straightforward and achievable in the time frame.”

MR. FITZGERALD: So in that paragraph there’s several references to time frame, isn’t there? There’s time available. There’s the reference to time frame.

MR. KENNEDY: Yeah. Okay.

MR. FITZGERALD: So, I would suggest that is appears to be that time frame is important for Mr. Harrington here, with respect to this analysis. Would that be a reasonable interpretation of that paragraph?

MR. KENNEDY: There’s reference to time frames on two occasions. Yeah.

MR. FITZGERALD: Yes. Can we please go to page 8 of that exhibit?

The PH1, the quote there: “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”

Having read this comment, would you agree to me that that colours the email of Mr. Harrington and certainly timelines were an issue for him?

MR. KENNEDY: Yes, that’s correct. Yeah.

MR. FITZGERALD: And he specifically references in this comment, risk analysis, doesn’t he? Still working on the estimate, risk analysis.

MR. KENNEDY: Yes, I see that. Yeah.

MR. FITZGERALD: And this is April 4.

P-01236, please.

THE COMMISSIONER: Tab 36.

MR. FITZGERALD: This is April 4. Email to Mr. Bown from Brian Crawley. “Charles ... I understand Ed” – Martin – “was tying to reach you on this. We are still working it” – still working it – “but” – we “do have major concerns with what has been proposed. Will be in touch.”

What’s the subject of that email, Mr. Kennedy?

MR. KENNEDY: Scope.

MR. FITZGERALD: Scope. It would appear from this email that Nalcor has major concerns with the scope of work and we also know at this point in time that there’s concern about timelines and the risk analysis not being completed. Would you agree with me on that?

MR. KENNEDY: That’s what you’ve shown me so far, Sir, yes.

MR. FITZGERALD: Thank you.

Page 18 of your transcript, Mr. Kennedy.

THE COMMISSIONER: Is this his interview, or ...?

MR. FITZGERALD: No, this is actually from yesterday.

MR. KENNEDY: Oh, okay.

MR. FITZGERALD: Bear with me.

MR. KENNEDY: I didn’t realize there were transcripts up, Mr. Commissioner.

THE COMMISSIONER: I didn’t know we were producing them that fast, to be honest with you.

MR. FITZGERALD: (Inaudible.)

MR. KENNEDY: I would have read mine last night, if I’d known.

MR. FITZGERALD: There’s a reference in this transcript, I thought I had highlighted this morning, but it’s simply stated that everything

that is important you write down. You made that comment yesterday?

MR. KENNEDY: Yes, yeah. Or I try to, Sir –

MR. FITZGERALD: You try to.

MR. KENNEDY: – I mean, I try to, I'd say.

MR. FITZGERALD: But if you write it down, you think it's important. You're not writing down things you don't think are important.

MR. KENNEDY: I write a lot down, and out of those things I try to determine what's important. But, normally, if something jumps out at me as being important, I write it down, yeah, that's what I did.

MR. FITZGERALD: And on page 92 of your transcript yesterday you also made the comment: "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." So when you use an asterisk or a circle –

MR. KENNEDY: And that could be a subsequent review of – see, what I'll do, Mr. Fitzgerald, I make my notes, and then two days later I may review those notes, the next day, Commissioner, or I might review them that night. And then, all of a sudden, something will jump out at me. So it could either happen on the same time as I'm making the notes –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – contemporaneously, Sir, or it could be the next day or a couple of days later, and then I circle and say, well, that's an important point. But that's what the asterisk means, yeah.

MR. FITZGERALD: It may be a simple point, but there's a reason I'm taking you there.

MR. KENNEDY: Okay.

MR. FITZGERALD: P-01237, please. That is tab –

THE COMMISSIONER: Thirty-seven.

MR. FITZGERALD: Thirty-seven.

MR. KENNEDY: That's, again, the same meeting we referred to earlier?

MR. FITZGERALD: 01237, no, I have the wrong exhibit. Pardon me. Oh, actually, no, I don't. Yes, I do.

MR. KENNEDY: I know the one you're (inaudible).

MR. FITZGERALD: I'm looking for the April 6 note.

MR. KENNEDY: Yeah.

MR. FITZGERALD: April 6, 2012 meeting. Page 10 of Exhibit, maybe, 01240?

THE COMMISSIONER: How about page 10 of 01237? I think you were on the right one, but it's April 6, 2012, page 10.

MR. FITZGERALD: Page 10, yes, sorry.

THE COMMISSIONER: 01237.

MR. FITZGERALD: That's where I'm looking, yes. Thank you, Justice.

MR. KENNEDY: Okay, sorry, it's in volume 1, tab 37?

THE COMMISSIONER: Tab – volume 1, tab 37 –

MR. KENNEDY: Okay, I've got it, yes, Sir, okay.

THE COMMISSIONER: – page 10 – and then red page 10.

MR. KENNEDY: Red page 10. Okay, I've got that, Sir, yeah.

MR. FITZGERALD: Thank you, Mr. Kennedy.

So we have a note here that you drafted. It says: Meeting of Ed. That's Ed Martin?

MR. KENNEDY: Yes, it is.

MR. FITZGERALD: Brian Taylor.

MR. KENNEDY: Yes, it is.

MR. FITZGERALD: Premier's office.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Robert Thompson.

MR. KENNEDY: Yes.

MR. FITZGERALD: Glenda – what's here name again?

MR. KENNEDY: Glenda Power.

MR. FITZGERALD: Glenda Power, premier's office, communications.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Charles and yourself.

MR. KENNEDY: That's correct.

MR. FITZGERALD: This is April 6.

MR. KENNEDY: Yes, it is.

MR. FITZGERALD: This is a couple of days after the scope of work was received by Mr. Bown. And it's also a couple of days after the concerns were raised by Mr. Harrington to Gilbert Bennett and his team about risk analysis not being complete and timelines are going to be an issue.

MR. KENNEDY: Yes, okay.

MR. FITZGERALD: Okay? That's the context that we're in here. First line: "Will Nalcor have DG3 #s in time for June debate in House?"

MR. KENNEDY: That would be my question.

MR. FITZGERALD: Yeah. So, obviously, there's still a concern here about the June debate in the House in making that timeline. Would you agree with me?

MR. KENNEDY: Well –

MR. FITZGERALD: It's a concern?

MR. KENNEDY: Yes, certainly it's a major concern because one, you know, one of the reasons that were given to us for – or two of the reasons we put forward for not extending the PUB was getting into the House of Assembly and the timelines of Nalcor.

MR. FITZGERALD: Yesterday, in your evidence – and I'm just going to read you a passage: "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 DG3 review and that's why all the reference in it is from Nalcor were there."

Now, I know Mr. Martin seems to be the only one there.

MR. KENNEDY: (Inaudible.)

MR. FITZGERALD: And you said: "Yeah."

"MR. LEARMONTH: Do you recall this meeting?

"MR. KENNEDY: I don't recall the meeting, Sir, but when I took my notes I can generally tell you what the meeting was about."

"Okay.

"And it says down in the – you know, risk analysis contingency backup." There's a June 7 cut off here and there's an arrow, risk analysis, contingency back up.

You agree with me on that?

MR. KENNEDY: That's what it says, yes.

MR. FITZGERALD: Right. And you write down important things?

MR. KENNEDY: Yeah.

MR. FITZGERALD: Yes.

MR. KENNEDY: I don't know in the context, Mr. Bown may be able to – if he remembers that meeting. I don't remember exactly what that means.

MR. FITZGERALD: Mm-hmm.

MR. KENNEDY: I just know that I'd written it down as being something to do with June 7 cut off and risk analysis.

MR. FITZGERALD: Yes.

MR. KENNEDY: Contingency back up.

MR. FITZGERALD: And that's why I was trying to give you the context of the scope of work coming in, scope of work going up to former Justice Burrage; one scope going for him to review. There was discussions in government about the scope of work. There was discussions at Nalcor about the scope of work.

MR. KENNEDY: Yeah.

MR. FITZGERALD: And then there's a meeting on April 6. I'm trying to bring you some context into your notes.

MR. KENNEDY: Sure.

MR. FITZGERALD: The following page, "MR. LEARMONTH: So, are you able to confirm that at this meeting Charles Bown would have – or prior to the meeting – sent you a copy of the scope of work that Paul Wilson had proposed?"

Your answer: "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."

MR. KENNEDY: Yes.

MR. FITZGERALD: "I can't tell you what exactly is discussed, but they're obviously – those issue are discussed." This was your evidence.

MR. KENNEDY: That's correct, yeah.

MR. FITZGERALD: "MR. LEARMONTH: But so are you – you're saying that you have no recollection of seeing the scope of work that Mr. Wilson sent" under cover of email of April 3, Exhibit 00741.

Then you say: "MR. KENNEDY: I'm not saying I didn't, Sir. I have no recollection."

So it is possible that this scope of work was there, you just don't have a recollection of seeing it. That was your evidence to Mr. Learmonth.

MR. KENNEDY: Certainly. And what we have is – there could have been discussions about the scope of work. Mr. Bown or someone else could have had it with them. There could have been discussions.

MR. FITZGERALD: Yeah.

I mean, normally, Mr. Bown's practice, wouldn't it, for something like this that's important – he had a Sunday morning meeting on April 1 and there was obviously issues going back and forth to Nalcor. It'd be normally his practice to bring these items to your attention, wouldn't it? This would be something important.

MR. KENNEDY: Yes.

MR. FITZGERALD: And it's important.

You say: "I'm not saying I didn't, Sir. I had no recollection.

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

And to your defence, Mr. Kennedy, this goes to my last question: "Mr. Bown, generally, he knew the way I operated and he generally brought things to my attention"

MR. KENNEDY: Yeah.

MR. FITZGERALD: And so is it fair to say you would have expected him to bring something like to your attention, given what was going on at that particular point in time.

MR. KENNEDY: It looks to me, Commissioner, from this particular document that there is discussion as to what MHI is going to do. You'll see, again, there's – the note in capitalized: Premier, there has to be timelines. That could be the message delivered by Mr. Taylor on behalf of the premier because she is not noted as being present.

MR. FITZGERALD: I was going to ask you a question. Is – were there occasions because this was in the premier’s boardroom, I take it.

MR. KENNEDY: I don’t know if this is in the premier’s boardroom.

MR. FITZGERALD: Okay. If it was –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – were there occasions where the premier would stop in? And could she have possibly stopped in to that meeting and you just neglected to write on the top that she was in attendance?

MR. KENNEDY: No, normally if the premier was present I’d have her noted. But I mean all I can tell you is that I have noted: Premier, there have to be deadlines – and I got two asterisks, that’s a double asterisk on that one. And so it’s either the message being delivered by the premier or Mr. Taylor is delivering the premier’s message.

MR. FITZGERALD: So in the context of this –

MR. KENNEDY: Or it could be me delivering the premier’s message.

MR. FITZGERALD: Yes, fair play.

You know, we know now and we’ve shown you some emails. And some of those emails, Mr. Kennedy, in fairness to you, were internal Nalcor; you wouldn’t have been aware at the time, possibly not. But in the context of what you’re seeing now, I would suggest to you – and it will be Mr. Bown’s evidence – that the scope of work was in full play at that meeting and that people were discussing what was going to be done.

MR. KENNEDY: It appears to me that the scope of work was discussed, yes.

MR. FITZGERALD: If we scroll down a little bit. Thank you.

This goes back to my question about your circles, Mr. Kennedy

MR. KENNEDY: Yeah.

MR. FITZGERALD: You circled: What we need, schedule DG3 numbers. So in your evidence yesterday the two key points that you mentioned were – one, obviously, was the House debate in June.

MR. KENNEDY: Yeah.

MR. FITZGERALD: And two was the construction schedule for Nalcor. I believe there’s some issue about missing a time period because it could cost a lot of money, is – you would recall that –

MR. KENNEDY: Yeah, we’d have to go back to my notes of December 5, where I have – I think there’s – I’ve got Gilbert written and then there’s five or six points where he made, in relation to why it had to proceed. We’d like to be in there in February, but we have to be in there June at the latest.

So there was a schedule. This – when I refer to schedule, yeah, in this particular case there’s two scheduling constraints: one is the – if we’re going to get into the House of Assembly and second is the construction timeline.

And you’ll also see there, Sir, under DG3 numbers: Always meant to be provided – or, excuse me, always meant to be provided in June.

MR. FITZGERALD: Mm-hmm.

Oh yeah, and that’s consistent with your evidence. I accept that.

And you would agree with me that this meeting is very shortly after – excuse me – Mr. Harrington’s email to Mr. Bennett talking about risk analysis were not done, were not completed at that point in time and they were being set up to fail.

MR. KENNEDY: I think the email you showed me was April 4 –

MR. FITZGERALD: Yes.

MR. KENNEDY: – and this note is dated April 6, yeah.

MR. FITZGERALD: And then we have Mr. Martin at this meeting.

MR. KENNEDY: Yes.

MR. FITZGERALD: P-01179, please.

THE COMMISSIONER: Tab 150.

MR. FITZGERALD: I'm sorry, Justice, I keep forgetting – long day.

THE COMMISSIONER: No problem.

MR. FITZGERALD: Now, Mr. Kennedy, this is another Nalcor email.

MR. KENNEDY: Yeah.

MR. FITZGERALD: And so I wouldn't be surprised if you weren't aware with it –

MR. KENNEDY: No, I haven't (inaudible).

MR. FITZGERALD: – aware at the time, obviously.

Gilbert, Ed has “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” is “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.

“Brian.”

So what is the date of this email, Mr. Kennedy?

MR. KENNEDY: April 9.

MR. FITZGERALD: That's three days after your meeting with Mr. Martin and the premier.

MR. KENNEDY: That's correct.

MR. FITZGERALD: Yes.

MR. KENNEDY: I don't know if the premier was there. The –

MR. FITZGERALD: Oh, premier's chief of staff, sorry.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Mr. Taylor, he was noted in attendance, and Mr. Thompson.

In terms of Ed working it with the province, do you have any knowledge of what he would be trying to work?

MR. KENNEDY: No, I don't. Nor do I have any notes to indicate there were any discussions with me in relation to that.

MR. FITZGERALD: When it says work with the province, could there have been discussions with the premier's office that you weren't aware of?

MR. KENNEDY: There could be, yes.

MR. FITZGERALD: Yeah.

MR. KENNEDY: But I don't know if that took place, Sir. You'd have to ask the premier.

MR. FITZGERALD: No, I will ask.

In terms of the issue that Nalcor was facing at the time, the risk analysis not being complete, do you have any knowledge if Mr. Martin was working this with the province in the sense that we don't need the risk analysis 'cause the risk is being mitigated, the risk is being controlled.

MR. KENNEDY: I don't have any knowledge of that, Sir. I don't remember that. I have no recollection of that.

MR. FITZGERALD: But you do recognize that this is four or five days after the email –

MR. KENNEDY: There seems to be a trail here, Sir (inaudible) –

MR. FITZGERALD: – from Mr. Harrington, yes.

MR. KENNEDY: Again, but that's not something I would've seen.

MR. FITZGERALD: No, you wouldn't have seen that at the time.

I only ask you that question in the context of how – your previous evidence of risk was being mitigated, risk was being minimized, I was just wondering if you had any knowledge that this was how Mr. Martin may have been trying to work this issue with the scope (inaudible).

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

MR. FITZGERALD: Okay.

But the premier's office did have a lot of involvement in this file and it is possible that Mr. Martin may have went to the premier's office directly.

MR. KENNEDY: Yeah, I don't know that, Sir. I – that's something you'd have to ask the premier or the chief of staff or –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – Mr. Martin. I don't know that.

MR. FITZGERALD: The chief of staff was involved in these meetings, wasn't he? The premier's –

MR. KENNEDY: He was at every meeting.

MR. FITZGERALD: Yeah. Thank you.

P-00742, please, and that is tab 133. On the bottom here is April 19, email from Paul Wilson to Mr. Bown:

“Hello Charles, it was a pleasure to meet with you and Walter over the last two days. 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.” Once again there's a reference to data availability and schedule.

“We have also removed the items that do not require our involvement, in particular the power

system reliability review, Muskrat Falls Hydrology review, and the detailed HVdc converter station review.

“I will begin to estimate the amount of effort and pricing for your consideration and wait to hear from you if this scope ... is agreeable.”

Who is Walter, Mr. Kennedy? Do you recall who that is?

MR. KENNEDY: Yes, Walter Parsons – I forget his exact role in the Department of Natural Resources, but he was the individual when I met in October, November 2012 – on electricity rates, Walter would always be the person who was present with Charles as we discussed electricity rates.

MR. FITZGERALD: Did Walter Parsons have a team of people working with him in (inaudible) –?

MR. KENNEDY: Yeah, there would've been like – I think Walter might've been a director at the time.

MR. FITZGERALD: Okay.

MR. KENNEDY: There would be the deputy minister, associate deputy minister, assistant deputy ministers, director and then staff members, yes.

MR. FITZGERALD: Okay. So he would've had assistants as well –

MR. KENNEDY: We had a lot of people. I remember when I was doing that work on the rates commission we had a lot of people working on it.

MR. FITZGERALD: Now, there was a two-day meeting here with MHI regarding the scope of work. It comes in and Mr. Bown then sends it to Mr. Parsons. So Mr. Parsons obviously would've seen the scope of work as well, I would suggest to you. Forwarded –

MR. KENNEDY: It looks to be that way, yes.

MR. FITZGERALD: Forwarded up above.

MR. KENNEDY: Yeah.

MR. FITZGERALD: So my point is it appears to be that the department's giving consideration to the scope of work that has come in, in the context of data availability and schedule.

MR. KENNEDY: I don't know what data availability and schedule – I know what schedule means, obviously, but I don't know what data availability –

MR. FITZGERALD: Oh, I'm gonna suggest data availability is the fact that the risk analysis wasn't complete. And in terms of data availability and schedule, that's what was pushing the scope of services here.

MR. KENNEDY: See part of the problem, from my perspective, Mr. Fitzgerald, we're talking about risk analysis; it's been discussed in different ways, there have been different terms used to describe it. So I'm not clear, you know, the type – we've heard of strategic risk, tactical risk. I'm not quite certain what risk analysis we're talking about.

MR. FITZGERALD: No, but – I appreciate that, but it was clear in Nalcor's view and Paul Harrington's view that they couldn't get this done in time because the work on the risk analysis wasn't complete. So there was a time availability from Nalcor.

And now we have a subsequent meeting where there's a reference here to data availability and schedule. I would suggest that given the construction season – which was important for the government – and given the fact that the June debate was coming up, that certain things could not be done. And the government would've went to MHI and consulted and said: You know, here's what we're looking for, what can be done in the time period?

Does that seem reasonable to you?

MR. KENNEDY: It seems reasonable, Sir. I know a week later – I think that I was shown a document yesterday – it was a week later where the premier announced that the debate was postponed because we were still looking at July and things kept – that was part of the frustration I thought, Mr. Fitzgerald – things kept getting postponed because the DG3 numbers were not coming in, so ...

MR. FITZGERALD: And it'll be Mr. Bown's evidence that, you know, in a meeting, you know, the 17th and 18th, it would be generally his practice that he would brief you about meetings he's going to of this nature; in particular where you would've been involved in the matter in terms of the meeting on April 1 and forward.

MR. KENNEDY: Yes, Mr. Bown would brief me. But in terms of, Sir, I – like, I don't know what a Muskrat Falls hydrology review is –

MR. FITZGERALD: Oh no, I don't expect you to.

MR. KENNEDY: I don't know, in terms of detailed HVDC.

MR. FITZGERALD: No –

MR. KENNEDY: He would – I'm sure he would've briefed me that there would've been meetings with –

MR. FITZGERALD: Yeah, he would tell you –

MR. KENNEDY: I don't remember that, but it would not be inconsistent with his practice, yeah.

MR. FITZGERALD: Yeah.

MR. KENNEDY: But I would – for me, as I keep saying, the issue of the – what I thought MHI – the big issue was the review of the DG3 numbers.

MR. FITZGERALD: Yeah. No, and I understand that, Mr. Kennedy.

MR. KENNEDY: 'Cause it's still not clear to me. I don't sign the scope of work, I think, 'til June 4 of June 15, and this is April. I don't know –

MR. FITZGERALD: Yeah, I'm gonna take you to that in a minute. I just want to make sure if my time is good.

THE COMMISSIONER: Keep going.

MR. FITZGERALD: Okay.

So what we see now is that from April 1, there's an issue with respect to the scope of work. There were some discussions with Justice Burrage, as he was then at – a deputy minister of Justice. We have Mr. Bown getting the scope of work, we have Mr. Martin involved, we have the premier's office involved, and now we have Mr. Parsons – Walter Parsons involved in the scope of work, and Mr. Parsons has a team under him.

So there was a number of government officials dealing with the scope of work at this time period, would you agree with me on that?

MR. KENNEDY: It appears to be that way, certainly, yeah.

MR. FITZGERALD: P-01522, please, and that is 142. I think it's volume 4, Mr. Kennedy.

MR. KENNEDY: Sorry, I – yeah, I will – that is what –?

MR. FITZGERALD: Oh, I'm sorry. It's at tab – volume 4.

MR. KENNEDY: Yeah.

MR. FITZGERALD: And it's tab –

THE COMMISSIONER: 142.

MR. FITZGERALD: – 142.

MR. KENNEDY: So that would be – 42. I have it, thank you.

MR. FITZGERALD: Okay, thank you.

This is a decision note, Department of Natural Resources, and if we go to the –

MR. KENNEDY: Decision note?

MR. FITZGERALD: Yeah.

MR. KENNEDY: Yeah.

MR. FITZGERALD: And we go to the second page. If we scroll down just a little bit. Right here in the middle of the page we have a summary – I guess not a summary. We have a – this is a decision note. This is the decision, I take it, of what MHI is going to do.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Yeah. And it we go scroll down a little bit further. Thank you.

It says: Prepared by A. McCarthy and P. Scott. Do you recall who these individuals were?

MR. KENNEDY: Paul Scott would've been an assistant deputy minister at the time.

MR. FITZGERALD: Is he a lawyer by training?

MR. KENNEDY: Yes, Paul –

MR. FITZGERALD: Do you know?

MR. KENNEDY: – is a lawyer by training, yeah.

MR. FITZGERALD: Okay. And Ms. McCarthy, I believe, that's a Ms. McCarthy?

MR. KENNEDY: I am not sure who that is.

MR. FITZGERALD: Could it be Angela?

MR. KENNEDY: Yes, but I'm not sure exactly what role she played.

MR. FITZGERALD: Okay, but she was obviously involved in this scope of work issue because her name appears on the decision note, doesn't it?

MR. KENNEDY: Yes.

MR. FITZGERALD: Yes.

So now we have even more people involved in the scope of work. It says this was reviewed by, I believe, it's Vaughn Hammond and D. Hogan. I don't know who D. Hogan is – that's Cabinet Sec.

MR. KENNEDY: Yes.

MR. FITZGERALD: Okay.

Then it was received from Minister Jerome Kennedy. That's yourself?

MR. KENNEDY: That's correct.

MR. FITZGERALD: Yeah.

There was discussion yesterday about whether or not this went to Cabinet and I don't know if you can help me, Mr. Kennedy. But it's my understanding that this is an MC – we'll get to the end of it, the Cabinet directive – but an MC is the prerogative of the premier and it may not have gone to Cabinet. Does that ring a bell?

MR. KENNEDY: I don't know, Commissioner, I don't know if that's been explained to you. I don't – I thought it would've been – a minute in council would've been Cabinet but I don't know that – I don't (inaudible) –

MR. FITZGERALD: Hmm. And maybe we'll hear from Mr. Bown. He might have a view of that as well.

MR. KENNEDY: An order-in-council would certainly be –

MR. FITZGERALD: Oh yeah, I accept that.

If this was the premier's prerogative, though, and an MC – that would be consistent with the premier's office being involved with the scope of work from beginning to end, wouldn't it?

MR. KENNEDY: Again – but I don't know the answer to that –

MR. FITZGERALD: No, I'm saying if it is – we'll get clarification. But if it is, we've certainly have had the premier's involvement throughout, haven't we?

MR. KENNEDY: The premier's office, yes.

MR. FITZGERALD: With the scope of work.

MR. KENNEDY: Again, which would not be unusual –

MR. FITZGERALD: Unusual, no.

MR. KENNEDY: – from my experience and – but I don't know whether or not the premier, for example, would have been particularly or individually involved.

MR. FITZGERALD: No, but we know Mr. Taylor was involved in this process don't we. At the very beginning –

MR. KENNEDY: Certainly, yeah, he was present –

MR. FITZGERALD: Yeah, yeah.

MR. KENNEDY: – at meetings, yes. He was present at a lot of meetings, yes.

MR. FITZGERALD: Yeah, okay. Thank you.

I'm at page 4 of this Exhibit, Mr. Kennedy, red numbers.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Bottom of the page, thank you.

That's yours – oh, it was Ashley McCarthy. Does that ring a bell?

MR. KENNEDY: Not really, Sir, no.

MR. FITZGERALD: Fair enough.

That's your signature?

MR. KENNEDY: That's my signature.

MR. FITZGERALD: “Jerome Kennedy, Minister.”

MR. KENNEDY: That's it, Sir.

MR. FITZGERALD: And this was approved by Paul Scott.

MR. KENNEDY: Yeah.

MR. FITZGERALD: That official we talked about a few minutes ago.

Page 28, please, Madam Clerk, and if you could scroll down just a little bit.

The clerk of the Executive Council at the time, who was that now?

MR. KENNEDY: The clerk of the Executive Council at that time would've been Mr. Thompson.

MR. FITZGERALD: Yeah.

On the left-hand side here we have, I guess, Natural Resources deputy minister, is that what that means?

MR. KENNEDY: That's correct, yes.

MR. FITZGERALD: We have Treasury Board secretary.

MR. KENNEDY: Yes, that's correct.

MR. FITZGERALD: Ed Martin, Nalcor.

MR. KENNEDY: Correct.

MR. FITZGERALD: Deputy clerk.

MR. KENNEDY: Correct.

MR. FITZGERALD: Who was the deputy clerk?

MR. KENNEDY: I think it was Ms. Mullaley at the time.

MR. FITZGERALD: I think it might've been too, yes.

MR. KENNEDY: Yeah, I'm not sure. But I know Ms. Mullaley came in at some point, but I'm not sure. Yes, I think she did because she – when Mr. Thompson left she replaced Mr. Thompson.

MR. FITZGERALD: Okay, thank you.

And this is the Cabinet directive with respect to the scope of work – for MHI?

Would Treasury Board be involved in this, because it's a significant amount of government money being spent to retain the consultant?

MR. KENNEDY: Normally, the Treasury Board guidelines, if I can remember them Sir, Commissioner, there – in the normal process – there would be a request for a proposal. However, there were guidelines governing sole-

source contracts. I thought they had to be under a certain amount.

MR. FITZGERALD: Okay, fair enough.

MR. KENNEDY: So Treasury Board could approve them under a certain amount. The amount of this contract and I – it's blacked out but my guess the amount of the contract is such that it would not simply be a deputy minister, or a minister or anyone else approving this stuff.

MR. FITZGERALD: Yeah, I think you're correct on that.

That exhibit there, that is in May – P-01237, page 10 – that was your note of the meeting on – and I –

MR. KENNEDY: Okay, 37 – sorry.

MR. FITZGERALD: Yes, on –

THE COMMISSIONER: Tab 37,

MR. FITZGERALD: – on April 6.

MR. KENNEDY: No, we gotta go back to the other –

MR. FITZGERALD: I just want to make a –

MR. KENNEDY: Oh, that's fine. I got you, yes.

MR. FITZGERALD: – I don't even know if I need you –

MR. KENNEDY: Okay.

MR. FITZGERALD: – to go to it, Mr. Kennedy, but –

MR. KENNEDY: All right.

MR. FITZGERALD: – my point is we have this process starting in April. We have MHI – decision by the government to hire MHI. We have April 6, we have a meeting with yourself and those officials. We have concerns by Nalcor on risk analysis not being completed. And then, there's a meeting with respect to the scope of work and it all subsequently gets finalized.

At the first meeting, yourself is there, Mr. Thompson was there on April 6 and other officials were there.

And now we're here, the Cabinet directive is done, the scope of work has been completed and there's some similar individuals who were there again, would you agree with me?

MR. KENNEDY: Yes.

MR. FITZGERALD: Yes.

And those individuals would have had an opportunity to question why risk was gone out, they would have been at the first meeting when risk analysis was brought up, wouldn't they?

There was a process of going through the whole department here – is the point I'm trying to make, Mr. Kennedy.

MR. KENNEDY: Yeah, there's certainly a process here –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – there's not just Mr. Bown –

MR. FITZGERALD: No.

MR. KENNEDY: – making this decision. There was a process that went right through. I can't tell you the basis of the decision, but I think I said to Mr. Learmonth yesterday, I was a bit surprised why it took so long.

But it's not simply Mr. Bown, no. I've never considered it seriously to be Mr. Bown making decisions.

MR. FITZGERALD: With respect to the federal loan guarantee, you were the minister of Natural Resources?

MR. KENNEDY: Yes, I was, yeah.

MR. FITZGERALD: And it was your evidence that you were not – how to put it – you didn't play a big role in it?

MR. KENNEDY: I was not directly involved in the negotiation of the federal loan guarantee.

MR. FITZGERALD: Yeah, and I accept that.

Mr. Bown, at the time, would have been the deputy minister, I believe, of Natural Resources.

MR. KENNEDY: That's correct.

MR. FITZGERALD: And he would have been going back and forth to Ottawa and Halifax –

MR. KENNEDY: I thought there was a committee – a negotiating committee –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – chaired by Mr. Martin, maybe –

MR. FITZGERALD: Okay.

MR. KENNEDY: – and Mr. Bown was on it. And I know that the – I thought that the chief of staff was involved in it.

MR. FITZGERALD: And, in terms of that – and I'm not saying that you were intimately involved in the process, but Mr. Bown would let you know that, you know –

MR. KENNEDY: Oh, yeah. I was aware –

MR. FITZGERALD: – I'm going to Ottawa, and here's what –

MR. KENNEDY: – oh, I was aware of what was going on –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – in terms of – in a general way – because I got very frustrated. You know, this was another example – like, these DG3 numbers – where there's taking so long to produce them; we're promised them and all of a sudden –

MR. FITZGERALD: Mmm.

MR. KENNEDY: – it doesn't happen. And, you know, there's political fallout from that.

Then we're (inaudible) – the federal loan guarantee is taking so long –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – and we can't make a decision as to where we're going with the federal loan guarantee because it impacts the final numbers.

We got the Emera deal, which is still outstanding.

So, yeah, I – Charles would have updated me on the meetings, and I can remember being frustrated at the pace. But I was not – probably with good reason – involved in the negotiation of the loan guarantee.

MR. FITZGERALD: Mr. Simmons this morning took you to a draft report that MHI had done; I think it's P-00733 (inaudible) –

MR. KENNEDY: I've seen – I don't know how many draft reports, Commissioner; I know I've been provided what seems to be more than one –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – but I do remember Mr. Learmonth and Mr. Simmons showing me a –

MR. FITZGERALD: Yeah, I have –

MR. KENNEDY: – report, yeah.

MR. FITZGERALD: – a specific point to make with you on this, Mr. Kennedy.

MR. KENNEDY: Okay.

MR. FITZGERALD: And P-00733, if we could just briefly bring it up.

THE COMMISSIONER: It's not in his documents.

MR. FITZGERALD: It's – no, it's not in Mr. Kennedy's documents.

I have the number wrong; my apologies. In any event –

MR. KENNEDY: Yeah, I don't even – I've never – I don't know –

MR. FITZGERALD: No.

MR. KENNEDY: – what that is.

MR. FITZGERALD: There a draft report – MHI. Were you aware that when MHI and Nalcor were engaged in the review that it was a request-for-information process?

MR. KENNEDY: In the PUB review, you mean?

MR. FITZGERALD: No, no – in the government review.

MR. KENNEDY: No, I wouldn't have been aware to that level of detail, Sir, no.

MR. FITZGERALD: But would it surprise you to hear that Manitoba Hydro would go to Nalcor and say: Here's what we need, in the form of a chart, and then Nalcor would get back with the information?

MR. KENNEDY: No, that wouldn't surprise me, no.

MR. FITZGERALD: That would make sense, wouldn't it?

MR. KENNEDY: Would make sense, yeah.

MR. FITZGERALD: P-00769, please – that is not in Mr. Kennedy's – package.

MR. LEARMONTH: That report 00773, maybe?

MR. FITZGERALD: Yeah, that was the report – 00773. Thank you, Mr. Learmonth.

There was a cross-out of some contingency in 00773 Mr. Learmonth just referenced.

And we've had evidence from MHI that this was Mr. Wilson's RFI log "Revision: August 27, 2012."

And if we go to the next page, and – sorry, the third page – it says: "Contingency." And this is a request for information going back and forth between Nalcor and between Manitoba Hydro.

So in terms of a draft report being edited, would it surprise you that Nalcor and MHI are working on issues, trying to figure out what can and

cannot – what Manitoba Hydro can put in their report, and that something may be taken out of a draft once Manitoba Hydro are provided more information by Nalcor?

MR. KENNEDY: Again, I have no – I mean, this document – I’ve never seen this before. I have no idea the process that was being engaged in –

MR. FITZGERALD: Okay.

MR. KENNEDY: – but no, it wouldn’t surprise me.

MR. FITZGERALD: You have a draft document, there’s issues on it, requests for information is going back and forth, and something gets taken out of a draft before the final copy because MHI was satisfied.

MR. KENNEDY: Or it related to accuracy, Commissioner, or –

MR. FITZGERALD: Oh yea.

MR. KENNEDY: – there was something that wasn’t –

MR. FITZGERALD: Fair enough. (Inaudible) show an RFI process between (inaudible)

MR. KENNEDY: I wasn’t aware of that, no.

MR. FITZGERALD: Yeah, fair enough. Who is Brian Crawley?

MR. KENNEDY: Brian Crawley was working at Nalcor at the time. I don’t know his exact role.

MR. FITZGERALD: No? Well, he did work at government, didn’t he?

MR. KENNEDY: He worked in government at one point, yes.

MR. FITZGERALD: And what was his position?

MR. KENNEDY: He had been the chief of staff for Premier Williams.

MR. FITZGERALD: And that’s a political position, isn’t it?

MR. KENNEDY: Chief of staff is, yes.

MR. FITZGERALD: Yes, so it would be similar to Brian Taylor for Ms. Dunderdale.

MR. KENNEDY: Well it’s the same role, in terms of that they played, yeah.

MR. FITZGERALD: Do you know what position he had at Nalcor?

MR. KENNEDY: No, I don’t.

MR. FITZGERALD: You’ve seen his name on a number of emails?

MR. KENNEDY: Yes, I did, and he was present at a number of meetings, but I don’t know his exact title, Commissioner.

MR. FITZGERALD: He seems to be on the upper level? He’s not down in the mail room, is he?

MR. KENNEDY: He sent the emails, so obviously he’s, you know – he’s got a certain status, I just don’t know his – what his exact role is.

MR. FITZGERALD: P-00926, and I don’t need to bring it to you, but that was the political messaging on the deck from Nalcor talking about the House debate.

There was a House debate being set up, and it was put to you by Mr. Learmonth that, you know: You’re gonna control the House debate, your government. And I believe that the point Mr. Learmonth was trying to make was: Why is Nalcor being political? This doesn’t seem to be appropriate.

Do you recall this?

MR. KENNEDY: Yes I do, yeah.

MR. FITZGERALD: Do you have any knowledge whether or not the fact that the former chief of staff is now working for Nalcor? Is that some reason why this political messaging may have ended up in a Nalcor deck?

MR. KENNEDY: So Brian Crawley was a – was and is a – I presume he’s still reasonable. He was a very reasonable man. He was very calm, he was a guy who – one of the reasons he dealt with chief – he was chief of staff, he’d deal with various personalities of ministers –

MR. FITZGERALD: Mm-hmm.

MR. KENNEDY: – and he was our primary contact. I’ve never known Mr. Crawley to – would be doing something like that. That’s –

MR. FITZGERALD: And I –

MR. KENNEDY: – that’s not Mr. Crawley’s style.

MR. FITZGERALD: And I’m not suggesting for a second he used the word hit squad or anything like that. I’m just speaking generally about how the House debate appears on a Nalcor deck.

I’m just wondering –

MR. KENNEDY: No, Mr. Crawley had no involvement, Sir.

MR. FITZGERALD: Okay.

MR. KENNEDY: Again, to the best of my knowledge nor was there any reason for having –

MR. FITZGERALD: Okay.

MR. KENNEDY: – him to have any involvement.

MR. FITZGERALD: But there were a number of people that went from government to Nalcor over the time period of the project, wasn’t there?

I believe Chris Kieley might’ve left Natural Resources.

MR. KENNEDY: Yeah, Chris Kieley would’ve been – he was – that was before I got there, Sir, yeah.

MR. FITZGERALD: Okay.

So it’s possible, I guess, that some of the political messaging sort of got into this because you had people from government ending up in Nalcor.

MR. KENNEDY: Not from Mr. Crawley. That’s not –

MR. FITZGERALD: No, no, not Mr. Crawley. I’m just saying generally people at Nalcor who would’ve went over.

MR. KENNEDY: Chris Kieley, though, my understanding, Sir –

MR. FITZGERALD: Mmm.

MR. KENNEDY: – would have been an assistant deputy minister –

MR. FITZGERALD: Okay.

MR. KENNEDY: – at Natural Resources. He was not a political –

MR. FITZGERALD: What about the communications staff? Did any of them go from government to Nalcor?

MR. KENNEDY: Not that I’m aware of, Sir.

MR. FITZGERALD: Okay, fair enough.

MR. KENNEDY: I wouldn’t know that.

MR. FITZGERALD: I was just trying to flush that out, ’cause we haven’t heard from Mr. Crawley.

MR. KENNEDY: No I – that’s – I don’t know exactly, but I don’t think that he would’ve had involvement in that.

MR. FITZGERALD: Okay, thank you.

Mr. Simmons brought you to P-00077 earlier today to demonstrate to you that strategic risks were buried in page two hundred and something of a document.

Do you recall this?

MR. KENNEDY: I do, yes.

MR. FITZGERALD: Yes.

And your answer was: I would expect these things be brought to my attention, not be – not to be put forward like that.

That's your evidence, correct?

MR. KENNEDY: Yes, I did. And, Commissioner, I remember getting a little bit frustrated to that point, and Mr. Simmons was just simply asking me a question, so I remember it clearly, yeah.

MR. FITZGERALD: And your evidence is that you would expect Nalcor officials to bring any important information to your attention, true?

MR. KENNEDY: That's my evidence, Sir, yes.

MR. FITZGERALD: Yeah? And Robert Thompson said he would've expected to be advised of key variables. That was Mr. Thompson's evidence.

I would suggest that you had the same expectation, didn't you?

MR. KENNEDY: More than key variables. I – you know, I was prodding and poking. I wanted to know, so that I would've expected to be made aware of something, not to go to page 277 of a document filed with the PUB.

MR. FITZGERALD: Were you aware that Derrick Sturge gave evidence that – do you know who Derrick Sturge is?

MR. KENNEDY: I know Mr. Sturge works for Nalcor, and I think he's the vice-president of finance or something like that, yeah.

MR. FITZGERALD: He's the chief financial officer.

MR. KENNEDY: Yeah.

MR. FITZGERALD: Were you aware that he gave evidence that he was kept out of the loop?

MR. KENNEDY: I remember Mr. Sturge – Commissioner, I can't tell you any, you know – other than I do know on August 10, 2011, at the meeting in the Marystown Hotel, where I wrote

my notes on the little Cabinet paper document, that Mr. Sturge was present there.

MR. FITZGERALD: Mm-hmm.

MR. KENNEDY: I know that Mr. Sturge was present at other meetings. Now, exactly which meetings, Sir, I can't tell you.

MR. FITZGERALD: Okay.

MR. KENNEDY: Or how many.

MR. FITZGERALD: Did you follow any of the testimony of Mr. Bennett last week? Gilbert Bennett.

MR. KENNEDY: No, Sir, other than what I would've either read in the media or – actually, wait now –

MR. FITZGERALD: I guess what I'm getting to, Mr. Kennedy –

MR. KENNEDY: I did see a little bit, I think, yeah.

MR. FITZGERALD: Are you aware that he admitted to not telling Mr. Bown about the P1 schedule issue or the management reserve or the risks?

MR. KENNEDY: I would have been aware just from, I guess, from either the media or hearing it, yeah, or bring it to my – yeah. I didn't see that particular testimony, no.

MR. FITZGERALD: Would you agree with me it would be much more efficient if the chief financial officer was in the loop or if Mr. Bennett just told government what the strategic risks were and what the cost risks were as opposed to burying this in page 272 of an exhibit to the PUB?

MR. KENNEDY: I thought Mr. Sturge was involved, Commissioner. I don't – well, I mean, Mr. Bown will know –

MR. FITZGERALD: In terms of communicating.

MR. KENNEDY: Yeah.

MR. FITZGERALD: They could have called you and said here's what's going on, Mr. Kennedy.

MR. KENNEDY: I think that they – yeah, the way I put it to Mr. Simmons, even though I probably shouldn't have phrased it the way I did, was sort of common sense to me.

MR. FITZGERALD: Exactly.

I have one area left, Commissioner.

THE COMMISSIONER: Go ahead.

MR. FITZGERALD: P-01275 is exhibit 83 in volume 2, please.

Now, this is an email from you to you.

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

MR. FITZGERALD: Yeah. And below we have an email from Charles to you – Mr. Bown.

MR. KENNEDY: Yes.

MR. FITZGERALD: And we had a number of – if we can just scroll up a little so we can substance of the email.

Okay, right here.

We have a number of areas that Mr. Bown is reporting to you on.

MR. KENNEDY: That's right, yeah.

MR. FITZGERALD: MHI DG3, MHI draft report –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – Ziff, Dave's mining paper, Wade's report, environmental paper, rates and demand papers –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – export – “I asked Wes to contact Wood Mac to have them review Ziff again and to give us a letter of support.” And you wrote: “Charles to talk to” – somebody. I can't read your handwriting, Mr. Kennedy.

MR. KENNEDY: I think that's one of the individuals from –

MR. FITZGERALD: Wood Mackenzie, maybe?

MR. KENNEDY: – Wood Mackenzie, Dave Barrowman, yeah.

MR. FITZGERALD: Okay.

Now, would this be an example of how Mr. Bown would communicate –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – to you and brief you?

MR. KENNEDY: Yeah, and I think one of the – I remember this, 'cause one of my concerns was that WoodMac not feel compelled. This was not – you know, like, if they agreed or – 'cause we knew what their opinion was – if they were comfortable with that –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – to make sure that – you know, 'cause this – my – I was concerned that it in no way be seen like we have to do this or anything like that, so. This is the way Mr. Bown would – and then if you go up further, though, my understanding is that that's the email, September 23 –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – then you'll see a note at the top says: September 24, I met with Charles and Heather.

MR. FITZGERALD: Okay, and –

MR. KENNEDY: So it's more likely that my writing is put there on – I get the email and that the next day, when we have the meeting, my writing's there.

MR. FITZGERALD: Okay. All right. That makes perfect sense.

And I guess I just – this is a pretty comprehensive update, isn't it?

MR. KENNEDY: We're now getting ready, Sir, for these reports that we're trying to prepare. The things that I have within my control as minister, I'm trying to determine the status.

MR. FITZGERALD: Okay.

MR. KENNEDY: Certain things are beyond my control as minister, such as when, you know, Nalcor will provide certain things.

MR. FITZGERALD: Okay. Oh, I completely agree.

Exhibit P-01269, please.

THE COMMISSIONER: Tab 75, book 3.

MR. FITZGERALD: Once again, we have Jerome Kennedy, Jerome Kennedy, "Summary of WoodMac meeting" –

MR. KENNEDY: Yeah.

MR. FITZGERALD: – "in London."

MR. KENNEDY: Mm-hmm.

MR. FITZGERALD: And this was sent to the premier.

MR. KENNEDY: Yep.

MR. FITZGERALD: Premier's chief of staff, Robert Thompson, Ed Williams – who's Ed Williams?

MR. KENNEDY: Ed Williams was there at the time. He was a political advisor to the premier.

MR. FITZGERALD: Okay. Mr. Bown and Ms. Hammond. I believe Ms. Hammond was communications?

MR. KENNEDY: She was communications director at the time –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – yeah.

MR. FITZGERALD: And there's a report there with respect to the London meeting.

MR. KENNEDY: Yes, correct, yeah.

Now, my notes – this a summary. My notes are much more extensive. They may be attached to this or not. But my notes –

MR. FITZGERALD: No.

MR. KENNEDY: – are much more extensive. This is a summary that I'm sending to the premier so she'll know the extent –

MR. FITZGERALD: Okay.

MR. KENNEDY: – of what's happened.

MR. FITZGERALD: So in terms of the natural gas, LNG issue at the time, the premier was also being briefed on what was going on in terms of Wood Mackenzie and natural gas and Ziff?

MR. KENNEDY: Yeah. Just as Charles would brief me, I would brief the premier.

MR. FITZGERALD: Yeah.

MR. KENNEDY: That's the way that this worked.

MR. FITZGERALD: But –

MR. KENNEDY: Now, I mean, in writing – it wasn't always briefing in writing.

MR. FITZGERALD: Yeah. But you were both – were you both at this meeting in London, you and Mr. Bown?

MR. KENNEDY: Mr. Bown would've been with me, yeah.

MR. FITZGERALD: Oh yeah, yeah. So –

MR. KENNEDY: Yeah.

MR. FITZGERALD: So, yeah – so two of you –

MR. KENNEDY: Most certainly.

MR. FITZGERALD: Two of you were there?

MR. KENNEDY: Yeah.

MR. FITZGERALD: P-01276, please.

Justice, I'm sorry.

THE COMMISSIONER: That's okay. Tab 85.

MR. FITZGERALD: Tab 85, volume 2.

And we have another similar email: October 10, 2012. "Meeting with Wood Mac," Mr. Kennedy?

MR. KENNEDY: That's correct.

MR. FITZGERALD: And this time it's forwarded to or sent to the premier, the chief of staff, the communications person and Mr. Bown, correct?

MR. KENNEDY: Correct, yeah.

MR. FITZGERALD: And at the bottom of the email, last paragraph: "Wood Mac is willing to write a brief report verifying Ziff's analysis and outlining their own conclusions if" they want – "if we want them to do this."

MR. KENNEDY: Yeah.

MR. FITZGERALD: "They are also willing for any report they write to be made public. We will see what" comments – "what comes out of Thursday's call but Charles and I" – I is you, I take it?

MR. KENNEDY: Yeah.

MR. FITZGERALD: "agree that a supporting report from Wood Mac would be helpful and would further help to silence the critics and satisfy the public that natural gas is not a viable option to Muskrat Falls."

So that was your email.

MR. KENNEDY: Yeah. And I should say, Commissioner, there's nothing sinister about silencing the critics. Nothing silenced the critics.

MR. FITZGERALD: No, and I'm –

MR. KENNEDY: It was simply the – we're trying to satisfy is probably the better word.

MR. FITZGERALD: Yeah, and I'm not suggesting any sinister motives.

MR. KENNEDY: No, there's not.

MR. FITZGERALD: Mr. Learmonth asked you this morning – or was it this morning? I believe it was yesterday. Could have been this morning. A long time ago.

MR. KENNEDY: Would have been yesterday – Mr. Learmonth.

MR. FITZGERALD: In any event, he asked you about the fact that LNG, liquefied natural gas, did not appear in the Wood Mackenzie report. He was saying that it was gone, okay? He asked you that question. That went to you.

MR. KENNEDY: I'm not quite certain, Mr. Fitzgerald. He – there was discussion of the pipeline and liquefied natural gas.

MR. FITZGERALD: Yeah and there was edits to the Wood Mackenzie report and liquefied natural gas didn't appear. I believe that was the questioning that Mr. Learmonth was putting to you. Do you recall this?

MR. KENNEDY: Again I don't remember the exact details but it makes – it does resonate with me.

MR. FITZGERALD: Well I'll try to refresh your memory, because Mr. Bown is going to testify tomorrow and it will be his evidence at the time, the government did not want to deal with the issue of shipping LNG to shore. Keeping LNG in the report would overshadow Wood Mackenzie's positive comments on the pipeline. Does this ring a bell to you?

MR. KENNEDY: It doesn't ring a bell with me but it's certainly not –

MR. FITZGERALD: Inconceivable

MR. KENNEDY: No.

MR. FITZGERALD: No. And another reason why it was taken out – with your knowledge, by the way – is that public focus was on a pipeline and Dr. Bruneau. And removing LNG was a

political decision to focus the argument on the pipeline. Do you recall that?

MR. KENNEDY: I'm sorry, I can't say with my knowledge. You said, with my knowledge – I mean, when I met with Wood Mackenzie –

MR. FITZGERALD: Yeah.

MR. KENNEDY: – as I indicated on numerous occasions, my focus – we dealt with natural – with the pipeline and we dealt with liquefied natural gas. They were both options that were explored.

MR. FITZGERALD: No I – fair enough. But I'm just – and I'm putting to you to be fair to you, Mr. Bown's recollection of this is that the government knew and LNG was taken out because Wood Mackenzie – you wanted Wood Mackenzie to just focus on the pipeline, not LNG.

MR. KENNEDY: I don't remember that, Sir, I don't remember why, you know, the government – is he saying that I made that decision, someone else made that decision? I have no recollection of that. You know, I don't see why it would be done.

MR. FITZGERALD: Well, you were working hand in hand with Mr. Bown over meeting with WoodMac. You agree with me on that?

MR. KENNEDY: Yes I do.

MR. FITZGERALD: Yeah. And Mr. Bown knew your manner and how you were.

MR. KENNEDY: Yes.

MR. FITZGERALD: Yes. So what reason would Mr. Bown have to take LNG out of a report without your approval?

MR. KENNEDY: But there were other people involved here, Sir. You're saying without my approval –

MR. FITZGERALD: Okay, well the government –

MR. KENNEDY: – you know, this is –

MR. FITZGERALD: – sorry, Mr. Kennedy, the government's approval.

MR. KENNEDY: What I've said to you, I didn't know it was taken out. I have no recollection of that.

MR. FITZGERALD: Okay. Fair enough if you don't have a recollection of it. I was just telling you what Mr. Bown's recollection of that is, and he will give evidence on that, and I just wanted to make sure you were aware of that. I was wondering if you recall that.

MR. KENNEDY: No, I don't recall that, Sir.

MR. FITZGERALD: Okay, thank you very much.

MR. KENNEDY: But also, Sir – no, forget it.

MR. FITZGERALD: Thank you, Mr. Kennedy.

THE COMMISSIONER: Mr. Fitzgerald.

Okay. I think that's it for the day. It's been a long day. So I just want to try to get the lay of the land because I think, for Mr. Kennedy's sake, we need to get him out of here by noon tomorrow.

So Mr. Thompson – Mr. Coffey, with regard to Mr. Thompson, how long do you plan to be tomorrow?

MR. COFFEY: Commissioner, a half an hour or more.

THE COMMISSIONER: Pardon me?

MR. COFFEY: A half an hour, 45 minutes.

THE COMMISSIONER: Okay. 'Cause I may be cutting you all down to a size where you all know which time you're going to have tomorrow. So I've got a half an hour for you.

Ms. van Driel?

MS. VAN DRIEL: About 10 minutes, Commissioner.

THE COMMISSIONER: Mr. Hogan? Innu Nation's not here. Nunatsiavut. NunatuKavut?

MR. RYAN: Commissioner, I think I can do a half hour.

THE COMMISSIONER: Ekuanitshit's not here. Grand Riverkeepers?

MS. URQUHART: I expect to be about half an hour.

THE COMMISSIONER: Emera Inc.? Gone. Former Nalcor Board Members?

MR. GRIFFIN: I think about five, 10 minutes.

THE COMMISSIONER: Manitoba Hydro?

MS. VAN IDERSTINE: No questions.

THE COMMISSIONER: Okay. And Newfoundland Power?

MR. KELLY: Ten minutes tops.

THE COMMISSIONER: Okay. And Mr. Williams?

MR. T. WILLIAMS: I would think (inaudible).

THE COMMISSIONER: Okay. Let me add that up.

Well, that's 3½ hours. So maximum time tomorrow is half an hour for Mr. Coffey, for Mr. Hogan. Sorry to have to do this, but that's the way it has to be. NunatuKavut counsel 15 minutes max.

I got this totalled wrong. Sort of added on the 15 extra minutes for a few of them. It was 3½ hours. So I've got – so what I'm trying to do is get this organized for tomorrow.

So as I said, Mr. Thompson a half an hour max.

MS. O'BRIEN: Commissioner, (inaudible) you know I'm not sure we can (inaudible) 2 hours and 40 minutes on the (inaudible).

THE COMMISSIONER: All right. I took the longer one.

MS. O'BRIEN: And I got two – two hours and forty minutes (inaudible).

THE COMMISSIONER: Right and knowing the way lawyers work, I think I better take the long side.

So, half-hour max for Mr. Thompson; half-hour max for the Consumer Advocate; 15 minutes for the NunatuKavut Council; the Grand Riverkeepers, 20 minutes; Nalcor board members, 10 minutes; 10 minutes to Newfoundland Power; and 20 minutes to Mr. Williams.

I apologize for doing that but I think everybody needs to focus on exactly where we are.

Did I miss you, Ms. van Driel? Ten minutes for you as well.

MS. VAN DRIEL: Yeah.

THE COMMISSIONER: Yeah. So that will give us enough time to finish tomorrow. We're going to start at 9 o'clock tomorrow morning, and I am going to keep you to those times.

All right, good.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.