



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 52

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

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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: All right, just before we begin this morning, Mr. Coffey, I just want to address something. So, tomorrow – yesterday, rather, was the first time that I’ve had to basically impose time limits, which is something I was trying to avoid, and will continue to try to avoid if possible, as we move forward. But the problem with doing it the way we did yesterday – or the way I did it yesterday – is that unfortunately it shortchanges those that are later in the loop in the sense of who is asking questions, and that’s not going to be fair as we move forward.

So I have a feeling that for the next three witnesses – or at least two of the three witnesses – we may have a bit of a time crunch. And as a result of that, what I’ve done is I’ve said to Commission counsel or I’ve asked Commission counsel to try to take no more, and if possible, less than one-half of the allotted time for the witness to – or to ask your questions.

At some point in time during that lead testimony I think each of you should begin to think about how much time you may well need so that when the witness is finished with the Commission counsel, I’ll have – you know, I’ll have some sort of an idea as to what everybody’s expectations are. It will be at that time that I’ll look at it, and if it’s close enough and whatever, we’ll obviously do it without any time restrictions.

If I see a problem and we don’t have any slack time to make it up, then I’m going to need to look at trying to force you to concentrate your – or focus your questions in particular areas within an allotted period of time. It’s unfortunate, but that’s the way it has to be in order to maintain the schedule. Right now we have no slack in the schedule ’til Christmas and that’s the problem. And I really don’t want to sit weekends if we can avoid it. So, that’s that.

And in line with the whole idea of schedule, I’ve been asked now about three times this morning since I walked in about what we’re doing Friday morning, seeing we have an impending storm. So the first thing I’m going to tell you is that we’re not following the government protocol or anybody else’s protocol for the storm. We may well be sitting Friday, even if weather out there might be a bit nasty. I’ve never had an occasion in St. John’s yet where I cannot drive to work. And there’s many days that court has been closed that I’ve been at work waiting to start.

So I’m not going to be inclined to postpone the hearings, if at all possible. Now, I mean, it is – you know, obviously you have to be reasonable because we can’t have people out in the streets getting killed, but at the same time what I’m going to ask you to do is look at the – by 7 o’clock in the morning, if there’s going to be a postponement of the hearings, it will be on our website. So you go to “What’s New” on the website and you’ll see it there by 7 o’clock.

But don’t be surprised if government is closed, schools are closed and we’re still sitting, because if we can get here, we’re going to get here. So that’s all I just wanted to say this morning.

Mr. Kennedy, you remain under oath at this time and, Mr. Coffey, when you’re ready to proceed.

MR. COFFEY: Thank you, Commissioner.

Exhibit – Clerk – Madam Clerk – P-01069, please.

And let’s see. I don’t believe that’s in your binders.

Mr. Kennedy, if it’s on the screen in front of you – I believe you were shown this –

MR. KENNEDY: I was shown, yes.

MR. COFFEY: – in your examination-in-chief. It’s a 24-page-long document; it predates you as minister, October 26, 2010. You were asked some questions about it; in particular I believe something about CPW.

Madam Clerk, can we go to page 5, please? Mr. Kennedy, this is a rendition of – at DG2. And

the Charles in this context is Charles Bown; it was addressed to – of various Island revenue requirements for – Island supply options considered, Island revenue requirements, as I understand it, prepared by Nalcor this particular – these figures.

But if we could go to page 13, please. Go down – scroll down a bit, please.

Mr. Kennedy – just stop right there – you’ll notice down at the bottom of the page here there’s a table: Cumulative Present Worth, and there are various figures. There’s an asterisk to the right hand side – or a double asterisk – to the right-hand side of six of those figures. See that?

MR. KENNEDY: Yes I do, Sir.

MR. COFFEY: And you’ll note they’re calculated by DNR and they’re calculated by – yeah, by DNR in both cases.

If we go to page 10, please, and just scroll down a bit please. You’ll notice here Mr. Kennedy in the box Cumulative Present Worth, an asterisk calculated by DNR and you’ll notice that in the middle of the box there’s a – (inaudible) two figures for the period 2010 to 2041. Okay?

MR. KENNEDY: I see that, Sir.

MR. COFFEY: See those?

MR. KENNEDY: Yeah.

MR. COFFEY: So you were asked, I believe, about the expertise with – your understanding of expertise within your own department – that is Natural Resources – while you were minister. And this – the evidence reflects that this document was actually prepared by Natural Resources personnel for Charles Bown and for Robert Thompson. Mr. Thompson having been deputy minister before your time.

So, what I’m going to suggest to you was that during your tenure as minister, when CPWs were being performed they were being done by external organizations such as the PUB – or being done for the PUB during your time – and subsequently, by MHI.

MR. KENNEDY: Right, yes.

MR. COFFEY: Right? So you as minister never had occasion to inquire into the internal ability of your department –

MR. KENNEDY: That’s correct, yes.

MR. COFFEY: – to conduct CPW analysis.

MR. KENNEDY: That’s correct, yeah.

MR. COFFEY: So you wouldn’t have been aware of this? You –

MR. KENNEDY: No I wasn’t aware of that, Mr. Coffey.

MR. COFFEY: Okay, thank you.

Mr. Kennedy, yesterday, I believe – if not the day before – you referred to or characterized Nalcor’s timelines as artificial. You referred to them as artificial.

I’m going to ask you about that. In relation to that, your view of them being artificial, is that a view that you have come to since you left the ministry?

MR. KENNEDY: Yeah.

Part of the – I remember, Mr. Coffey, when I was in the ministry being told by Nalcor that we were going to get certain documents. And there’s three issues that come to my mind: We were going to get the DG3 numbers at a certain stage –

MR. COFFEY: Yes.

MR. KENNEDY: – they never showed.

We were going to – the Emera agreement was always on the verge of being signed.

The federal loan guarantee was always on the verge of being signed.

MR. COFFEY: Yes.

MR. KENNEDY: So while I was there, the time frames – I was certainly concerned with time frames – I had a concern that time frames were too optimistic –

MR. COFFEY: Yes.

MR. KENNEDY: – based on what I was seeing happening at the time.

MR. COFFEY: Yeah.

And as well, in relation to that, for example, timelines relating to, you know, excavation work. Like, certain timelines –

MR. KENNEDY: Yes.

MR. COFFEY: – would have to be met for other things to occur.

MR. KENNEDY: Yes.

MR. COFFEY: Like, not to lose a construction the construction season.

But while you were minister, did you actually see them – come to the judgment that these are artificial, or is that looking back on it?

MR. KENNEDY: No, I wouldn't have used the word – it wouldn't have been artificial at the time.

MR. COFFEY: At the time.

MR. KENNEDY: I remember being frustrated – I mean, I remember –

MR. COFFEY: Yes.

MR. KENNEDY: – having concerns.

Of course, Mr. Commissioner, as I said on numerous occasions, I, you know, all of us have had the opportunity – who have been involved in this – to reflect back and to, you know, think what we could have done differently or what happened at the time. So there is a certain element of hindsight involved, Mr. Coffey.

MR. COFFEY: Thank you.

Now, Mr. Kennedy – if you look, please, at Exhibit P-01106. Now, Mr. Kennedy –

THE COMMISSIONER: It's the one on the screen.

MR. KENNEDY: Okay, that's fine.

MR. COFFEY: It's on the screen, yes. Mr. Simmons may have referred you to this, but in any case, this is an email –

MR. KENNEDY: Yeah.

MR. COFFEY: – from Mr. Thompson to Dawn Dalley, Don Burrage, Tom O'Reilly. And it involves a letter to the PUB. And in this context – and of course this all relates to the reference question, which is Exhibit P-00038, the PUB reference question.

Now, in the context here, the – joint – I'll refer to it as a joint effort or a collaborative effort between Nalcor and government personnel to draft a letter to the PUB. Okay? On January 11, 2012.

MR. KENNEDY: (Inaudible.)

MR. COFFEY: In terms of the propriety of that collaboration, I'm going to suggest to you that the involvement and the perception at the time (inaudible) whatever – looking back six years or more, seven years now – whatever in hindsight one might think – at the time, Mr. Burrage was the deputy minister of Justice, wasn't he?

MR. KENNEDY: Correct, yes.

MR. COFFEY: Tom O'Reilly had been hired at your instance, at your suggestion, as –

MR. KENNEDY: Correct, Sir.

MR. COFFEY: – a very senior and experienced litigator for this province?

MR. KENNEDY: Correct.

MR. COFFEY: And the idea that – certainly, for civil service personnel such as Mr. Thompson – I'm going to suggest to you the idea that there might be some impropriety involved in this collaborative effort – bearing in mind, who else was involved in it with you with no – with no concern – I'm gonna suggest to you – would probably – they would probably infer that there was nothing wrong with it.

MR. KENNEDY: Mr. Coffey, my notes of January 10th, they're – I think they're redacted actually, Commissioner, but I remember them –

my notes of January 10th indicate that there was a meeting, where the comments of the chair of the PUB were discussed.

MR. COFFEY: Yes.

MR. KENNEDY: Both Mr. Burrage – or Justice Burrage – and Mr. O'Reilly had outlined certain concerns as to how this should be dealt with, Commissioner, so there was going to be a letter written. So there was – issues that had to be addressed – and again, specifically, how far or what the letter could say.

So I don't see in the context of what was going on at the time, Mr. Coffey, I don't see any impropriety in there. We had to – with the two gentleman we had involved, Sir, I don't – I have no concern with impropriety.

MR. COFFEY: And if we could then go to please – Exhibit P-00810. Well actually, first of all please, P-01524 – and in 01524, page 41, please.

THE COMMISSIONER: That's at tab 144?

UNIDENTIFIED MALE SPEAKER: Yeah – oh sorry.

MR. KENNEDY: Tab 144?

THE COMMISSIONER: Yeah, book 4.

MR. KENNEDY: Book 4? Yes, I – okay, and that's page 41?

MR. COFFEY: Yes, these are –

MR. KENNEDY: No, it's not the exhibit. I'm familiar with these notes –

MR. COFFEY: Okay.

MR. KENNEDY: – I haven't (inaudible) seen it somewhat, but I am familiar with it.

MR. COFFEY: Yeah, and this is I take it, your notes – October 30, 2011 –

MR. KENNEDY: Oh, yes, sorry. I know what this is.

MR. COFFEY: – info needed.

MR. KENNEDY: Yeah.

MR. COFFEY: And if we could go please to number – go down the page, please – keep going please. I'm sorry, go back up please? Just stop – oh yes, it's note number 5.

Would you read that out please, Mr. Kennedy?

MR. KENNEDY: Yes, these are – to put this in context Mr. Coffey, these are notes that I made by myself I think. Is the date of this October –?

MR. COFFEY: October 30, 2011, which would be two or three days after you were named minister.

MR. KENNEDY: So I've already read a couple of reports, and I'm trying to define for myself now the information that I need. So this is essentially a note to myself where I'm outlining a checklist.

And what number 5 says Sir, is, "Cost of developing similar projects in North America or elsewhere in the world, including cost of overruns."

MR. COFFEY: Okay.

And if we could go, please, to Exhibit P-00810.

And scroll down the page, please. And keep going, thank you.

Right there, thank you, Madam Clerk.

This is an email, Mr. Kennedy, from Charles Bown, October 31, 7:34 p.m. to Mr. Sturge. Subject is "Costs."

"Derrick, Have you done any research into the history of cost overruns on hydro projects in north america? Charles".

If we can scroll –

MR. KENNEDY: I haven't seen that before, but it makes sense to me.

MR. COFFEY: Pardon me – and scroll up, please.

And then there was a response from Mr. Sturge to Mr. Bown that same day – same evening – saying “I have not, but have copied Paul Harrington on this email – perhaps he or SNC/Westney might have something.”

Scroll up, please.

And then Mr. Harrington weighs in in response to Mr. Bown: “We do not have any analysis on hydro project overruns.”

So you obviously posed the question to yourself –

MR. KENNEDY: Yes.

MR. COFFEY: – on October 30. Mr. Bown inquired –

MR. KENNEDY: And then I would have –

MR. COFFEY: – on the 31st.

MR. KENNEDY: As Mr. Fitzgerald pointed out yesterday, then the natural sequence of events – I would go out and say Charles, like, can you find this out for me? And that would lead to that email. That’s my guess, Sir, in terms of how –

MR. COFFEY: How this transpired.

MR. KENNEDY: I hadn’t seen that before, but it makes sense.

MR. COFFEY: And do you recall whether there was any – anything further – information forthcoming to you in relation to that?

MR. KENNEDY: I don’t remember receiving any further information, Mr. Coffey, no.

MR. COFFEY: Now, Mr. Kennedy, yesterday, I believe – perhaps the day before – you used phrases such as, you know, the numbers, the cost estimates, and the schedule estimate that you expected to receive from Nalcor officials. You expected it to be like a real or concrete or – you –

MR. KENNEDY: Yeah.

MR. COFFEY: – used words like that.

And you at times refer to that in a context of – because if there were – you know, if the costs were actually gonna be significantly higher than the ones you understood to be the case –

MR. KENNEDY: Yes.

MR. COFFEY: – which translated into a 14.3-cent-per-kilowatt-hour rate – you recall that?

MR. KENNEDY: Yes, I do, Sir.

MR. COFFEY: That your understanding was, was that if the rates were gonna be higher than that, that there might be mitigation – like, concrete mitigation –

MR. KENNEDY: Yes.

MR. COFFEY: – efforts or plans put in place.

MR. KENNEDY: Yeah.

MR. COFFEY: Now, in relation to those rate mitigation or potential rate mitigation – they would involve, I’m gonna suggest, using revenue from excess – sales of excess power?

MR. KENNEDY: That’s the first obvious one, Mr. Coffey, certainly.

MR. COFFEY: Another might be the – adjusting internal rate of return?

MR. KENNEDY: The internal rate of return, Sir, I accept it, that, when it was there, it was what the PUB had, I think, the other utility companies had, but it was never – I never knew, Commissioner, whether or not that 8.5 per cent was actually required to – for debt servicing, operation and maintenance and all of that.

So whether or not – if there was any excess money, Mr. Coffey, I agree with you that that should go to mitigate rates.

MR. COFFEY: And I take it, the point you were making to the Commissioner, though, in relation to that is that based on the projected rates, based on the \$6.2-billion capex –

MR. KENNEDY: Yes.

MR. COFFEY: – the projected rates of – I’ll use 14.3 cents, at one point – comparing that to the projected rate for the Isolated Island, that it was thought that at that, bearing in mind how things might – it was expected to unfold, that there wouldn’t necessarily be a need for rate mitigation at that level.

MR. KENNEDY: Not at that level, that’s correct.

MR. COFFEY: At that level. But your message to the Commissioner is it was on your mind that if the rates were actually gonna be higher than that, those projections, then concrete measures would probably have to be taken.

MR. KENNEDY: Yeah, I think we started out, Commissioner, it was 14.3 cents at the 5 billion. My recollection, I don’t know if I’ve seen –

MR. COFFEY: Yeah.

MR. KENNEDY: – this anywhere, 16.4 cents at six point –

MR. COFFEY: 6.2.

MR. KENNEDY: – 6.2 billion.

MR. COFFEY: Yeah.

MR. KENNEDY: So what – the point I was making yesterday, if the cost went up, if there were overruns identified or – excuse, if –

MR. COFFEY: Yes.

MR. KENNEDY: – there were costs identified so that it went up, then it didn’t mean that Muskrat Falls wouldn’t be sanctioned, Commissioner. I wasn’t saying that. What I’m saying that over – there would have to be concrete mitigation measures in my mind to reduce rates so that it stayed within the realm of what we were looking at when we began –

MR. COFFEY: Yeah.

MR. KENNEDY: – the project.

MR. COFFEY: A certain range for rates of dollars – of cents per kilowatt hour, within a certain range.

MR. KENNEDY: Yes.

MR. COFFEY: Yeah, okay.

And you told Mr. Simmons, I noted, you were underestimating the influence Ed Martin and officials at Nalcor had.

MR. KENNEDY: Yeah.

MR. COFFEY: I’m gonna ask you, ’cause no one else has, influence with whom?

MR. KENNEDY: Yeah, I guess that’s a – I didn’t mean that, Sir, Commissioner, in any sinister way, it was just that these people were – Ed Martin and Gilbert Bennett and their teams were very confident in what they were doing. So their confidence translated into a degree of trust or reliance, really, from government officials, so that when they came forward, and I – the best example, Mr. Coffey, and I know you only got limited time, so I’m not trying to take away your time.

I go to New York. They tell me there’s no markets for large blocks of hydro energy. I come back; I meet with Ed Martin right away. I alert everyone. Mr. Martin explains it to me, and at that point I – you know, I’m not going back and questioning him again. We go back to New York and have the discussion.

So it was not meant to be anything wrong with what they were doing. It’s just that they were confident, they were believable and they had – we believed they were –

MR. COFFEY: They had influence.

MR. KENNEDY: They had, yeah, influence in just a regular way. Nothing nefarious or sinister.

MR. COFFEY: Now, in relation to that, I’m gonna – a topic I’m going to briefly canvass with you. Did you ever do any research as to the public perception in the mid-1990s and what happened with the government of Clyde Wells and the EPCA, 1994?

MR. KENNEDY: I was familiar with it. I don’t remember doing any research as such.

MR. COFFEY: Okay. Did you understand that there was a significant effort to privatize hydro by Mr. Wells?

MR. KENNEDY: I remember, yeah.

MR. COFFEY: Or a formal effort. Came to the House of Assembly. That the EPCA in 1994 was part of that effort?

MR. KENNEDY: I didn't know that, but that makes sense, Sir, yeah.

MR. COFFEY: And that the privatization bill did not come to a vote, but the EPCA, 1994 did?

MR. KENNEDY: Again, Mr. Coffey, I didn't know that but it makes sense.

MR. COFFEY: Okay. And that Newfoundland and Labrador Hydro was perceived publicly at the time – in terms of its status as a Crown corporation – was so significant, so well thought of in public that then-premier Wells had to back down from a privatization effort. Are you aware of that?

MR. KENNEDY: Yeah, I would have been aware in a general way. I was pretty busy with what I was doing in those days, but I would have been – I didn't really follow politics that close, but I would have been aware in a general way, Sir. I was aware of some of the people who were opposing the privatization for example.

MR. COFFEY: And the point I raise – the reason I raise it in the context of influence is we've heard various witnesses, particularly long-time Hydro personnel, who refer to Nalcor and Hydro interchangeably. Even here, now, even in 2018, they're perceived as, in their world, the same, okay?

So that – did you ever have any sense that Nalcor inherited the public goodwill that Hydro had – existed in the 90s and presumably continued on?

MR. KENNEDY: I don't know. I have no –

MR. COFFEY: No sense of that? Okay.

MR. KENNEDY: – no sense of that, Sir, other than Nalcor was based to a certain extent,

Commissioner – I don't know if they – on the Statoil model, which had resulted in significant –

MR. COFFEY: Yeah. That's Nalcor itself.

MR. KENNEDY: Yeah.

MR. COFFEY: But –

MR. KENNEDY: They were seen as one a lot of the times, yeah.

MR. COFFEY: Did you do any inquiry into the origin of section – what is now section 5.2 of the EPCA, which was enacted by the Tobin government under – Roger Grimes was the Natural Resources minister in 1999. Did you do any research into that?

MR. KENNEDY: I know that during the House of Assembly debates, Mr. Coffey – and if you look at my index to my notes in the House of Assembly, there's a reference to the Grimes deal. So I would've done some reading in the EPC –

MR. COFFEY: No, that was the deal on – I'm not talking about the deal –

MR. KENNEDY: Okay, Sir.

MR. COFFEY: – on the Lower Churchill. I'm talking about –

MR. KENNEDY: The EPCA, itself.

MR. COFFEY: – the EPCA of 1994 –

MR. KENNEDY: I would've been briefed on it, Sir, at some point.

MR. COFFEY: Okay. What I'm getting at – 5.2 is the power – the exemption power for the Cabinet.

MR. KENNEDY: I knew that, Sir, yes.

MR. COFFEY: You knew that. Did you ever do any – make any inquiries into the origin of that? As to why that was done? What the explanation by Mr. Grimes in December of 1999 –

MR. KENNEDY: I think –

MR. COFFEY: – to the House was?

MR. KENNEDY: I think, Commissioner – again, I could be wrong – I think I’ve read *Hansard* at some point –

MR. COFFEY: Yes.

MR. KENNEDY: – as – ‘cause I was trying to understand – but I think I did address that issue in the House of Assembly. And I read *Hansard* at some point, but I can’t remember exactly what was in it, Mr. Coffey, but there – I don’t know – but one of Mr. Budden’s clients was mentioned at the time. I’m not sure.

MR. COFFEY: Well, in relation to that – for anybody who’s interested – December 9, 10 and 13 of 1999, Mr. Grimes, who sponsored that amendment – section 5.2 – he spoke in the House of Assembly on it, and he explained the rationale for it and he refers to it as reversing the effect of the 1994 amendments.

MR. KENNEDY: Okay.

MR. COFFEY: But that’s all spelled out there, I’m not gonna take you through it.

Were you aware that that 1999 amendment occurred without any coverage by the then, Telegram?

MR. KENNEDY: No, I wouldn’t have been aware –

MR. COFFEY: No – the fact that this was being taken away from – through Cabinet exemption orders, the possibility of PUB review under the 1994 legislation, and it occurred and there was no reporting on it –

MR. KENNEDY: No, I (inaudible) – no.

MR. COFFEY: – in December of ’99. No, okay.

MR. KENNEDY: I will tell you, Mr. Coffey, one of the reasons we were out in public – Commissioner, one of the reasons we were out in public so much, because in the past there had been instances where there hadn’t been

significant – or there hadn’t been discussions, and I particularly refer to the Upper Churchill –

MR. COFFEY: Oh, yes.

MR. KENNEDY: – (inaudible).

MR. COFFEY: Yeah, and it is instructive, isn’t it, Mr. Kennedy, to go back and look at what happened then.

MR. KENNEDY: Well, I mean, my understanding – my recollection, Sir, and this might’ve been in the Jason Churchill or one of the articles – at the time was that there was no debate in the House of Assembly. In fact, in the Smallwood government, I think there were only one or two people knew that the deal was actually being signed. At least that was the – I don’t know if I’m right on that, Mr. Coffey – but that’s my recollection.

MR. COFFEY: Okay, now if we could please – Mr. Kennedy, you were asked – in relation to – could – please bring up, please, Exhibit P-01525, which is in tab 145.

MR. KENNEDY: (Inaudible) waiting (inaudible) on the screen, Sir.

MR. COFFEY: And –

MR. KENNEDY: Yes, I remember that.

MR. COFFEY: – this is your notes.

MR. KENNEDY: Yeah.

MR. COFFEY: And Mr. Kennedy, has anyone asked you to transcribe your notes?

MR. KENNEDY: No. Well, actually, no – that’s not correct. Peter Ralph and the department, on behalf of government, sent me a bunch of notes that he couldn’t read, and myself and Peter had a conversation where I translated them.

MR. COFFEY: You translated them, okay. Thank you.

So you are available if –

MR. KENNEDY: Sure, anytime.

MR. COFFEY: – the proper channels to translate them. Thank you.

If we could go to page 19, please.

Now, Mr. Kennedy, this is –

MR. KENNEDY: Yeah.

MR. COFFEY: – notes – your notes of October 2, 2012. This is a page from a slide deck: “Cost Estimate Change Since DG2.”

MR. KENNEDY: Yes, that’s correct.

MR. COFFEY: And you got various notes.

MR. KENNEDY: Yeah.

MR. COFFEY: I presume this particular slide would’ve been provided by Nalcor?

MR. KENNEDY: Yes, this looks to me, Sir – I remember this October 2 meeting, and I think we were – we had a meeting on – the DG3 alignment numbers were August 3. September 19 we had a meeting, and this is my recollection of the second meeting now dealing with the DG3 numbers. There’s another meeting October 18, and then the –

MR. COFFEY: (Inaudible.)

MR. KENNEDY: – (inaudible) October 30.

MR. COFFEY: And if we could just scroll – just a little bit – (inaudible) okay. There’s – over here to the left-hand side –

MR. KENNEDY: Yeah.

MR. COFFEY: – top left-hand side, you said, “includes 15% contingency” and escalation?

MR. KENNEDY: Yeah, I spelled escalation wrong. It looks like –

MR. COFFEY: Yeah.

MR. KENNEDY: – to me, I could be – yeah.

MR. COFFEY: You left out the –

MR. KENNEDY: That is escalation.

MR. COFFEY: Escalation.

MR. KENNEDY: (Inaudible) it is, yeah.

MR. COFFEY: And then if we could go over to the right-hand side; if you scroll down – oh, thank you.

MR. KENNEDY: Yeah.

MR. COFFEY: “9%” –

MR. KENNEDY: Yeah.

MR. COFFEY: – and then there’s a “degree of certainty” –

MR. KENNEDY: Yeah, I remember that number. I thought it – I said to someone yesterday, I thought it was 750, but I remember that number, and –

MR. COFFEY: Seven-hundred and –

MR. KENNEDY: – the 730 –

MR. COFFEY: – thirty million.

MR. KENNEDY: Yeah, that’s 730 and the 9 per cent is right above that.

MR. COFFEY: And if we could go down, please, a little bit. Thank you –

MR. KENNEDY: Just – if you just go up – excuse me, Mr. Coffey –

MR. COFFEY: Oh, go ahead.

MR. KENNEDY: – just go up a little bit, there’s an interesting – is 6.2 billion – Commissioner – really 6.2 billion?

MR. COFFEY: Yeah. What certainty –

MR. KENNEDY: And “what degree of certainty?”

MR. COFFEY: (Inaudible) certainty.

MR. KENNEDY: Yeah.

MR. COFFEY: Exactly.

And then you – go down please, and then it's "Estimate Contingency & Escalation Allowance" –

MR. KENNEDY: Correct.

MR. COFFEY: – is the 730.

MR. KENNEDY: Yeah.

MR. COFFEY: Now, if we look across at all of those categories on the bottom of the page – "DG3 Estimate Incl. Estimate Contingency & Escalation" – and we can read all the way across, okay?

MR. KENNEDY: Yeah, okay.

MR. COFFEY: They're blown up. You won't find anything about strategic risk, will we?

MR. KENNEDY: I never heard the term, Sir.

MR. COFFEY: Or anything even similar to that?

MR. KENNEDY: Never heard the term.

That was one of the points –

MR. COFFEY: Yeah.

MR. KENNEDY: – I was making, Mr. Coffey, is that the numbers – everything was broken down in such a way, Commissioner, that, you know, this is why there's been an increase in numbers; this is why we have the certainty that we can tell you 6.2; this is why the 9 per cent will work.

MR. COFFEY: And there was nothing that would've prevented Nalcor from putting a footnote on this particular deck, for example, pointing out that strategic risk amount is being, for whatever reason – such as they did apparently in DG2 in their filing with the PUB – Mr. Simmons took you to that, remember –

MR. KENNEDY: Yes, he did, I remember.

MR. COFFEY: – he took you to that, right? That kind of –

MR. KENNEDY: That page 270 –

MR. COFFEY: – page 200-and-some-odd –

MR. KENNEDY: – 273 or –

MR. COFFEY: – of 200-and-some-odd pages, yes.

But there was nothing to prevent Nalcor for having put, for example, there – off to the side or, you know, as a footnote somewhere in this – to bring to the reader's attention that there is this amount quantified and we have left it out for the following reasons.

MR. KENNEDY: That's correct, Sir.

MR. COFFEY: Because they have everything else there in fair detail don't they?

MR. KENNEDY: They do, yes.

In fact, by October 18 we're breaking down (inaudible) –

MR. COFFEY: And –

MR. KENNEDY: – Commissioner, breaking down the cost of steal, cost of –

MR. COFFEY: And here's where I'm going – thank you very much, Mr. Kennedy.

If we could go to, please, page 22 of this Exhibit?

MR. KENNEDY: Yeah, this is –

MR. COFFEY: You –

MR. KENNEDY: – the meeting – yeah.

MR. COFFEY: – yeah. And you remarked on this, at one point, in effect suggesting that you were – you had yet – not yet been brought to this page in your notes –

MR. KENNEDY: Yes.

MR. COFFEY: – okay?

Well, if you could just take, please, a minute or two and take the Commissioner down through this.

MR. KENNEDY: Okay.

MR. COFFEY: What was going on here?

MR. KENNEDY: Yeah. I – there's – Commissioner, on October 18 – so October 2, we've had that meeting –

MR. COFFEY: Yeah.

MR. KENNEDY: – that you've seen there. There could be other –

MR. COFFEY: Notes you've taken are on October 2.

MR. KENNEDY: Yeah, there could be other notes Commissioner. I'd gone to New York in-between, so now I'm coming back. So I'm meeting with Mr. Martin. I don't know if Mr. Bown was present, I haven't noted.

Commissioner, "Broken cost increases into two categories on the generating station." One, more concrete and steel; change gates – 267. Which I'm assuming is 267 million.

"Why more concrete & steel? DG2 vs. 2011.

"(1) after DG2 lot more numerical modelling & engineering & design; unit 1 and part of unit 2 – flow wasn't going straight in. Lose efficiency/lose electricity; detail modelling – didn't engage in at DG2." That's 15 per cent of the increase.

MR. COFFEY: Keep going.

MR. KENNEDY: Okay.

Number two, the intake structure – and I don't necessarily understand, I'm writing down what I'm being told – the intake structure, there's more water coming. The rock quality – had to go deeper into the rock. We're raising the centre of gravity. We need more – I can't see that on the screen, Sir, we need more something or other – deeper and more – Okay – yeah, I still can't read it – deeper and more concrete, increased stability at 7 per cent, the increase.

Number 3, Commissioner: erosion of rock base of bed, integrity of the structure, added concrete, increase the integrity of the structure during the

main dam construction. I think there's 5 per cent on that.

Now, this would be, Commissioner, the way this note reads, this is my question, why not done at DG2? The answer appears to be have to bring in the specialists, we don't do that at DG2. The things that you do after, the normal process after DG2 decision.

MR. COFFEY: That was Mr. Martin's (inaudible).

MR. KENNEDY: These were Mr. Martin explaining to me what's going on, yes, why the numbers have increase, yeah.

MR. COFFEY: Keep going.

MR. KENNEDY: Okay.

DG2 – and this is what, again, Mr. Martin would be explaining, which was my understanding. At DG2 he wanted to select the preferred alternative, did not want detailed construction costs.

The next number 2, I don't why, I haven't heard of number 2, Commissioner, but: changed gates, up and down versus out and in, Commissioner. I mean, there's no way I – this had to be told to me. I'm writing down what I'm being told. Concerns about the amount of – it could be debris and ice.

MR. COFFEY: Yes, yeah.

MR. KENNEDY: Vertical up and down versus –

MR. COFFEY: Radial.

MR. KENNEDY: – radial out and in – I couldn't, I don't even know what it means – 7 to 10 per cent.

More reliability and less prone to ice buildup. In bracket, in high – in capital letter – reliability, because that's a key word for me. The radial – it appears to be radial gates were considered feasible at the time. More detailed engineering, Lobstick gates were vertical – so they changed the gates.

Now, I'm going down, and this is Mr. Martin telling me: This is a good example of why Nalcor was spending money up-front. You invest 5 per cent of your total capital and decide not to go is accepted as the best practices in the industry.

MR. COFFEY: Keep going.

MR. KENNEDY: I, well, okay.

MR. COFFEY: Oh, sorry.

MR. KENNEDY: Now we're into transmission. I knew the issue of transmission. My note says 481 million. No detailed routed routing. Narrow 2 kilometres.

Again, Mr. Commissioner, none of this would have meant anything to me, I'm writing down what I'm being told: Ice loading and wind loading stations in addition to historical loading. Had to backup, I think that says backup the towers. Steel legs were bigger, expand the base. Bigger towers.

DG2, 1,100 kilometres, 3,700 towers. Cost per kilometre of line, benchmark numbers.

The size of the tower has changed, Mr. Martin's explained. There's more steel, there's a bigger tower, there's insulation costs, there's labour, ice and wind loading detail, the weather date, the voltage changed from 320 to 350. Certain isolated areas/section beefed up again. Weather – I think that says weather date or something – weather date/voltage, 65 to 70 per cent, 20 million.

Now I've got DG2 versus DG3. What was missed in DG2? Wouldn't do engineering work at DG2. Know generally where you're going but detailed route not determined, 'cause we're talking about the transmission line at DG2. Once you know the route, the more specific.

MR. COFFEY: Yes.

MR. KENNEDY: Now I've got 176 million for escalation. Changing them –

UNIDENTIFIED MALE SPEAKER: Sorry to interrupt. I just (inaudible) – we don't have time

to talk to everyone this morning and we're three hours behind.

THE COMMISSIONER: We're –

UNIDENTIFIED MALE SPEAKER:
(inaudible) Mr. Coffey (inaudible) –

MR. COFFEY: Well – we're behind.

THE COMMISSIONER: You're past 30 minutes.

MR. COFFEY: Okay. If I'm passing

THE COMMISSIONER: He's trying to answer the question. Let's just get to the point of this –

MR. COFFEY: Okay. The point being this and, if I could, and certainly for my usage if not for the Commission's if we could have that translated. Okay? In a sense of that you haven't already done for the record.

UNIDENTIFIED MALE SPEAKER: Okay.

MR. COFFEY: And equally so pages 35 to 36 of this particular exhibit – which are your October 30, 2012 notes.

My point – the question relating to all this is – this is – in all of that – in all of that detail – Mr. Martin never talked about strategic risk or management reserve or adding anything other than what's there.

MR. KENNEDY: That's correct, Sir.

MR. COFFEY: And based upon that level of detail you were comfortable.

MR. KENNEDY: Yes, I was. Yeah.

MR. COFFEY: Overall. One final question. Might – you were asked about Tom Clift's email to Robert Thompson in January of, I believe, 2012. And you were asked about, well, not having it brought to your attention. I'm going to suggest to you that perhaps Mr. Thompson, who was then clerk, might have brought that to the premier's attention.

MR. KENNEDY: That would be – knowing Mr. Thompson like I do, Sir, he would have brought to someone’s attention.

MR. COFFEY: Thank you. Thank you, Commissioner.

THE COMMISSIONER: Okay. Thank you. All right. Todd Stanley? Terry Paddon?

MS. VAN DRIEL: Good Morning, Mr. Kennedy.

My name is Gerlinde van Driel. I represent Todd Stanley and Terry Paddon. I just have a couple of questions for – won’t be long.

A question about – I understand, from previous evidence, that Mr. Marshall was Minister of Finance from December ’06 until October ’08.

MR. KENNEDY: Correct.

MS. VAN DRIEL: Then you became Minister of Finance in October ’08 until October ’09.

MR. KENNEDY: Sounds correct.

MS. VAN DRIEL: And then Mr. Marshall again was Minister of Finance from October ’09 until June 2012. Just to give it some time –

MR. KENNEDY: We kept getting traded.

MS. VAN DRIEL: - time perspective. Yes, of course.

Just a question about the role of the Department of Finance.

We have evidence from Mr. Marshall that the way he saw – he understood the role of the Department of Finance to be – is that it finances government programs. It funds government departments. In particular, there are some key departments like Health –

MR. KENNEDY: Yes.

MS. VAN DRIEL: – and you were Minister of Health at some point, Education – they need a new hospital or new school, they come to the Department of Finance for funding.

They come to the Department of Finance for funding after they have done all of the legwork, as it was called, all of the engineering work, and then they come to the Department of Finance for funding. Then there’s a process in place to see what money there is. Would you generally –

MR. KENNEDY: That – seem like –

MS. VAN DRIEL: – agree with that?

MR. KENNEDY: Yeah, generally agree with that.

MS. VAN DRIEL: Yeah.

And Mr. Marshall also said that basically, Nalcor operated in a similar fashion. Nalcor was retained, essentially, by government to implement the Energy Plan of 2007. Nalcor was the one that was going to do all the cost estimates, all the details involving that, the engineering work that was involved, the risk analysis that that would have entailed, as we have heard a lot of evidence about. And the government was relying on that information.

Would have any reason to disagree with that?

MR. KENNEDY: None at all.

MS. VAN DRIEL: The Department of Finance, in all of this, does not do cost estimates. They don’t do the engineering work. As we have heard, they are not equipped to do that. They don’t have the capabilities to do that. As Mr. Paddon said: They are a department of accountants, not engineers.

Would you have any reason to disagree with that?

MR. KENNEDY: No I don’t, no.

MS. VAN DRIEL: So my question to you then is – and maybe I misunderstood, so I’d like you to clarify that – that in an answer to Mr. Learmonth on Monday, I think it was, that you were surprised that the Department of Finance did not do a detailed cost analysis.

MR. KENNEDY: Yeah, I – I don’t remember the exact question, but I think the – perhaps more of a review. I was always aware that the

Department of Finance wouldn't be engaged in the kind of things you're talking about, but I thought the way Mr. Learmonth was putting the question to me – and perhaps I misunderstood – was that was I surprised that there was no review done of the numbers that were brought in by Nalcor.

MS. VAN DRIEL: Yeah.

MR. KENNEDY: That could be reviewed by the Department of Finance.

MS. VAN DRIEL: Yeah. But, the evidence has been so far that they simply don't have the capabilities to do so.

MR. KENNEDY: Well, there were certain – there was a department – we had a Statistics and Economics branch with some very good people who could apply some of the economic principles.

MS. VAN DRIEL: And they did.

MR. KENNEDY: Yeah, okay.

MS. VAN DRIEL: I mean, apparently they did that. They took the output from Nalcor when they were putting the numbers in, took the output –

MR. KENNEDY: Yeah, that's what –

MS. VAN DRIEL: – and –

MR. KENNEDY: – I would've – that's what I meant.

MS. VAN DRIEL: – and that's what you meant.

MR. KENNEDY: Yeah, sure.

MS. VAN DRIEL: Okay. Fair enough.

MR. KENNEDY: I wouldn't have meant that the engineering, for example – the way it would work, Ms. Van Driel, they'd come to us with numbers. The Department of Finance, then, analyses numbers as best we can, then there's a budgetary process.

In the budgetary process, well, how much money do we have, how do we do this –?

MS. VAN DRIEL: Right.

MR. KENNEDY: – so, yeah.

MS. VAN DRIEL: Yeah, okay, fair enough.

MR. KENNEDY: It would be a review process.

MS. VAN DRIEL: Right, thank you.

And then, I have a question on something that was said by Mr. Gilbert Bennett, and I'm paraphrasing his evidence now a little bit. He did say that – and again, we've heard a lot about strategic risk, you've heard a lot about strategic risks, and he said that strategic risk – and this was in the context of this 487 or \$497 million – he said that is something that is to be known by the owner, and this was in the context that his own project management team had no clue about strategic risk, apparently, and the owner in this case, of course, would've been government.

So the question is, was to him, well why was that not disclosed to government? And he said that at sanction, because he had also said that at sanction, government had all of the information, had all of the absolutely necessary information, and that government understood all of the key risks.

So, and then he said that those risks were discussed with government, and I asked him whether he discussed them with government, he said: No, he would not do that – that was Mr. Martin. And he said, basically forget about the strategic risk of \$497 million; the key risks that were discussed with government were many times beyond that figure, and they were discussed with government.

Now, we've heard you say a number of times, we've seen your notes, in October of 2012 Mr. Martin sat down with you, and your notes indicate, no, Mr. Gilbert was there, and Mr. Gilbert said he wasn't there.

What did you understand about those key risks that were discussed with you?

MR. KENNEDY: Yeah, sure.

Commissioner, as I've indicated on numerous occasions, the question for us, and was almost, to a certain degree, in one respect mathematical. Is it the least-cost option? In order to determine the least-cost option, we had to have the real numbers. So you'll see from the note that Mr. Coffey just referred to, it's like I'm saying, what's the degree of certainty, 9 per cent contingency.

Call it what you like, Commissioner. What we were looking at, what is the real cost of the project that we're going to the people of the province with – that we're going into the House of Assembly?

So to say, there were all kinds of other risks and that, I mean we were trying to minimize the risk. We were trying to identify the risks so that we knew the number that we had.

So I really don't know what they're talking about if that's the evidence that's been given.

MS. VAN DRIEL: And you need to know a robust cost estimate, didn't you? Because you, as the government, you had signed a completion guarantee.

MR. KENNEDY: And we were going out to – but even more – yeah, that's important, Sir, but importantly, Ms. van Driel, we're going to the people of the province. I'm standing up as the minister, Commissioner, before the public day in, day out, in front of the media, giving speeches, in the House of Assembly, using a number that's been given to us.

So we tried, Commissioner, to determine is that number – what degree of certainty? We were told because there's 50 per cent – more than 50 per cent of the engineering done, it's a good number.

MS. VAN DRIEL: Thank you, Mr. Kennedy. Those are all my questions.

THE COMMISSIONER: Almost 10 minutes directly on. Good, Ms. van Driel.

Mr. Hogan, Consumer Advocate.

MR. HOGAN: Mr. Kennedy, my name is John Hogan, counsel for the Consumer Advocate.

MR. KENNEDY: Mr. Hogan.

MR. HOGAN: Sorry for the interruption, Commissioner and Mr. Kennedy. It wasn't necessarily for my questions, but there's questions to come about Aboriginal issues, environment issues which you haven't had a chance to talk about yet. So let's try and move along, right?

Mr. Coffey, or you raised with Mr. Coffey this morning the export markets again. So I just want to go back to that.

Your transcript, and I think over the last two days you said you were very surprised when you met with Wood that there was no export markets available for the Hydro. Is that correct?

MR. KENNEDY: Well, large blocks of power, Mr. Hogan.

MR. HOGAN: Large blocks of power. Fair enough. And you went to the premier and to Ed Martin about this?

MR. KENNEDY: You'll see, Commissioner, that in my notes there's actually a typed note that I sent to them. So I did – I thought there was a typed note – after my meeting with Wood Mackenzie November 28 where I outlined the issues of export markets.

MR. HOGAN: The issue being there's no sales of large (inaudible).

MR. KENNEDY: I was surprised. I mean there's no large blocks of power, Commissioner.

MR. HOGAN: And what was Mr. Martin – what did he explain to you about how not to worry about this?

MR. KENNEDY: Yeah. Well Mr. Martin came in a few days later, as he always did, and he explained to me that there were spot markets, that energy could be sold on the spot markets, that energy could range from I think \$40 a megawatt to \$90 a megawatt depending on time of day, whether or not the air conditioning was being utilized in Boston, things like that.

MR. HOGAN: All right. So there's variability there?

MR. KENNEDY: Yes.

MR. HOGAN: As opposed to having a contract in place that would give certainty to these sales?

MR. KENNEDY: Yeah. Because in the meeting with Wood Mackenzie, they told me that the only – I think the only state that had looked upon – hydro as – big hydro as the renewable energy portfolio was Vermont, I think. And that there was – Quebec was trying to sell big blocks of power and it wasn't happening.

MR. HOGAN: So Wood are the world experts?

MR. KENNEDY: That's my understanding. That's why I went there, Sir, yeah.

MR. HOGAN: They told you something that gave you concern? Mr. Martin –

MR. KENNEDY: (Inaudible) Sir.

MR. HOGAN: – is not a world expert in hydro export sales and you accepted his rationale.

My question is, why would you accept Mr. Martin over Wood on this issue?

MR. KENNEDY: No I didn't accept – we went back. This –

MR. HOGAN: When –

MR. KENNEDY: This – no this is —

MR. HOGAN: Okay, go ahead.

MR. KENNEDY: This – to put this – November 28, Mr. Hogan, we met – I'd come back and I raised this issue, I meet with Mr. Martin – this is still an issue. On January 18th, we go back 'cause we're –

MR. HOGAN: Back to Wood?

MR. KENNEDY: Yeah, back to New York – and the premiers there, at this point, were having meetings with PIRA on oil. We had another meeting in relation to something else with a high-ranking official, and then we met with Wood Mackenzie again. Mr. Martin – all the same people in the room – Mr. Martin gets up

and gives a presentation as to why there are export markets.

MR. HOGAN: Okay, and –

MR. KENNEDY: And Wood Mackenzie appeared to accept what he was saying then.

MR. HOGAN: Okay.

MR. KENNEDY: And they had people I think that day, Mr. Hogan, on – there might've been people there – I could tell if you want – I know you don't have much time, but it's in my notes.

MR. HOGAN: Okay, just wanted to point out quick a couple of examples. If we can go to P-01213, this is a *CBC News* release. I'll just read it out quickly.

MR. KENNEDY: Sure.

MR. HOGAN: “Kennedy, formerly the minister of health, took on the natural resources...last weeks...shuffle. He said the provincial government needs to improve how it responds to questions about the \$6.2-billion plan to tap power at Muskrat Falls on...Churchill River, transmit it to Newfoundland and export as much as 40 per cent to Nova Scotia.”

And I'll just turn, please, to P-01266. These are speaking notes – July 2012 at the Confederation Building – your speaking notes.

MR. KENNEDY: That's the Emera – yes, okay.

MR. HOGAN: And if I could just turn to page 2, please – a few paragraphs from the bottom – right there. The, “interconnection is crucial and the construction of the Maritime Link means we finally have a transmission route to sell power for profit that is surplus to our domestic needs.”

So I'll just put to you that you're satisfied about the spot market, I accept that. But you're talking to the public about selling power – exporting power.

MR. KENNEDY: Yes, okay.

MR. HOGAN: Okay – you know, I think the public – and you said in 2011 the election was

all about Muskrat Falls – I think the public thought that this deal was a good deal because we were getting around Quebec, which means we were going to be able to sell power without having to go through Quebec. And that there were dollar signs in the public's eyes, thinking that we were gonna make a lot of money off the export sales. I don't recall ever hearing the word spot market prior to this Commission, to be honest with you.

Do you think you had a duty to advise the public that you had concerns with the export sales, but they were alleviated because the spot market issue? And specifically, (inaudible) of the public, we do not have export sales, we do not have contracts, but we can sell spot markets, which are not as efficient or as certain as external contractors.

MR. KENNEDY: Yeah, I don't think it was – again, Mr. Hogan, I don't think it's that simple because when we're going back to Wood Mackenzie, we're meeting with them. They're saying that things are going to change in the United States in the future in terms of the markets because there are – I think there's 40 per cent coal, there's more than 100 nuclear plants, a lot of these are getting ready to close down so they – there could be markets – there's still the possibility or availability of markets. But what's –

MR. HOGAN: And that's not in your meeting notes is it – it's not in your speaking notes?

MR. KENNEDY: No, it's not there. I don't disagree, Sir, I – now I can't tell you I didn't use the words spot markets, because I spoke so much on this over a period of time. But it's not in that note – it's not in there.

MR. HOGAN: Okay.

And yesterday your quote was you're aware of the weight of Muskrat Falls on your shoulders as a politician, but again, you didn't feel the need to explain that to the public – that specific issue.

MR. KENNEDY: I don't know if I didn't feel the need, Sir, there's a –

MR. HOGAN: It wasn't done.

MR. KENNEDY: I can't say it wasn't done; it's not in that particular – it's not there in that – I do remember at (inaudible) points somewhere along talking about spot markets, but it's not in that note, no, that's correct.

MR. HOGAN: You also talked about using these sales to export – or sorry, to mitigate rates. Is that correct?

MR. KENNEDY: Yes.

MR. HOGAN: Okay.

But we can't – obviously at that point in time, you wouldn't be able to assess export sales for mitigation purposes because you didn't have a number, did you?

MR. KENNEDY: We didn't have a number, no.

MR. HOGAN: No.

MR. KENNEDY: But, Mr. Commissioner, my understanding – that spot markets are still – are selling energy daily on the spot markets. That number should be available from Nalcor.

MR. HOGAN: Yeah, I think the number I heard was 2 cents.

MR. KENNEDY: I figured it would be higher than that, but I don't know that, Sir.

MR. HOGAN: Yesterday you mentioned that call a couple times in the parking lot of Brother O'Hehir about the federal loan guarantee?

MR. KENNEDY: Yeah.

MR. HOGAN: You said the federal loan guarantee was gone; Muskrat Falls was gone. That's the quote from the premier at the time.

MR. KENNEDY: That's basically the position that the premier (inaudible) –

MR. HOGAN: This is a month before sanction, so what happened? What – and I know, eventually, the federal loan guarantee came through, but what happened in November 2012?

MR. KENNEDY: I (inaudible) – I wasn't involved in the actual negotiations; I was involved when there would – when there was a need for minister to minister with Mr. Oliver. I don't know what happened; it certainly just came together. There had been discussions for months and months, Mr. Hogan.

MR. HOGAN: So was the plan, then, if you weren't going to get the federal loan guarantee, it sounds like you weren't going to proceed with sanction.

MR. KENNEDY: That was basically – it was a very significant part of the – of what we were putting forward as the rationale for Muskrat Falls – that we needed the federal loan guarantee.

MR. HOGAN: But it was sanctioned without the federal loan guarantee. So that's why I'm confused.

MR. KENNEDY: Yeah, but I think the federal loan guarantee – I mean, if I remember correctly, Commissioner – and, again, I could be wrong – this date – but I thought that in early December there was at least an agreement signed. Prime Minister Harper showed up in our – was in –

MR. HOGAN: There was a conditional agreement signed.

MR. KENNEDY: But I think there was – pretty good idea that the – that things were gonna happen is my understanding.

MR. HOGAN: Okay, well that leads to my next question. One of the things that needed to happen was to get UARB approval.

MR. KENNEDY: Yeah.

MR. HOGAN: Now, we know that the UARB came back and needed some more things from this project –

MR. KENNEDY: Yeah.

MR. HOGAN: – to ensure that they would get the approval.

Do you think that – because now you needed the federal loan guarantee, you needed to meet these conditions, you had already sanctioned the project – that Nalcor had lost negotiating power with Emera on what the UARB required?

MR. KENNEDY: That's a fair point, Sir, but the – you know, that was always a point of contention with me is the – how slowly the negotiations were going.

MR. HOGAN: Okay, so was it wise to sanction this without the full federal loan guarantee? Or was that a risk that the government was aware of and was willing to take?

MR. KENNEDY: I don't think we – again, I – the premier and Mr. Martin would have more – and Mr. Bown might have more detail about that, but I don't think there was a real risk. I think that there was a, you know, there was a possibility that the Emera agreement might be put in place, but I don't – I think there was some degree of certainty it was going to happen. So it was not like we were doing it on the basis that it might happen, but I don't disagree. I mean, again, I've said a million times –

MR. HOGAN: It all fell apart, right? Yeah.

MR. KENNEDY: I said, Mr. Hogan, a million times is that: You got to look at in a context of what we were doing at that point in time, and the way everything was moving.

MR. HOGAN: And that's why I asked it. You know, at that point in time, was it thought that we'll sign it, accepting the risk at that point in time?

MR. KENNEDY: No, I think the premier was pretty adamant, you know, that that loan guarantee was a key part of the –

MR. HOGAN: We can ask the premier – or the former premier.

MR. KENNEDY: Yeah.

MR. HOGAN: Yeah. Just a couple of quick questions about rates. You said yesterday, rates were going up, rates were not stable. Where did that information come from?

MR. KENNEDY: And I know you don't have time, Sir, but if you look at – Commissioner, there is a – I'll just give you the reference. There is a reference of January – there's a typed note of January 6, 2012, Commissioner, which I have in my volume 14, pages 8, on.

MR. HOGAN: Okay.

MR. KENNEDY: And it types out – it outlines, Mr. Hogan, the numerous meetings I have with officials at Nalcor, and particularly in the department in determining the issue of rates. You'll see there's hand-written notes everywhere. I've got charts everywhere. As you go through my hand-written notes, you're in those meetings. I had over 10 or 12 meetings.

The information was – we had – Mr. Parsons in our office, it was my understanding, had a certain – Walter Parsons had a certain expertise in this area. He was the point person with Mr. Bown for (inaudible) –

MR. HOGAN: Okay.

MR. KENNEDY: – given to me. Information also came from Nalcor.

MR. HOGAN: Okay. So mostly your department; some information from Nalcor.

MR. KENNEDY: Nalcor would have to check the information, yes.

MR. HOGAN: Was there issues where customers and consumers coming to you about an issue with instability at that point in time? Was it raised by the public?

MR. KENNEDY: I don't remember using the words stability, Sir, but, I mean, it's a – I think what I meant was that it would stabilize rates over the long term. I don't – the stability was in the fact that by 2015 –

MR. HOGAN: The future.

MR. KENNEDY: Yeah. That's what I think I – the point I was trying to make, yeah.

No, the customers weren't coming at that point. The customers are concerned, or ratepayers –

what am I paying today, and what am I going to pay in the future? Yeah, that's their concerns.

MR. HOGAN: But there's not concerns at the point in time when you were resource minister that rates were going up at that point in time or that they were instable at that point in time. That wasn't an issue on your agenda, was it?

MR. KENNEDY: No, other than the rates were going to go – we had – we needed the power, we have to do something. Rates were going to go up with or without Muskrat Falls.

MR. HOGAN: So you were advised?

MR. KENNEDY: That's how I was advised (inaudible).

MR. HOGAN: Because I'm going to – I can give you some information. I'm not going to do it right now, but the rates – I think rates were fairly stable, historically. I don't think there was any instability, but we'll (inaudible).

MR. KENNEDY: No, historically, I think – I don't remember there being – we looked at – I looked at the other countries and the other cities in the country, we did comparisons, we had all the information. No, I don't there was instability –

MR. HOGAN: Instability issues.

MR. KENNEDY: – at that point, no.

MR. HOGAN: Okay. Thank you.

MR. KENNEDY: There was a future potential for instability I think, Mr. Hogan, we were looking at.

MR. HOGAN: Fair enough. I'm going to go back to natural gas.

MR. HOGAN: Fair enough.

I'm going to go back to natural gas.

MR. KENNEDY: Natural gas, Sir.

MR. HOGAN: So you – we've asked about this Wood report and what was taken out of the wood report. Right?

MR. KENNEDY: Yeah.

MR. HOGAN: And do you know yet? Have you had a chance to look again?

MR. KENNEDY: I think there's some – I thought about this yesterday because Mr. Learmonth was asking me questions and – I remember there being a highlighted portion.

MR. HOGAN: Let's just go to P-01312.

THE COMMISSIONER: That's at tab 139 in book 4.

MR. KENNEDY: Thank you.

MR. HOGAN: We turn to page 8.

So this is the draft report. So, "Review of 'Newfoundland and Labrador LNG Viability and Analysis.'" This is what was removed from the report.

MR. KENNEDY: Sorry, which is – what was removed? I was under the – I got confused at one pointing think it was out of the Ziff report, but in any event, so this is the letter that's provided by Wood Mackenzie, you're referring to here is it?

MR. HOGAN: Right, which reviewed Ziff, correct?

MR. KENNEDY: Right.

MR. HOGAN: So the LNG was what references were what removed. And we can get – I'm not going to get into who removed it or at whose insistence, but we did look at an email from Mr. Keating to Wes Foote and Charles Bown was copied. Do you remember that?

MR. KENNEDY: Yeah.

MR. HOGAN: He says Wood Mackenzie "should say that they were to comment only on the pipeline piece." Makes sense then that LNG was removed, correct?

MR. KENNEDY: Yes, makes sense, yeah.

MR. HOGAN: Now I just want to point out – if we could look at – go down a little bit, to where the paragraph starts "Ziff assumes."

MR. KENNEDY: If – Okay, I see it.

MR. HOGAN: Right there.

See the "70%" on the left there, four or five lines up?

MR. KENNEDY: Ah, no I don't, sir.

MR. HOGAN: Right there, it says "Wood Mackenzie believes that a gas-to-oil price arrangement in the range of 70% –"

MR. KENNEDY: Okay, I see it.

MR. HOGAN: "– would be more – effective – "reflective of these evolving market conditions." Whereas if you look at the top there is says Ziff uses 80 per cent, okay.

MR. KENNEDY: Okay.

MR. HOGAN: Now if I could take you to P-01290.

So you understand that Wood is saying 70, Ziff said 80.

MR. KENNEDY: There was some difference between Wood Mackenzie and –

MR. HOGAN: Yeah.

MR. KENNEDY: – Ziff on –

MR. HOGAN: And yesterday you said, that's fine if people have disagreements let's talk about it, right.

MR. KENNEDY: Yeah.

MR. HOGAN: So these are you notes but if we could turn to page 9.

MR. KENNEDY: Of – okay.

MR. HOGAN: Scroll down a little bit.

MR. KENNEDY: Yeah.

MR. HOGAN: So this is the LNG option, which is costed out there as 80 per cent or 90 percent of Brent. Okay. So we have 11.1, which would be 90 per cent.

MR. KENNEDY: Okay.

MR. HOGAN: you have 10.7 which would be 80 per cent, now presumably if you use 70 percent it is going to be lower then 10.7, right?

MR. KENNEDY: Correct, yeah.

MR. HOGAN: Okay.

This is the Isolated Option right next to it, which is 10.8.

MR. KENNEDY: Okay.

MR. HOGAN: Now Mr. Bennett, Gilbert Bennett, was asked about this, you know, why didn't you do further analysis on LNG if – and I think his evidence was: well, it was so close anyways it didn't really matter. But if you use the 70 per cent, it is going to get lower then the 10.8.

Now this is a couple of months before sanction, this piece of information comes out. That maybe you could use 70 per cent for this.

So my question is, if that information is released to the public – or to anyone else because I don't know who saw that – wouldn't you second guess using the Isolated Option at that point in time as opposed to looking at the 70 per cent LNG option at that point in time?

MR. KENNEDY: It was one of the reasons that, Commissioner, as I – Mr. Hogan, I said to the Commissioner one of the reasons that I started looking at natural gas, basically at my own –

MR. HOGAN: But let's just look at this though. You looked at natural gas, fair enough.

MR. KENNEDY: I'm saying to you natural gas is an option from – always an option in my mind.

MR. HOGAN: But the 70 per cent number, which is – now is going to be much lower than the Isolated Island Option.

MR. KENNEDY: Yeah.

MR. HOGAN: It would be second-best option. Right?

MR. KENNEDY: Yes, okay.

MR. HOGAN: As opposed to the Isolated option, but it wasn't reviewed in great detail. This is a couple of months before sanction. Is that correct?

MR. KENNEDY: By this point, Sir, the least-cost option – we had – there were two – this had been determined, Commissioner, before I got there. There were two options being looked at – were the Isolated Island, Interconnected. The DG2 process –

MR. HOGAN: Number one or number two?

MR. KENNEDY: The DG2 process.

MR. HOGAN: And you know what? You did all this work, got Wood, got Ziff, and you know what I think you found out without actually maybe knowing? LNG is the second-best option.

MR. KENNEDY: Without actually knowing, Sir – it's the reason they explored these issues Mr. Hogan. But I had to rely on officials; I had to rely on Nalcor; I –

MR. HOGAN: I know. But you did the work; you went out and got the reports, found out it was lower, and then –

MR. KENNEDY: My number there says 2.3 – that's my writing – 2.3 to 2.8.

MR. HOGAN: The 70 per cent is going make it lower than the 10.7 is my (inaudible) –

MR. KENNEDY: Seventy per cent would make it lower.

MR. HOGAN: Which makes it clearly the second-best option.

MR. KENNEDY: Yeah.

MR. HOGAN: And now we know the second-best option was not explored –

MR. KENNEDY: Yeah –

But you would have to discuss that idea with Mr. Bown or Ziff or Wood Mackenzie. I don't understand –

MR. HOGAN: Well, I want –

MR. KENNEDY: – all the intricacies.

MR. HOGAN: I guess we should have asked Mr. Keating if that was the reason that it was –

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

MR. HOGAN: – taken out and – I still don't know who took it out of the report, right?

MR. KENNEDY: To me, we were – all my notes indicate LNG and pipeline. They were both options that we had explored when I sat down with these people and looked at which option – are there options there.

MR. HOGAN: You didn't see my point that the 70 per cent makes that a better option?

MR. KENNEDY: I – it's the reason we explored natural gas, Sir, to see if it was a viable alternative.

MR. HOGAN: Right.

MR. KENNEDY: But LNG, I think Dr. Bruneau was the – again, sometimes I get confused – Dr. Bruneau was the pipeline option and the LNG would have been the importing of the natural gas.

MR. HOGAN: Just on that, why didn't you just call Cabot Martin and Dr. Bruneau?

MR. KENNEDY: Yesterday, Sir, there was reference to the way things were going at this point. You know, there was – I decided, Commissioner, to try to look to objective parties like Wood Mackenzie. I don't know why that didn't happen, Sir. It wasn't –

MR. HOGAN: I mean, you gave credence to their opinions because you looked into it?

MR. KENNEDY: Yeah, I gave – I checked into a lot of opinions that people didn't think I was giving credence to, but I – while I was listening, Sir.

MR. HOGAN: And like on that note, you know, you have Bruneau and Cabot Martin come on of natural gas, out to get reports. Lawyers call in to *Open Line* shows about water management; Gilbert Bennett calls in. PUB makes a decision; they get attacked. Liberals raise issues; they get attacked. Mr. Vardy raises issue about the Corner Brook mill, he gets attacked.

And I know you said today – or yesterday – you sort of look back and said you used, maybe, inappropriate language, but that doesn't change the fact of what was done in 2012, does it?

MR. KENNEDY: I don't – but I don't think it was that simple, Sir – Commissioner.

I was out there doing one thing; there was – the critics, if I can use that term, they were never satisfied. Every time they would ask us to do something, we would go out, and they'd come out again and say we had done something –

MR. HOGAN: I guess –

MR. KENNEDY: – wrong.

MR. HOGAN: – my point is that that was the strategy, though, wasn't it –

MR. KENNEDY: There was no –

MR. HOGAN: – to beat back the critics.

MR. KENNEDY: – strategy, Sir. There was no strategy to go out and attack.

What happened was there was – every time we would – and you can go to October 2012, after the Ziff report comes out, Mr. Martin (inaudible) are criticizing that. So there was no way of satisfying the –

MR. HOGAN: Did you ever –

MR. KENNEDY: – critics.

MR. HOGAN: – step back and think maybe the project has issues, we can't satisfy anyone, and they're raising valid issues –

MR. KENNEDY: They were –

MR. HOGAN: – and –

MR. KENNEDY: – raising – and I checked – that's the point I'm making – I've made, Sir. I checked those issues out, and every time something was raised, on shale gas, Mr. Cabot Martin, I went to New York, talked about shale gas. Energy markets, I went to New York and talked about it. Liquefied natural gas, pipelines, I retained –

MR. HOGAN: Yeah.

MR. KENNEDY: – experts.

I was doing these things, Sir.

MR. HOGAN: If we could just turn to P-01216. This is the letter you wrote to Thomas Johnson, Consumer Advocate?

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

MR. HOGAN: Sorry, I know we're going a bit fast here, so I apologize for that.

How many times did you meet with Mr. Johnson about the PUB issue?

MR. KENNEDY: I have – my notes indicate, Sir, on January – wait now – yeah, I met with Mr. Wells on the 4th, Mr. Wells, Ms. Greene on the 5th. I met with – yeah, Tom Johnson, January 3.

MR. HOGAN: Okay, and that – whose – how did that come about? Was this your suggestion, his suggestion?

MR. KENNEDY: I don't remember exactly. Now, Mr. – I knew Mr. Johnson, and – you know, as a lawyer, and I – it just became – sometimes I was just reaching out to people to talk to them, see what, you know, see what the issues – there were issues around the PUB. I was trying to be a facilitator, Sir.

MR. HOGAN: And I think Mr. Johnson's opinion was to grant the PUB extension from March to June?

MR. KENNEDY: I can't remember. I do know my notes indicate, Mr. Commissioner, that, in Mr. Johnson's opinion, the PUB were raising valid issues. There are RFIs – I think, there's a little circle in my – the RFIs were valid.

MR. HOGAN: Right, and he did retain an expert, you're aware of that?

MR. KENNEDY: Yes, I am, yeah.

MR. HOGAN: Did you review that report, or did you receive it?

MR. KENNEDY: I don't remember ever seeing that report.

MR. HOGAN: You don't remember ever seeing it?

MR. KENNEDY: No.

MR. HOGAN: Okay.

And do you know why he wasn't permitted to file that at the PUB?

MR. KENNEDY: No, I don't.

MR. HOGAN: Was it on your instruction?

MR. KENNEDY: Mr. – when I met with Mr. Johnson that day, he wanted the – or excuse me, he wanted guidelines to guide his role. It wouldn't have been at my instruction, Sir. It would've been – the letter – I signed the letter as minister, but these meetings were group meetings where decisions were made –

MR. HOGAN: But do you recall that being a specific direction? Do not file that expert report?

MR. KENNEDY: No, I don't recall that, Sir.

MR. HOGAN: Okay, can we just look at the directions, the guidelines, on page 2, please?

And I don't know if this is how it played out but it does say in the middle: "The Consumer Advocate may retain such expertise as necessary

solely for the purpose of assisting the Consumer Advocate” – Tom Johnson – “in preparing for any public hearing held by the Board”.

So is that a limitation on the filing? You can just use it to prepare as opposed to –?

MR. KENNEDY: It could be interpreted that way. Yes.

MR. HOGAN: It could be. Do you know if that's the way it was drafted?

MR. KENNEDY: I didn't – those – I didn't draft that.

MR. HOGAN: Yeah.

MR. KENNEDY: I would have – the guidelines, I don't know who drafted them. I wouldn't have drafted them, but that could be seen as limitations, certainly.

MR. HOGAN: Okay. I just want to clear up a bit of a conflict in my mind.

You said it was okay for Nalcor to have a direct line to the premier's office in relation to this project because it's an important project.

MR. KENNEDY: It's what was in place when I became minister of Natural Resources. Yes.

MR. HOGAN: Did it continue when you were minister of Natural Resources?

MR. KENNEDY: To the best of my knowledge. Yes.

MR. HOGAN: Okay. And you also said you didn't appreciate being bypassed.

MR. KENNEDY: No. I was – after that I don't – I'm not aware of being bypassed after those couple of incidents. I'm not –

MR. HOGAN: You can't –

MR. KENNEDY: – aware of being –

MR. HOGAN: Either you have a direct line and you're being bypassed, or you don't have a direct line and you're not being bypassed.

MR. KENNEDY: From my perspective, Sir, at that point – and you can ask the premier about this – but I had no problem with Mr. Martin or Nalcor going to either Mr. Taylor, as chief of staff, Mr. Thompson or going to the premier.

MR. HOGAN: So that meeting in Corner Brook, when – you've talked about it, right? You were obviously very angry, upset about being bypassed. Do you think that was the way it worked up until your time as minister? I mean –

MR. KENNEDY: I don't know. Different ministers have different styles, Sir, and mine was – like, I wanted to know.

MR. HOGAN: Yeah. Fair enough.

Yesterday you mentioned the possibility of brownouts.

MR. KENNEDY: I don't know if I used that term. I remember –

MR. HOGAN: Okay.

MR. KENNEDY: – the sweater. Using the sweater – you had to – yeah, you could be. I was being a little bit dramatic.

MR. HOGAN: I think that was – I think the sweater was Monday, but anyways.

Do you know where you got that information about –?

MR. KENNEDY: About brownouts?

MR. HOGAN: Yeah.

MR. KENNEDY: Again, that information would have come from Nalcor, Sir. And – or relayed to me through my officials, coming from Nalcor.

MR. HOGAN: Did you ever have any direct conversations with the PUB about that?

MR. KENNEDY: It – I – the only conversations I would have had would have been with Mr. Wells and Ms. Greene, and I don't – I'd have to go through my notes. I don't remember – I remember reading, you know, Mr.

Wells making valid points in going through my notes. I don't remember brownouts being there. No. I don't remember that.

MR. HOGAN: Did you ever meet with Newfoundland Power during your time as Natural Resources minister?

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

MR. HOGAN: You did not?

MR. KENNEDY: No.

MR. HOGAN: Okay. Did they ever request a meeting?

MR. KENNEDY: Not that I'm aware of, but, again, in hindsight, Sir, if it's something I – that would have probably have been very helpful.

MR. HOGAN: Okay.

MR. KENNEDY: Although I – yeah, okay. Sorry. I'll just leave it there.

MR. HOGAN: Helpful. How so? Well, you –

MR. KENNEDY: Well, there seemed to be – the issue was going to Nalcor. If we needed information to go to Nalcor. There was never a suggestion to me that we should go to Newfoundland Power –

MR. HOGAN: Sure.

MR. KENNEDY: – or talk to Newfoundland Power.

MR. HOGAN: It just wasn't done, wasn't part of the process.

MR. KENNEDY: It wasn't – no, that's a good – that's a fair way –

MR. HOGAN: I know when you step into a ministry you're probably going to pick up what had been done before you, right?

MR. KENNEDY: You inherit certain decisions, Sir, and you also then have to make decisions that are in line with generally what you –

MR. HOGAN: And you probably inherit processes a little bit, hey?

MR. KENNEDY: You inherit a process. Even someone like myself, Sir, you do inherit the process, yeah.

MR. HOGAN: You moved around a few ministries. I think you said in your interview that you were sent to ministries to solve certain problems.

MR. KENNEDY: That appeared to be what was happening, yes.

MR. HOGAN: Do you think you had enough time to get up to speed with the Muskrat Falls Project?

MR. KENNEDY: Sir, I don't know if I'd ever have enough time because of the technical – like, when you see that note that Mr. Coffey had – I mean, I'm writing down notes –

MR. HOGAN: Yeah.

MR. KENNEDY: – and a lot – most of that stuff and I don't even know what – I don't know what it is. So I don't know if any – this is part of the problem, though, as – Commissioner, as I said yesterday.

MR. HOGAN: Oh.

MR. KENNEDY: As ministers, we've got to rely on officials. We can't – I dug down deeper than perhaps, you know, other ministers would. But our role is to make policy decisions based on the best information that's available to us, which we have to rely on officials, experts and consultants, in this particular case, Nalcor.

MR. HOGAN: People who are doing these full-time jobs for decades.

MR. KENNEDY: I – Sir, I was in my own, amateur way, out there trying to understand.

MR. HOGAN: Okay.

Can we just go to P-01210? These are more of your notes, please.

THE COMMISSIONER: Tab 4.

MR. HOGAN: Now, I've asked people about this, and you actually have a note about it. It says 600 – you see that number two, 600 million to replace scrubbers?

MR. KENNEDY: Yeah.

MR. HOGAN: And I don't know what the next part says, something or other Holyrood.

MR. KENNEDY: Okay. Yeah.

It's 600 million to replace scrubbers and precipitators on Holyrood.

MR. HOGAN: And precipitators.

MR. KENNEDY: I don't know what a precipitator is so I might not –

MR. HOGAN: Is the precipitators –

MR. KENNEDY: (Inaudible.)

MR. HOGAN: – is it on Holyrood?

MR. KENNEDY: Pardon?

MR. HOGAN: Did you say on Holyrood? Or for – what does that –

MR. KENNEDY: I've got – the word says: on Holyrood.

MR. HOGAN: On Holyrood.

MR. KENNEDY: But I'm referring to Holyrood, obviously, yeah.

MR. HOGAN: And why did you make this note?

MR. KENNEDY: Sir, this is April 9, 2011. By that point I don't even know what this meeting's about. I'm the minister of Health, if I remember correctly, and there must have been – this sounds to me like it's a Nalcor presentation or briefing. It's either in Cabinet – it could be Cabinet, and I'm just writing down what's being – as I did, I was writing down what's being told to me.

MR. HOGAN: Okay, so you never – do you remember ever making a decision about this? I'll just tell you why – MHI says in their report that the scrubbers, which are put in for environmental reasons, may not be needed –

MR. KENNEDY: Okay.

MR. HOGAN: – because of certain other kinds of fuel – cleaner fuel are being used. Now if you take a \$600 million expenditure out of the Isolated Option, it decreases –

MR. KENNEDY: Yeah, I thought the –

MR. HOGAN: – the CPW by (inaudible).

MR. KENNEDY: I thought it was included in the CPW.

MR. HOGAN: It was.

MR. KENNEDY: Okay.

MR. HOGAN: The question is, is should it have been? So do you –

MR. KENNEDY: I don't know the answer to that, Sir.

MR. HOGAN: Okay. Do you remember talking about that issue?

MR. KENNEDY: I was always told, again, you know – and this is a note in April, but I was always of the understanding that in improving – if we were going to improve the environmental performance of Holyrood, then scrubbers and precipitators were needed.

MR. HOGAN: Okay.

Question on your mind was do we need the power, right?

MR. KENNEDY: That was the number one question, Sir.

MR. HOGAN: Yeah. But we know – I mean yesterday you said we needed 40 per cent of this power, which is about 300 megawatts, right?

MR. KENNEDY: That's what we needed. That's what we were told, yeah.

MR. HOGAN: Don't have any contracts for export sales.

MR. KENNEDY: At that point there were no contracts in place. That's right.

MR. HOGAN: My question is: Was the question ever asked are we overbuilding here?

MR. KENNEDY: Yes.

MR. HOGAN: And what was the answer to that?

MR. KENNEDY: If you look at my notes, Sir, I can take you through – I know we don't have time, but I can take you through the explanations given to me early on in November. There's three issues I'm working on in November when I become minister: Is the issue of do we need the power, demand; is Muskrat Falls the lowest-cost option; and third, is the issue of rates. Those are the issues I'm working on.

MR. HOGAN: So the least-cost option was this, even though it was 150 per cent more power than we needed. I mean that was the conclusion that was reached, wasn't it?

MR. KENNEDY: The position was that we needed power and, therefore, we had to do something. That's the – it was portrayed as a dire –

MR. HOGAN: Yeah.

MR. KENNEDY: – situation, Mr. Hogan. And in concert with the Energy Plan of transitioning from a non-renewable to renewable resource economy, it all made sense.

MR. HOGAN: Okay.

Last question I have is people have referred to the government's commitment to this as a blank cheque; talked about overruns, you wanted to know the cost. You knew Hebron had gone over budget.

MR. KENNEDY: Yes, we did (inaudible).

MR. HOGAN: I saw the news last night and there's a clip of you saying that this is the cost, subject to overruns.

MR. KENNEDY: Yeah.

MR. HOGAN: So that was acknowledged. What was the number? Did you know what the risk of possible overruns, worst-case scenario was?

MR. KENNEDY: With Muskrat Falls?

MR. HOGAN: Yeah.

MR. KENNEDY: Sir, that's why those notes in late – in October are so important, because I'm trying to nail down the actual cost, what degree of certainty – remember one note I referred to yesterday –

MR. HOGAN: Did you think there was certainty in 6.2, as in terms of overruns?

MR. KENNEDY: I was told, Sir, that the 9 per cent – there'd already been a –

MR. HOGAN: Yeah.

MR. KENNEDY: – 50 per cent contingency, we've done 50 per cent of the engineering we're certain, so 9 per cent will get us there. That's what I was told.

MR. HOGAN: You thought the overruns were built in to the 6.2?

MR. KENNEDY: The 9 per cent was built in, yes. The 9 per cent contingency and escalation was built in, yes.

MR. HOGAN: Right, and if we didn't need the contingency it's going to – if it doesn't go over budget, if there's no overruns, we're going to be less than 6.2.

MR. KENNEDY: But there was no blank cheque, that was never the intention of our government, Sir –

MR. HOGAN: Well, there –

MR. KENNEDY: – to write a blank cheque.

MR. HOGAN: Okay, well, there was.

MR. KENNEDY: I know what you're saying, but I mean in terms of – that's not the – that's not – that was not –

MR. HOGAN: But that wasn't the plan, I know, right.

MR. KENNEDY: Never my plan, Sir, no.

MR. HOGAN: But there was a document signed that said the government will pay for this project.

MR. KENNEDY: Yes, I'm aware of that, Commissioner. I wasn't –

MR. HOGAN: I think it was a commitment letter.

MR. KENNEDY: Yeah, I wasn't – that was – I've seen the letter since, I don't remember seeing it when I was there in government.

MR. HOGAN: Okay.

That's all the questions I have. Thank you.

MR. KENNEDY: Thank you very much, Mr. Hogan.

THE COMMISSIONER: Thank you, Mr. Hogan.

All right, Innu Nation's not here.

NunatuKavut Community Council?

MR. RYAN: Good morning, Mr. Kennedy.

My name is Victor Ryan. I'm counsel for NunatuKavut Community Council.

MR. KENNEDY: Good day, Sir.

MR. RYAN: It represents Inuit in South and Central Labrador. You might be familiar with them also by their former name, Labrador Metis Nation.

Madam Clerk, can we go to Exhibit P-00290, please?

Mr. Kennedy, you were first elected to the House of Assembly in 2007. Correct?

MR. KENNEDY: Correct, yes.

MR. RYAN: And then very shortly after that you were appointed as minister of Justice?

MR. KENNEDY: Correct, Sir.

MR. RYAN: And so in the year preceding your appointment to Cabinet in 2006, the Trial Division of the Newfoundland and Labrador Supreme Court rendered a decision regarding the government's duty to consult my client which were then called the Labrador Metis Nation.

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

MR. RYAN: You're familiar with this decision. Sometimes it's called the Fowler decision.

MR. KENNEDY: Yeah.

MR. RYAN: So if we review Exhibit P-00290, this document is in Word form, but it appears to be an engagement strategy or some type of draft briefing note that was created by Mr. Brian Harvey. And in Danny Williams's testimony we learned that Mr. Harvey was a director within the ministry of Labrador and Aboriginal affairs.

If we can go to page 7, Madam Clerk?

So this is, sort of, an outline of where the government is vis-à-vis their relationship with each Indigenous group in Labrador in 2007. And under the heading Labrador Metis Nation it says: "The Labrador Métis Nation has asserted claim to lands in Labrador and refer to a recent decision of the Newfoundland Supreme Court in respect to the Trans-Labrador Highway in support of their claim. However, their claim has not been accepted by either the federal or provincial governments. The Government of Newfoundland is appealing the Trans-Labrador Highway decision and in any case, question its relevance to the Lower Churchill project."

Now, this – you wouldn't have been minister of Justice at the time that this decision came out. But very shortly thereafter you would have been involved in the government's decision to appeal this decision. Is that correct?

MR. KENNEDY: I'm not aware of that, Sir. I'm not aware of being minister when this was appealed, no.

MR. RYAN: Okay, well, the appeal came out in 2007. I believe, the hearing –

MR. KENNEDY: The decision you mean?

MR. RYAN: Yes.

MR. KENNEDY: Okay, yeah.

MR. RYAN: The hearing date was also in 2007. So I guess my questions is: Did you, as minister of Justice, have any involvement in the government's decision to appeal the Fowler decision?

MR. KENNEDY: I don't remember that, Sir. I don't remember the time frame. I know as a minister when you come in, Commissioner – I don't know if you've heard this – but one of the things that as a minister when we go in to new portfolios there's a briefing book prepared and the briefing book would have issues that were of – that were on the – coming up for the minister that were on the plate.

So, yes, that issue would have been – I would have known there was an issue ongoing. Correct, yes.

MR. RYAN: Okay.

So the appeal was ultimately dismissed and the decision was also made by the government to seek leave to appeal to the Supreme Court of Canada. Did you have any involvement in that decision in your capacity as minister of Justice?

MR. KENNEDY: I have no recollection of it, Sir. You'd have to give me the dates. But I have no recollection of being involved in any of that – what you're talking about here now.

MR. RYAN: Okay. I mean, the dates were 2007 –

MR. KENNEDY: Well, I didn't get – the election was October 9 –

MR. RYAN: Right.

MR. KENNEDY: – 2007 I think it was, yeah.

MR. RYAN: Yeah. So you were appointed minister of Justice in late 2007?

MR. KENNEDY: Yeah, it would've been late October I think.

MR. RYAN: 2008 I believe there, you know, there would've been a decision to –

MR. KENNEDY: I was – no, I was aware of the issue of the Metis or NunatuKavut.

MR. RYAN: Yeah.

MR. KENNEDY: Yeah, I was – no, I was aware of these issues, certainly.

MR. RYAN: Okay. But you have no recollection of discussing whether or not to appeal it to the Newfoundland and Labrador –

MR. KENNEDY: No, I have no –

MR. RYAN: – Court of Appeal?

MR. KENNEDY: – recollection of that, Sir, no.

MR. RYAN: Okay.

MR. KENNEDY: That's something that we would follow – there would be advice given, Commissioner, by Justice lawyers and decisions would be made, but that's not a decision a minister would say: I'm going to appeal this. Even though I was a lawyer.

MR. RYAN: Right. You would've ultimately given the direction to do so though ...?

MR. KENNEDY: Ultimately the decision – the way it would work – you're right – the officials or lawyers would make a recommendation and Cabinet or a minister – more likely a Cabinet in something like this would make a decision, because of the –

MR. RYAN: Right, so this would've been a Cabinet-level decision.

MR. KENNEDY: That's my recollection, Sir. We had a very strong – if I remember at that point we had a very strong minister of Labrador

Affairs and he tended – he wanted everything to – that related to Labrador to be discussed in Cabinet. And we also had a minister of Aboriginal Affairs at that time also.

MR. RYAN: Okay.

I bring this up because the government's arguments on appeal were that Labrador Metis Nation, at that time, had not produced a credible claim sufficient to trigger the duty to consult with respect to the Trans Labrador Highway project. It's a pretty significant decision for a ministry of Justice to try to seek leave to bring a case to the Supreme Court of Canada. Would you agree?

MR. KENNEDY: It's serious, yes, yeah.

MR. RYAN: So the arguments underpinning that decision to try to seek leave to the Supreme Court of Canada must be very important to government. Would you agree?

MR. KENNEDY: Yes.

MR. RYAN: So the timeline here is interesting because in late 2006, the Lower Churchill Project is registered for environmental assessment, correct?

MR. KENNEDY: That sounds right, Sir, yes.

MR. RYAN: And we have – the Commission has evidence that consultation began in earnest with the three Indigenous groups in Labrador in 2007 – May of 2007 is what the documents say. Does that line up with your understanding?

MR. KENNEDY: That – if you're telling me that, Sir, I have no reason to doubt that.

MR. RYAN: Okay.

So at the time that the environmental assessment process for the Lower Churchill Project is beginning and the consultations with Indigenous groups that had an interest in the project was starting to ramp up, the Government of Newfoundland and Labrador was pursuing legal arguments in the Newfoundland and Labrador Court of Appeal and the Supreme Court of Canada that denied that NunatuKavut had mounted a credible claim to Aboriginal rights

sufficient to trigger a duty to consult. Is that right?

MR. KENNEDY: That's my understanding, Sir, yeah.

MR. RYAN: Do you believe that the province's stance with respect to the Fowler decision inevitably impacted the province's stance on consultation with NunatuKavut in the Lower Churchill Project?

MR. KENNEDY: I remember, Commissioner – and again, I just – I need to take a second, Sir. I'll be very quick, I know there's a limit.

I do remember, Commissioner, reading those – some of those cases on the duty to consult because I wanted to be aware myself. I knew the arguments that were being put forward. In fact, Sir, one of the first things I did when I became minister of Justice – I met with the Aboriginal groups in Labrador, I met with the elders – the Metis elders. I still have a little gift that was given to me by one of the Metis elders.

So I was aware of the issue. Would it affect – certainly, I think the duty to consult – again, Commissioner, I know the Supreme Court of Canada is handing down decisions on this all the time. But the duty to consult is triggered by the – I guess by the recognition of being a – I forget the exact term, Sir. But I – in short, I think there would have to be a connection, yes.

MR. RYAN: Right. So the government, on the one hand, is starting consultations with a group on one project and, with the other hand, advancing arguments in court denying that their claim is credible, sufficient to trigger a duty to consult. Would you agree that the legal arguments being brought in court would infect the good faith of the negotiations on the other project?

MR. KENNEDY: I met, Sir – I know it's around July 2012. I have notes of a meeting with Todd Russell, who was president of NunatuKavut at that time, and some of those issues were raised. Those notes are redacted for some reason from my binder, Commissioner. I even remember having meetings with Mr. Russell – that's one that jumps out at me. I don't know whether I had met with him on others – I

can't remember, but I do remember meeting with him and that issue being raised. I do remember that issue being raised.

MR. RYAN: Do you remember what was said by you?

MR. KENNEDY: I'd have to see my notes, but –

MR. T. WILLIAMS: Mr. Commissioner –? (Inaudible.)

THE COMMISSIONER: If you could just turn off your mic, just for a second, Mr. Ryan.

MR. T. WILLIAMS: (Inaudible) – actually, mine mustn't be working.

If it's useful, Mr. Kennedy brought this to our attention and with the help of the Commission, we were able to get a copy of these notes that were redacted. So if it's useful (inaudible) I can supply copies of the notes. These are entered as an Exhibit, it's just simply that this particular meeting was redacted presumably by the province. But I do have a copy of the unredacted notes, if (inaudible) –

THE COMMISSIONER: Okay, have you seen those, Mr. Ryan?

MR. RYAN: I don't believe I have, Commissioner.

MR. KENNEDY: They're redacted in the books, Sir, so –

MR. RYAN: Okay.

MR. KENNEDY: Sorry, Commissioner.

THE COMMISSIONER: Yeah, I know they were.

Ms. O'Brien?

MS. O'BRIEN: We seem to have (inaudible) – no, it's just we seem to be having a mic issue: they're not working.

THE COMMISSIONER: Okay, so –

MS. O'BRIEN: This is – we just wanna make sure. I don't know the purpose or the reason why those notes were redacted. That would've been in consultation with government. So before we start putting up unredacted notes, we have a duty to ensure that the Government of Newfoundland and Labrador is aware and agreeable, or we come to some other arrangement.

MR. LEAMON: I'm happy to take a quick look (inaudible).

MR. T. WILLIAMS: Okay, sure. I think there's only two or three that are redacted in relation to this.

MS. O'BRIEN: (Inaudible.)

UNIDENTIFIED MALE SPEAKER: Okay.

MR. LEAMON: Commissioner, if I may? Sorry to interrupt again, but I would need to get instructions from our client (inaudible) release these notes.

MR. KENNEDY: I remember (inaudible) –

THE COMMISSIONER: Okay –

MR. KENNEDY: Sorry, Commissioner.

THE COMMISSIONER: – so let's just do it this way.

Obviously, Mr. Ryan, I think you have the right to see these notes. If they're going to be referred to the witness, then I think you should have the ability to see them as well, in advance. So I'm gonna, basically, ask you to – if you're okay with this – to sit aside and at the break we'll try to figure out, you know – Mr. Leamon, I expect you to get an answer quickly and then provide them to Mr. Ryan if, in fact, they're going to be provided to Mr. Kennedy.

And seeing that they've already been provided now to Mr. Williams, I can't see why they should not be provided to Mr. Ryan. So –

MR. T. WILLIAMS: We have, obviously, no objections to (inaudible).

THE COMMISSIONER: Right.

So we'll – would it be okay with you if we took a break from your examination now? During our break you can look at the notes, hopefully, once they're cleared. And you can start getting to work on that now, Mr. Leamon. And then I'll get you – call you back afterwards to continue your examination of Mr. Kennedy?

MR. RYAN: Yes, that's fine –

THE COMMISSIONER: Works for –?

MR. RYAN: – Commissioner.

THE COMMISSIONER: Okay.

And if there are any other notes that are also being released or whatever, then I expect those will be also the same scenario for Mr. Ryan.

Okay. Thank you, Mr. Ryan. We'll call you back. All right.

All right, Grand Riverkeeper/Labrador Land Protectors?

MS. URQUHART: Good morning, Mr. Kennedy.

My name is Caitlin Urquhart, and I'm representing the Grand Riverkeeper and Labrador Land Protectors.

So you may be familiar with them. They're a concerned citizens group that has been dedicated to protecting the ecological integrity of the Mista-shipu, or Grand River as it was formerly known since the 1990s. And they were heavily involved in the Joint Review Panels – the environmental assessment hearings, which took place in respect of this project – and attended all 45 days of hearings, and they have a report that's filed here with the Commission as P-00352, if you have any interest in reviewing that.

So obviously, you came into this portfolio in October of 2011, and we have your notes from reviewing certain documents, including the JRP report.

MR. KENNEDY: Correct.

MS. URQUHART: And I'll note just that those are at P-01218, page 24. And I don't think we need to pull that up but just that that's – you know, if you do want to refer to them. Not sure what tab that is in your book.

In any case, in reviewing your notes –

THE COMMISSIONER: Tab 18.

MS. URQUHART: – I noted that there are a number of the recommendations from the Joint Review Panel that aren't addressed in there and so I just wanted to get –

MR. KENNEDY: Sure.

MS. URQUHART: – your, sort of, take on, you know, these important issues.

MR. KENNEDY: Sure.

MS. URQUHART: So one of the concerns that was relevant to my clients and to a number of the Indigenous groups as well, was methylmercury.

MR. KENNEDY: Correct, yeah.

MS. URQUHART: And that's – you know, a whole series of the recommendations from the Joint Review Panel were on that issue.

MR. KENNEDY: Yeah.

MS. URQUHART: And I guess, I put it to you just – what was your position on that? Why was that not noted in your notes?

MR. KENNEDY: Yeah I remember, Ms. Urquhart; early on, Commissioner, what I was trying to do was understand the project. So the – in terms of the basis of the project, the – and the issues that particularly struck me during the – without going to my notes there – during the review would have been issues relating to the financial oversight, the criticisms of – what appeared to be criticisms of Nalcor, things like that.

Things like – I certainly wasn't avoiding methylmercury, Ms. Urquhart. And I hesitate to raise this, Commissioner, but I know there was a meeting in January of 2012 with Jim Lyall who

was the president of Nunatsiavut Government at the time and the issue of methylmercury was certainly raised by Mr. Lyall. Those notes are also redacted.

MS. URQUHART: Okay.

Yeah so, I haven't seen those obviously. And of course you've mentioned Nunatsiavut was really outspoken on this issue and we have at P-00272 is a news release from them. But I'd like to go to P-00067, please?

THE COMMISSIONER: Just before we do.

MS. URQUHART: Sorry.

THE COMMISSIONER: So the issue of the redaction of these notes. It's coming as a bit of a surprise to me that these notes are being redacted. There may well be a good reason for it and I'm just going to ask Commission counsel to address this, now, to make sure that what I need to see, I'm seeing and that there's an appropriate reason why these notes are being redacted.

And that's all I'm going to say at the moment because I'm a little surprised that these sorts of notes would be not there but maybe there's things in them that I don't know about and whatever.

So anyway, sorry to –

MR. KENNEDY: Commissioner, perhaps I should clarify. I know I met with Jim Lyall. I know I made notes and I have original notes. They're not in the binder and they're – because they're chronological, I can tell. So I think that they're redacted; they're not in there.

THE COMMISSIONER: All right. Okay. Thank you.

MR. KENNEDY: I didn't redact them, Sir.

MS. URQUHART: Thank you.

So Madam Clerk, if we can go to P-00067, please? And – oh sorry, you have it up here.

So this is the sanction decision here – or the – I believe we discussed the other day, but this was a cabinet note. It's – obviously, it's redacted at

the top but it's some document that was prepared.

At page 17 here it indicates, just for the purposes of demonstrating – this is something that was brought up in the House of Commons as well. At the bottom of the page, it talks about – in the House of Assembly, issues including cost overrun, debt and methylmercury concerns were raised. So this is – obviously, this is an issue that's in the public eye. How did you address that? How did you address yourself to those concerns?

MR. KENNEDY: Quite frankly, Ms. Urquhart, it was certainly out there. It was – I'm familiar with it. Environment – the way these issues would work, in – when you have a government – Natural Resources would be a primary department responsible, obviously, for Muskrat Falls, but the Department of Environment would also be involved and when it comes to issues like methylmercury – we would seek their guidance and advice and this paper should have been reviewed by Environment, I'm assuming.

Also – but what I do remember is that Nalcor – the – one of the issues was whether or not there was enough discussion going on with – between Nalcor and the Indigenous groups in terms of methylmercury. I don't remember it being the same high profile issue during the time frame – this time frame, that it became later on. It was an issue, no question, it was an issue for the Indigenous groups but I don't remember it the same high-profile nature.

MS. URQUHART: And if we actually – if we can go to – sorry – P-00041, which is the actual JRP report, and I believe it's page 238 [sp this is the actual report page number, not the Exhibit page number in red] where the Joint Review Panel essentially –

MR. KENNEDY: Oh, it was an issue in the (inaudible) –

MS. URQUHART: – indicates that –

MR. KENNEDY: Oh, no question.

MS. URQUHART: – they have concerns –

MR. KENNEDY: Yes, (inaudible) –

MS. URQUHART: – about significant adverse health impacts –

MR. KENNEDY: Yeah.

MS. URQUHART: – on Labradorians as a result of methylmercury.

MR. KENNEDY: I was aware of the issue. Yes.

MS. URQUHART: And you read this, you know – we have your notes, so you read through this – and that didn't tweak to you as something that you should have, you know, with stars and underlined and –

MR. KENNEDY: Not at that point in time because I was looking at other issues. No.

MS. URQUHART: Okay.

So the –another issue in this document, if we can – so that was on page 238 [sp this is the actual report page number, not the Exhibit page number in red], just for the record, if we wanted to go to it but if we can move on, just 'cause we're a bit tight for time.

So to 251[sp this is the actual report page number, not the Exhibit page number in red] the Panel is talking about the failure of the North Spur and now we know that this is a significant concern for folks in the valley and Mud Lake and all communities, essentially, that are downriver from this project. And one of the issues – if we scroll down a little bit further, please – oh, maybe I have the wrong page number. I may have used the bottom page.

In any event, it – there's a recommendation that the failure of the North Spur – so the – or catastrophic failure of any of the dams, would be insured and that Nalcor would compensate people in all circumstances and have full coverage of that. And I can get, actually – exact wording is probably easiest to get here. Sorry, that's Recommendation 14.1 and 14.2, and in its response to this, the Government of Newfoundland and Labrador – that's 14.2 – is that there would be no-fault liability coverage for any potential catastrophic loss or failure of a dam.

And the Government of Newfoundland determined that it would be satisfactory for regular insurance, which would require negligence – anything only resulting from negligence would be covered. So it would not be a no-fault insurance policy; it's very, sort of narrow, in that way. Do you have any information as to how that was arrived upon?

MR. KENNEDY: My understanding, Ms. Urquhart, that – and Commissioner – that in relation to the recommendations of the Joint Review Panel, that different departments provided different answers or – to the Joint Review Panel. The North Spur was another one of these issues – in all of my notes, Commissioner, I think there is one or two references to it. It became a much – it's there –

MS. URQUHART: Mm-hmm.

MR. KENNEDY: Where it's – but it became a much bigger issue, I think after I'd left that portfolio.

MS. URQUHART: I mean –

MR. KENNEDY: I don't remember it being a major issue, that it's since become.

MS. URQUHART: There's a recommendation – there's –

MR. KENNEDY: Yeah.

MS. URQUHART: – in – that was directed at Newfoundland – the Government of Newfoundland and Labrador. This is your project, it's your portfolio. At the end of the day, you have to be satisfied releasing this from environmental assessment.

MR. KENNEDY: I think the Environment – again, I'm not sure on this – but I thought Environment were heavily involved in – the environmental assessment I thought was done by the Department of Environment – our Department of Environment, and the federal department of environments.

MS. URQUHART: This is the Natural – this – Natural Resources is the lead on the project – on the Muskrat Falls Project.

MR. KENNEDY: We are, but there's a coordination with other departments, yes.

MS. URQUHART: Absolutely, so this is – but in your view, I mean it's one of the recommendations that's at the government. And you're in Cabinet, you're around the table for these discussions and this is allowed to – in your view that passes muster.

MR. KENNEDY: I don't have any recollection. You'd have to point me to what the Government of Newfoundland and Labrador response, because I think as I indicated earlier, we had a very strong minister of Labrador Affairs in John Hickey, and Minister Patty Pottle was there as the minister of Aboriginal Affairs. These two Cabinet ministers spoke very strongly in relation to Labrador. So any issues that were discussed, I can assure you, I mean, we – the late Mr. Hickey – one of the comments, every time everything was to be discussed – said what about Labrador?

So these were issues that they would have been alert to. I don't have a specific recollection, Ms. Urquhart, of discussions. But I can assure you these ministers were on top of this.

MS. URQUHART: And were you – excuse me – were you aware that there was no risk or contingency built in to any of the cost estimates or around a catastrophic failure of any kind?

MR. KENNEDY: No, I wasn't aware of that, no.

MS. URQUHART: So that was the evidence that we received –

MR. KENNEDY: Okay.

MS. URQUHART: – from Mr. Bennett the other day, that that was not incorporated. So there was no – there's no backup, there's no fall back from this – this (inaudible) –

MR. KENNEDY: I wasn't aware of that, no.

MS. URQUHART: Okay.

And you're aware, obviously, that the potential of, you know, huge amounts of water to destroy property and to harm or put people's lives at risk?

MR. KENNEDY: Yeah, in a general way I certainly would be aware, obviously, of these issues. But also, back to the methylmercury – at that point, I understood that there was a dispute between Nalcor and the Indigenous groups as to the effect of methylmercury and the mitigation efforts that were being made.

So I know there were discussions ongoing between Nalcor and the Indigenous groups, was my understanding, and that that was one of the requests that the leaders were asking me, is that there be more involvement with Nalcor. So Nalcor were leading on that.

MS. URQUHART: Mm-hmm.

MR. KENNEDY: It didn't become – it's certainly an issue, Ms. Urquhart, and I, you know, I – but it wasn't the primary issue that was being – or a primary issue that was being raised with me.

MS. URQUHART: And one of the other issues – and one that Mr. Learmonth canvassed with you as well – was – so integrated resource planning is one of – another recommendation.

MR. KENNEDY: Yeah.

MS. URQUHART: And obviously, at the time of these debates, prior to sanction and around the time of the Joint Review Panel, discussions around conservation and demand management were certainly in the public eye. Were you aware that conservation and demand management was not integrated into any load forecasting for this project?

MR. KENNEDY: I do remember – if – again, if I remember correctly, Ms. Urquhart – this issue had been raised by Professor Feehan. It had been looked at by – I think I remember a briefing note at one point. There had been discussions of conservation and demand management. What exactly happened, I am not aware, so I can't dispute what either Mr. Learmonth or what you're saying to me.

MS. URQUHART: And so was there any – you don't have any recollection of conversations to Nalcor or to anyone else saying: why aren't we looking at getting people to conserve?

MR. KENNEDY: I don't have any recollection. But Mr. Bown, the deputy minister, or Mr. Martin might be able to shed some light on that.

MS. URQUHART: I mean, you were the – sort of this – what did you say – contrarian, right? So you went – you were going through this, step by step, to make sure that you had – you fully understood the project and the costs and everything. And – but to your recollection, there was no conversation about why aren't we looking at how we could get –

MR. KENNEDY: It was never –

MS. URQUHART: – people to reduce –

MR. KENNEDY: – brought to my attention as a big issue, as a way to deal with this, no.

MS. URQUHART: And I'm just going to go to – in your transcript, when you were interviewed – I believe it was August – you had indicated – you made a couple of statements, and I'm just – if you don't mind, I'd like to get your sense on this.

So one in particular that struck me – so at page 36 of your transcript you indicated when asked about how the response to the Joint Review Panel was developed: I have no recollection of it. I do know that I had extensive notes in relation to the EA report, and I know there's questions, but no, I don't remember having any specific – it seems to me we were adopting Nalcor's position or supporting Nalcor's position.

And we have records of notes and correspondence between senior bureaucrats and Nalcor. Is that your, sort of, recollection of events?

MR. KENNEDY: There – my recollection – I had an – after Mr. Learmonth had raised that with me – he, you know – yeah, I went back through all my notes. And I did see the actual responses to the – from Natural Resources, but there were various departments, Commissioner, I understand that were referring.

MS. URQUHART: Mm-hmm.

MR. KENNEDY: So I did see the responses. They would have been prepared by officials. But it wouldn't have been – this would have been a coordinated approach between the Department of Natural Resources, the premier's office, perhaps Environment, whoever. Labrador Affairs would – could possibly have been involved – Labrador and Aboriginal Affairs.

So I do remember subsequently seeing that, yeah.

MS. URQUHART: So and –

MR. KENNEDY: I would have had to sign off on it – is what my point is.

MS. URQUHART: And I guess my question is really around the point you made that we were adopting or supporting Nalcor's position. Is that part of your recollection? You've indicated that Nalcor was quite influential in terms of they had close relationships, they were confident and providing information and explanations to yourself and to your staff.

Is that something that you recall as being part of that process?

MR. KENNEDY: Yeah, especially in the early days. I mean, it's a – you know, the fact that that was the first report I reviewed, and even though I didn't review it perhaps through the same – or highlight the same points that you would highlight, I – that was the first report I reviewed, and I was struck by some of the comments in there.

So at that stage, I mean, the information was being provided by Nalcor. We had – I had no reason, as the minister at that point – even though I've got issues and concerns – I had no reason to question what they were being provided. That was generally the way things were happening it appeared to me, Ms. Urquhart, is that Nalcor would provide information, Commissioner, the government would do their own checks and, in coordination with Nalcor, provide answers to certain issues, yeah.

And I do remember the methylmercury was one that Nalcor would, I think, indicate that they had

under control or were having discussions or whatever.

MS. URQUHART: Thank you.

And in terms of – so we know that obviously the project was released from environmental assessment March 15, 2012. So while you were –

MR. KENNEDY: Yes.

MS. URQUHART: – minister at that time?

MR. KENNEDY: Yeah.

MS. URQUHART: And I'm just wondering, obviously, as you've indicated that different departments were each responsible for various recommendations –

MR. KENNEDY: Correct.

MS. URQUHART: – and the responses to those. Within your department, what mechanisms were in place to track the progress of the – or the conditions that were – the conditions of release?

MR. KENNEDY: Yeah. That would be a question, I think, that Mr. Bown might be able to help you out a bit more than me in terms of the actual procedures within the department.

MS. URQUHART: You were satisfied that there were procedures within the department to ensure that Nalcor would comply with those recommendations or with those conditions?

MR. KENNEDY: There was so much contact with Nalcor. I mean, I'm not going to say it was daily – now, Mr. Bown may have had – if not daily, it was certainly weekly contact. I know government was trying to stay on top – government as a whole was trying to stay on top of things. And the environmental assessment panel – excuse me – the environmental assessment released – again, the Department of Environment would have been primarily responsible for some of the issues were raised in that report. It's my understanding.

MS. URQUHART: Madam Clerk, if we can go to P-00352, please. And let me just get my page number here.

THE COMMISSIONER: Screen.

MS. URQUHART: Sorry, I believe it's page – and this – so this is the report – or the paper of the Grand Riverkeeper to the Commission. And I believe it's page – I just have the paragraph number, so if you can scroll down, I think it will be page 5 at the bottom, which is probably page 7. Try it? Yes.

If you can continue on to paragraph 11 there, please?

And Minister Kennedy, if you wouldn't mind just reading that out on the record.

MR. KENNEDY: Paragraph 11, Commissioner.

MS. URQUHART: Yes, please.

MR. KENNEDY: “In our view, provincial and federal politicians have sacrificed the sustainability of the province's natural capital in exchange for short-term political gains, and economic gains for the province that may in fact never be realized. When the Project is completed, the waters of the Grand River will be contaminated with methyl mercury, traditional trapping and portage routes will be submerged, winter travel will be more perilous, the people downstream will live in fear of the failure of the North Spur and the fish, water fowl, seal mammals and fauna that relied on the Grand River will be displaced, depleted or extinct; what will be left for Labradorians?”

MS. URQUHART: So this is the sentiment of a number of folks within – in Labrador – many Labradorians.

And so I just want to get your sense. When you are looking at what is the least-cost option for the Province of Newfoundland and Labradorian – sorry, the Province of Newfoundland and Labrador – and I'm wondering whether or not the costs that are going to be borne by Labradorians in building this project are built into your calculations on that?

MR. KENNEDY: Ms. Urquhart, as I – again, as I indicated, Commissioner, we had two ministers from Labrador, first time we’d ever had two ministers from Labrador sitting around the table. The issues for – we had the Innu who had signed on to the New Dawn Agreement, we – there were other groups in Labrador who were supporting the project, so we were certainly looking at the effect on Labrador. Some of the issues that have since become highlighted, if I can use that term, weren’t necessarily as big during the time frame that I was there, as they subsequently became.

MS. URQUHART: So – but I would put to you that really this was a sort of dollars-and-cents calculation and the Commission of Inquiry will determine whether or not the inputs into those calculations were correct and accurate. But, you know, I put to you that you’ve indicated that it’s the least-cost option is what you were aiming for and that that cost, that figure, does not incorporate the impacts on Labradorians, on the ecological integrity of the Grand River or of the Churchill River, and the impacts on the social and economic impact – impacts on Labradorians.

MR. KENNEDY: I don’t agree with you there, Ms. Urquhart. We had the – Minister Pottle was a Nunatsiavut, she lived in Hopedale, I think – Hopedale or one of those communities at the time. And Minister Hickey – late Minister Hickey, lived in Happy Valley-Goose Bay. We considered – all of these factors were considered. There’s always a cost-benefit analysis, not simply, you know, go ahead at all costs.

Even though the least-cost option, Commissioner, is the way I’ve described the issue that was been looked at, there were other – the issues affecting Labrador were certainly – Ms. Jones was in the House of Assembly daily, raising issues in relation to Labrador. Now, I don’t know in *Hansard*, Commissioner, where or not there’s references to methylmercury or Ms. Jones is raising a – but she was fierce advocate for Labrador, as were Minister Hickey and Minister Pottle.

So I don’t agree with you that issues of Labradorians weren’t looked at. There were

different groups in Labrador that had different issues, but the issues were looked at.

MS. URQUHART: But at the end of the day, the determining factor is what’s least cost, right?

MR. KENNEDY: No, the determining factor – again, with all due respect, Ms. Urquhart, the determining factor – and I think I ended this with every speech that I ever gave was: Is it in the best interests of the people of Newfoundland and Labrador? It was never is it simply in the best interests of people in Newfoundland, is it in the best interests of the people of Newfoundland and Labrador.

MS. URQUHART: And I guess that’s where we will agree to disagree.

MR. KENNEDY: That’s fine.

MS. URQUHART: Thank you.

That’s all for me.

THE COMMISSIONER: Thank you, Ms. Urquhart.

All right, Emera Inc. is not present.

Former Nalcor Board Members?

MS. MORRIS: Good morning, Mr. Kennedy. My name is Julie Morris and I represent the former Nalcor board members, those being: Ken Marshall, Tom Clift, Gerry Shortall and Terry Styles.

I only have a couple questions for you today, so I won’t be taking up much of your time. In follow-up to the evidence you provided yesterday to Mr. Budden, I understand you testified that you were not involved in the appointment of Terry Styles to Nalcor’s board of directors. Is that correct?

MR. KENNEDY: I would have been aware of it, certainly; I would have been consulted. But who actually made the appointment – I think the appointment came out of the premier’s office. I was aware it was being – happening, yes.

MS. MORRIS: So you were aware but you were – you did not directly decide that appointment.

MR. KENNEDY: I don't remember that. I have no recollection of that exact process.

MS. MORRIS: Did you personally take any issue with respect to the appointment of Mr. Styles to the board?

MR. KENNEDY: No, I knew Mr. Styles. Myself and Mr. Styles had gone to university together back around 1977 at Memorial; we played ball hockey together. I knew Mr. Styles; I hadn't known him in 30 years. I had no – when his name was put forward I had no reason to disagree with his name as being put forward.

MS. MORRIS: During your time as minister did you have any concerns with the capabilities or competency of Mr. Styles, Mr. Clift, Mr. Shortall or Mr. Marshall with respect to their capacity as board members?

MR. KENNEDY: Well, no, I knew Mr. Marshall from various capacities; his brother, Steve, and myself have been friends for many years and knew each other well. I knew Kenny from that perspective; I knew he was a very successful businessman. I knew he was a very sensible and smart guy so I had no problems with Kenny Marshall. I thought he brought that kind of mind necessary.

Mr. Shortall I didn't know. I knew him by reputation. Again, seemed to have a sterling reputation in the community and had the qualifications. And Professor Clift, or Dr. Clift, I also knew personally and, again, I knew he'd been on several boards and had no reason to question his qualifications in any way.

MS. MORRIS: Do you have any reason to believe the former Nalcor board members did not act in good faith while discharging their duties?

MR. KENNEDY: No, I'm certain that this – these board members would have been aware of their fiduciary duty and their duty to act in the best interests of the corporation. So I have no reason to think that, no.

MS. MORRIS: Those are all my questions.

Thank you.

THE COMMISSIONER: Thank you, Ms. Morris. Welcome, by the way.

Manitoba Hydro International, I believe no questions?

MS. VAN IDERSTINE: No questions.

THE COMMISSIONER: Thank you.

Newfoundland Power Inc.

MR. KELLY: Good morning, Mr. Kennedy.

MR. KENNEDY: Good morning, Mr. Kelly.

MR. KELLY: Ian Kelly for Newfoundland Power.

Mr. Kennedy, I want to have a discussion with you about the process and particularly before the Public Utilities Board. And let me start by setting up a couple of things for you.

First of all, we recognize that this project could have been sanctioned by government without going through a public utility board process; it had previously been exempt, correct? And various witnesses, including yourself, have talked about some of the public policy reasons behind the project as well. But in May of 2011 government made a decision to make a reference to the Public Utilities Board. Correct?

MR. KENNEDY: That's my understanding, Sir.

MR. KELLY: And we had Mr. Thompson, for example, explain how that process came about. There had been correspondence from Mr. Penney and Vardy pushing for a PUB reference, and government decided that it wanted to have an independent look at the project and set up the reference. Correct?

MR. KENNEDY: That sounds correct, Sir, yes.

MR. KELLY: Okay. And in doing that, if I can take you to Exhibit 00846, this is the note which was prepared –

MR. KENNEDY: Just – it’s not on my screen yet, Sir.

MR. KELLY: This is the note which was prepared to have the reference to the PUB, and it’s dated the 26th of May, 2011 –

MR. KENNEDY: Okay.

MR. KELLY: – on page 3. And I want to take you over to page 2 and you’ll see there a series of bullets. I’m going to take you to the second one which refers to the insurance reference –

MR. KENNEDY: Yes.

MR. KELLY: – previously held. As you scroll down, government appointed Mr. Johnson, “Consumer Advocate, to represent consumer interests during this review. A consumer advocate engages their own experts to review evidence and is able to challenge/question project assumptions.” And then there’s a discussion about how it’s been informally discussed.

And then if you come down a couple of more bullets: “Nalcor has requested that a provision be added to the Order to protect commercially sensitive information. The PUB has advised that it has well established processes in place to deal with commercially sensitive information and would prefer that the Order be silent on the matter.” I won’t read more; I just want to give you a flavour of what was set up.

So government set up a relatively robust process to get started and it was clear from Ms. Greene’s evidence of PUB witnesses that they had then contemplated a fairly robust process. And if we just very quickly turn to page 5 of this exhibit – or sorry, page 4.

You will see here that the reference contemplated that there would be a submission from Nalcor to outline the two options to be looked at. And we know from the evidence that that submission didn’t come in in May or June. In fact, it did not get filed until after you had become minister.

You became minister at the end of October, correct?

MR. KENNEDY: Correct.

MR. KELLY: And the submission was filed on November 10, right. So one of the first things – like, it hadn’t even come in when you became minister

So the first piece of paper that I can find that deals with then how this process was discussed is Exhibit 01214 and can I take you there?

THE COMMISSIONER: It’s tab 9?

MR. KELLY: Tab 9, I think, in your volume, Mr. Kennedy.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

And this is an email that Mr. Bown sends to you after he meets with Ms. Maureen Greene on November 24.

MR. KENNEDY: Yes.

MR. KELLY: And you’ll see at the top he says “I met with Maureen Greene this morning on the next steps.” I’m going to paraphrase through the first one, number 1 is release of MHI report. Number 2 is “Public Notice requesting interested” parties “to provide comments” – that’s going out in early January.

So that would have triggered the intervenor process.

Then “Technical Conference” is number 3, contemplated in February, 2 days. “Closed session with expert interveners make presentations and ask questions of Nalcor. Participants are likely to be PUB staff, Consumer Advocate and Nalcor. PUB has not yet heard from industrial customers or Newfoundland Power.” And that’s, of course, because the notice hadn’t yet gone out. “This assumes that the CA will represent all other informed parties (Vardy …)” – et cetera. So this is how the process is being described.

Then “Community Sessions” and a “Board Report – end of June.”

And then Mr. Bown reports to you: “Aside from schedule a number of issues were identified.”

The Consumer Advocate “plans to have his expert (Knight Pieshold) prepare a report for release.” And 2, the Consumer Advocate “will be seeking access to confidential information.”

The next one is – there is some discussion – the Board and the Consumer Advocate might want to look at natural gas.

I’ll skip through 4.

Mr. Bown says: The “PUB was advised that end of June is too late and March 31 is our date for submission of Board report. Response was that March 31 is not possible given activities that must take place. The following responses were given to PUB on the other issues:”

A report from the Consumer Advocate was not in his terms of reference “and will delay the process as he wants sufficient time to complete.” The Consumer Advocate “will not have access to the confidential”-information – “therefore the report will not be based on all facts. A second report; additional to MHI, will cause some public confusion and could be contrary to MHI report. NR will meet with CA to discuss.”

And 2, Consumer Advocate “will not have access to confidential information. NR will discuss with CA.”

Now, Mr. Kennedy, this is getting reported to you by Mr. Bown, and this would be – I would suggest to you – the type of thing, which wouldn’t – would rise to the level that would involve ministerial involvement, correct?

MR. KENNEDY: Yes it would, yeah.

MR. KELLY: And so did you agree with this limitation that was going to take place for both the PUB processes and the Consumer Advocate processes?

MR. KENNEDY: The first point I’d make Mr. Kelly, if you go back to the top of the page, it says that the – “I was provided with a...summary of the schedule as is seen by the PUB” – that was the PUB schedule as outlined. Quite frankly, I’m a little bit surprised by that date – November 24.

I didn’t have my first – my notes indicate my first meeting in relation to the PUB was December 1, Commissioner. So that I don’t know if these decisions were made with, you know, by someone other than myself. I don’t remember having any specific discussions with Mr. Bown by November 24, and he’ll be able to clarify.

MR. KELLY: But he’s sending this to you.

MR. KENNEDY: He’s sending it to me, yes.

MR. KELLY: And you don’t come back to him and say no, no this is not on – government has already decided on a more robust process.

MR. KENNEDY: No, but my – the point I’m trying to make Mr. Kelly, is that there had been people involved in the PUB process prior – in government – prior to me getting involved. So discussions were ongoing. I don’t remember being involved in this level of discussion about the PUB process.

MR. KELLY: Okay, so it’s clear at this stage that they’re contemplating limiting the process.

MR. KENNEDY: Well someone in government, yes. My point is someone in government, you know –

MR. KELLY: You’re the minister at this stage.

MR. KENNEDY: I’m – yeah, but I’m saying to you I don’t have a recollection of having that degree of detail about the PUB process at that point.

MR. KELLY: Well, let me help you along a little bit, if – a month later, in December, at Exhibit 00583 – can I take you there?

MR. KENNEDY: Sure.

THE COMMISSIONER: Tab 12.

MR. KELLY: Given the time, I won’t go through this in detail, but on December 23, you write to Mr. Johnson – this is before you’ve met with him in January – and you’re telling him in the third paragraph activities are going to be limited. You go on to explain, at the top of page 2, he won’t have access to confidential

information, and at the end of that paragraph it's "not contemplated" that he's gonna complete an independent analysis.

So, he's being told then he's going to be limited –

MR. KENNEDY: That's correct, yeah.

MR. KELLY: – and then at Exhibit 00584, you write the board –

MR. KENNEDY: That's right, yeah.

MR. KELLY: – and talk about – in the third paragraph – the activity – you talk about the insurance reference. And you say: "That activity was not burdened by the same time sensitivities as the current review."

And, at the top of page 2, you write: "... Government queries whether all of the process employed by the Board in the insurance review are necessary in the Board's review of the Reference Question."

So we've gone from May, in which government was looking for that type of review – insurance-type process – to, by December, it's off the board; it's not happening. Okay – and you're signing off on these letters.

Can you explain how got there?

MR. KENNEDY: Yeah, the – all I can tell you, Mr. Kelly, is that there were ongoing discussions within government as to the PUB process. I became the minister on October 28 and I've already outlined the detailed steps I took. My first notes of becoming alert to the types of issues you're talking about are December 1 and 5.

I signed a letter, but as I've indicated on numerous occasions, Commissioner, it's my letter – I'm the minister – but there – decisions are made in a consultation – consultative process. And, in this particular case, there were individuals who had involvement and understanding of the PUB.

All I'm saying to you is that by November 21, when you showed that email, I don't remember

having that degree of knowledge or detail as to the PUB process at all or what was going on.

MR. KELLY: Okay.

And in your – we know that the PUB process was delayed by the fact that out of the six months that they had, the – Nalcor had taken five months to get their submission in. And you also explained to counsel yesterday the fact that there was now this impending pressure on – from the DG3 numbers, which were coming, and the desire to get into the House of Assembly.

Did – are those factors – is that what limited this process?

MR. KENNEDY: Sir, the – I remember the – becoming alert early on to the letters that the chair of the PUB had written. I remember having concerns and there appear to be valid issues raised. So, that was one of the reasons, as I've indicated, led to the hiring of Mr. O'Reilly to try to help that process.

As for why it was limited, Sir, there were a number of issues. My understanding, you know, as I outline in my notes and letters, is that – one was that there was – nine months was felt to be sufficient, but more importantly, the premier – as I outlined in my notes of December 5 – wanted to get the matter to the House of Assembly to have a decision made on sanction and that – to get the DG3 numbers done because Nalcor also were outlining – as in my notes – that they needed to get in there and do the work.

MR. KELLY: And here's the conclusion that I draw from that, Mr. Kennedy, and see if you'd agree with this. It seems to me that the project was – drove the process instead of the process determining what the project was going to be. Am I not –

MR. KENNEDY: I can't disagree, Commissioner, that the project – the timelines were being given to us by Nalcor. We had no reason to – I had no reason not to believe that the timelines were accurate. And eventually it turned out not to be, Mr. Kelly.

MR. KELLY: Okay.

Can I take you to one last little bit. I wanna take you to your notes – this is your meeting with Mr. Johnson – exhibit 01215.

MR. KENNEDY: Yes. Correct, Sir. I'm familiar. That's the January 3 note?

MR. KELLY: January 3 note.

MR. KENNEDY: Yeah.

MR. KELLY: So by this point in time you'd already sent the letter to Mr. Johnson limiting the role of the Consumer Advocate, and as I go down through your notes, especially on page 2, you are –

MR. KENNEDY: Can you bring them up, Commissioner? So I can see them.

THE COMMISSIONER: Yeah. Can you get to that please?

MR. KELLY: Exhibit 01215.

THE COMMISSIONER: 01215.

MR. KELLY: As you go down through your notes, especially on page 2, it seems to me – as I read them – at the bottom of page 2, you are confirming the limitations that you've already written in your letter of December 23.

MR. KENNEDY: That's – yeah – that's –

MR. KELLY: Correct?

MR. KENNEDY: – correct. Yes.

MR. KELLY: Right.

MR. KENNEDY: Yeah. The meeting with Mr. Johnson was to – I was – is there anything I can do to help beyond what we've already decided. Yeah.

MR. KELLY: Right. But you'd already limited it by then.

MR. KENNEDY: Yeah – that's – yeah. There was no – yeah – it wasn't –

MR. KELLY: Right.

MR. KENNEDY: – a question of, well, can we change the process.

MR. KELLY: The last question I had is on page 3 of your notes –

MR. KENNEDY: Okay.

MR. KELLY: – you have a note at the bottom. Do you see that? It's at – there you go.

MR. KENNEDY: Oh, sorry.

MR. KELLY: Gone too far. It says "Exhibit 106 – reliability," and then maybe you could just read the next bit.

MR. KENNEDY: Yeah. "not only least-cost power but least-cost reliable power," and reliable is underlined.

MR. KELLY: Yeah. Do you know what that note's about?

MR. KENNEDY: I don't, but if I underlined it, obviously, it meant something to Mr. Johnson – was raising an issue – I think the PUB had some issues around the transmission lines.

MR. KELLY: Would this help you? Exhibit 106 is Nalcor's technical note about reliability –

MR. KENNEDY: Okay.

MR. KELLY: – issues (inaudible) –

MR. KENNEDY: So Mr. Johnson – yeah, okay.

MR. KELLY: Right. So Mr. Johnson –

MR. KENNEDY: Yeah.

MR. KELLY: – was flagging up –

MR. KENNEDY: Yeah, he was.

MR. KELLY: – for you.

MR. KENNEDY: Yes.

MR. KELLY: Even going to the extent of pointing out a particular exhibit number before the Public Utilities Board.

MR. KENNEDY: That's what it appears to be, Sir. Yeah.

MR. KELLY: Thank you. Those are my questions.

MR. KENNEDY: You're welcome, Sir.

THE COMMISSIONER: Thank you. I think we'll take our break here.

So what's going to happen next is that, hopefully, Mr. Ryan, you'll get – well –

MR. LEARMONTH: (Inaudible.)

THE COMMISSIONER: – we'll figure out what's going on. That's resolved?

MR. LEARMONTH: Yeah.

THE COMMISSIONER: So is Mr. Ryan going to see those notes?

MR. LEARMONTH: Yes.

THE COMMISSIONER: Okay, so you'll get a chance to see those, and we'll come back in 10 minutes. We'll continue with you. Twenty minutes for you, Mr. Williams, and then I think you have some redirect for about 15 minutes or so, and we – hopefully, we'll get you out by noon.

MR. KENNEDY: Thank you very much, Commissioner.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: Mr. Ryan.

MR. RYAN: Mr. Kennedy, so I've had a chance to review these notes and I do just need your help with two portions actually.

MR. KENNEDY: Sure.

MR. RYAN: So, on the first page where it starts July 17, 2012, yeah.

THE COMMISSIONER: Okay so these notes now are entered as – have we now re-entered these with the – without the redactions?

MS. O'BRIEN: We'd asked to have them entered as Exhibit P-01549, please. And then, I believe – are they ready for Madam Clerk to bring up?

THE COMMISSIONER: Just see if we got this. We'll bring it up now, Mr. Ryan, sorry.

01549.

MR. RYAN: Great, thank you.

So there is a vertical line on the right-hand side of the page and then there's –

MR. KENNEDY: Yes, there is, Sir.

MR. RYAN: – some notes in the margin.

MR. KENNEDY: Yeah.

MR. RYAN: And they seem potentially relevant to the questions that I asked you before the break, so could you just read those out?

MR. KENNEDY: Yeah, that's why I raised that issue, Commissioner; I remembered having discussions with Mr. Russell. What they say on the right-hand side is the SCC cases: two, it appears to be cut off a little, but CA decision. I think that's – that would be the Court of Appeal decision, Commissioner.

And it appears to me what I'm saying there – it's cut off a little: Ways to be recognized and Aboriginal group – that could be legal status. I'm not sure, Mr. Ryan, what exactly it says because it's cut off. And then down below I've got the federal government, then I've got my meetings in 2007 and then I seem to say: court case ongoing.

MR. RYAN: Okay. And now –

MR. KENNEDY: That's what it appears to be. It's cut off a little but that's what it appears to be.

MR. RYAN: And then on the second page, actually, the very first portion also seems to be relevant.

MR. KENNEDY: Yeah, I referred to the 2007 case on consultation. Yes.

MR. RYAN: And can you – is the asterisk part also part of that?

MR. KENNEDY: No, that asterisk refers to the agreement of Labrador Iron Mines, which will be announced shortly. I don't know what that means.

MR. RYAN: Okay.

MR. KENNEDY: What is – the next asterisk, though, could be helpful or may be relevant, Sir. The NCC has interpreted cases in a broad context.

MR. RYAN: Yes.

So I just have two questions about this, and I put this to you earlier but I'm not quite sure that I'm aware of the answer. So would the government's active pursuit of legal arguments in the Trans-Labrador Highway thread of cases that denied NunatuKavut was not owed the duty to consult – or that denied that they were owed the duty to consult, would that have coloured the province's view of whether NunatuKavut was owed a duty to consult in the Lower Churchill Project?

MR. KENNEDY: My answer to that, Sir, would be – is that our – my – again, my recollection, Commissioner, our government's position was that if the federal government recognized the Aboriginal, I don't if it's status – I forget the exact term, Sir, that we would use – of NunatuKavut, then as a province we would follow that direction. So it was our understanding, or my understanding, Commissioner, that the federal government would make the determination; I don't know if it's section 35 or one section of the Charter in terms of Aboriginal status.

MR. RYAN: Okay, I take your point that that is one aspect that would sort of colour the government's stance, but what I'm asking is: Would the government's role in a court case – that essentially the government's argument was

that no duty to consult was owed to NunatuKavut on this one project – would that legal stance have coloured the government's stance with respect to another project, that is, the Lower Churchill Project?

MR. KENNEDY: I don't know the answer to that, Sir. I mean, these – we were being provided with advice by Justice lawyers. I know that Mr. Burrage and Mr. Stanley would have been involved in that, so ...

Logically, it makes sense but I can't say to you definitively here today or, Commissioner, I can't say definitively that it did happen.

MR. RYAN: Okay, just one last question: Was the upcoming consultation between the Government of Newfoundland and Labrador and NunatuKavut, with respect to the Lower Churchill Project, a factor in the government's decision to pursue the Trans-Labrador Highway decision to the Court of Appeal and to the Supreme Court of Canada.

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

MR. RYAN: Those are my questions.

Thank you.

THE COMMISSIONER: Thank you.

All right, Mr. Williams?

MR. T. WILLIAMS: Thank you.

Good morning, Mr. Kennedy.

MR. KENNEDY: Good morning, Mr. Williams.

MR. T. WILLIAMS: Just for the record, I represent a number of former government officials, elected officials, including yourself, from the period of 2003 to 2015, with the exception of former Premier Dunderdale who has her own counsel.

I only have three or four – I know we're pressed for time – three or four wrap-up-type questions. And the reason for the same is that typically we hit what I will suggest is topics of interest to the Commission and to counsel. And through the

melee of two or three days of testimony you get various versions and evidence on this.

And one of those type issues is with respect to the direct – the – your direct examination with counsel. And we spoke of base cost estimates. And I think this morning, in fact, in cross-examination you mentioned that you may have taken Mr. Barry's question out of context in terms of the interpretation.

So the issue at hand is whether or not the Department of Finance and/or the Department of Natural Resources had the means whereby they would be able to be – to conduct a fruitful review of the base cost estimates of the project at DG2 or DG3.

Now, in fairness to you, I think you should be aware of the fact that we have had evidence already from Mr. Paul Lemay who is an engineer and an expert from SNC-Lavalin. And he has given evidence to the fact that in assembling that base cost estimate, it took approximately six to seven months, if I'm not mistaken, between May of 2011 and December of 2011, and that they had a team of experts – both in St. John's and, if I'm not mistaken, there were some back in Montreal – that helped assemble this base cost estimate.

Now, my question to you is – you being a former minister of Finance and a former minister of Natural Resources – do you feel that government had the means, resources or expertise to be able to legitimately review and criticize, if necessary, the base cost estimate that was assembled in relation to the Muskrat Falls Project that was assembled by both Nalcor in conjunction with SNC-Lavalin?

MR. KENNEDY: Mr. Williams, there – or, Commissioner, there would be certain aspects that could be reviewed. But what you've outlined for me – I apologize if I misunderstood what Mr. Learmonth said but, no, the Department of Finance wouldn't have the ability to do that kind of – develop the costs, look at the costs, no.

MR. T. WILLIAMS: Okay.

Another issue that arose – and, again, I don't want to go back and go through all the details,

but we've done extensive canvassing on this whole issue of natural gas. And you have given extensive evidence with respect to the efforts that were undertaken by you and your government in conjunction with government and the Department of Natural Resources to fully canvass this whole issue of natural gas, whether it be the pipeline considerations or whether it be the LNG considerations. We know that Nalcor had considered it, and had dismissed it as a viable option. You went back and revisited that as a government and did extensive additional work with both Wood Mackenzie and Ziff Energy.

Question is, at the end of the day, when government sanctioned the Muskrat Falls Project in December of 2012, were you and your government totally satisfied that the option – and the various options falling under the natural gas consideration – had been adequately canvassed and were not worthy of further pursuit?

MR. KENNEDY: We concluded, Mr. Williams, that natural gas was not – of any form – was not the least-cost option.

MR. T. WILLIAMS: So all the discussion we're having here of what may be in the report, may not be in the report, things of this nature, you were satisfied, independent of Nalcor, that this was not a viable option?

MR. KENNEDY: That's correct, Sir. Based on the advice that was provided to us.

MR. T. WILLIAMS: And then you were aware that Grant Thornton have already reviewed this (inaudible) and thought that Nalcor should review the natural gas option and its dismissal of the same as reasonable?

MR. KENNEDY: I wasn't aware of that, Commissioner.

MR. T. WILLIAMS: Okay. No, it is contained in the report, and I don't think I need reference it, but I think it would be accepted that they have acknowledged that in their report.

The next issue I'd like to address is the reasonableness of the Quebec option, and we've had evidence to date from not only yourself, but we've – from other witnesses that the issue of

Quebec has risen. You spoke to your actions with respect to and your work in relation to the good faith action – the recall of power – that you analyzed both of these yourself.

In addition, we've had evidence from the – that is contained in the Nova Scotia Review Board report that they had considered an option of trying to ascertain power through Quebec, but it wasn't viable. Former premier Marshall had given evidence to the fact that he had unofficial discussions with representatives from Quebec, and as well, there was also the reference – and as I think you did as well, is that – had discussions with Mr. Marshall, but there was concerns with – sorry, Mr. Martin – that Newfoundland was not able to get the firm power requirements that was required. And as well, we know all the difficulties, and there's litany of those, with respect to the regulatory hurdles that we went through.

Do you feel that your government adequately canvassed and eliminated the possibility of being able to ascertain power from Quebec?

MR. KENNEDY: If you mean buying power from Quebec, I was of the understanding that that issue had been explored and that it was not a viable option.

MR. T. WILLIAMS: Okay.

Finally, with respect to rates – and that's probably one of the biggest concerns to the ratepayer, obviously, in the province and the cost of this project. Can you speak to me as to the sensitivity of government with respect to the impact of rates on your consideration of this project from the time Muskrat Falls was considered to be the only option to pursue as right up to the point of sanction? So we're talking the two-year period between 2010 and 2012 when the project was ultimately considered –

MR. KENNEDY: Well, I can –

MR. T. WILLIAMS: – and sanctioned.

MR. KENNEDY: Yeah, I can speak, Commissioner, to when I became the minister. And it was the issue that took up most of my time in that first few months was trying to

determine the impact on the ratepayer of the province. When we would have caucus meetings or Cabinet meetings, inevitably, Commissioner, the first issue that would come up would be the issue of rates. And that's why we were looking for the cost certainty that would allow us to develop the profile or the – how the cost would go up.

So rates was always, always a key issue for us.

MR. T. WILLIAMS: Okay.

Finally, I just want to touch upon some of the evidence this morning that was raised by Mr. Hogan. And I don't want to get into it in detail, but I think it's important to get your response and your view.

Is that – Mr. Hogan put it to you this morning that when – whether it be individuals speaking out, whether it be people in the public, whether it be Mr. Penney, Mr. Vardy, the Public Utilities Board having criticisms with respect to government's reaction – various individuals – that they were attacked by government. And he used the word attacked. And I know yesterday Mr. Budden had described Mr. Vardy as being a victim. And these are their words, not yours. But obviously there was a number of people who brought up public criticisms in relation to the project, various elements of the project under, you know, under review by government.

What is your view of government's responsibility in order to address these issues – some being very legitimate, some may not be as legitimate as others? Can I get your position as with respect to government's responsibility on that?

MR. KENNEDY: Commissioner, I was – as I've indicated, I was – it appeared to me myself and the premier were the two individuals who were out there answering the critics. I certainly – and we recognized that the individuals who were raising these issues had the right to speak out. That was what we expected.

And every time, Commissioner, an issue was raised that was a valid issue – I've given you a litany of examples where I've looked into them and tried to answer the issues being raised.

In terms of the criticisms or attacks, Commissioner, I – part of it is a – is the way it's perceived. You know, I can only tell you, I didn't have my mind made up. But part of it also, as I've indicated, Commissioner – and I'm certainly not making any excuses here – but part of it is personality-driven.

Unfortunately, I am – I don't know if aggressive by nature, Commissioner, but in terms of it – you know, I'd never managed to dissociate myself from that trial lawyer persona when I entered into politics.

And I think, as I indicated to Mr. Learmonth during the interview, I never developed the art of the politician of being able to speak without saying anything. So when I was asked a question, I addressed it. When I had an issue to address, I addressed it.

So some of it's tone; some of it's personality, but the main point, Commissioner, is that, when issues were raised, we addressed them, and I certainly felt that we had the right and the obligation to the people of the province to outline our position as a government in relation to the issues being raised.

MR. T. WILLIAMS: Okay. Fine.

That's all the questions I have. Thank you, Mr. Kennedy.

THE COMMISSIONER: Thank you.

Mr. Learmonth, redirect?

MR. LEARMONTH: Mr. Kennedy, you said, I think repeatedly, in your evidence that before you made – a recommendation was to be made by you for sanctioning that you wanted to have all the best cost of estimates available based on all information that was available at the time – information, data, et cetera. Is that correct?

MR. KENNEDY: That's correct, Sir.

MR. LEARMONTH: But – and this is based on some of the questions that Mr. Fitzgerald put to you about what perhaps Charles Bown is going to say about this. With the risk analysis removed from the scope of work that MHI was

retained to do – you know what I'm talking about? The paragraph –

MR. KENNEDY: I remember the reference, yeah.

MR. LEARMONTH: The risk of scope.

Well, if you knew that the risk of – the risk analysis had been removed from the scope of the – scope of work, then you must have known that your objective of getting the best cost estimates could not be achieved.

MR. KENNEDY: I don't have any recollection. I mean, Mr. – there was references to the notes, and it would be consistent, as I think I indicated to you at the interview, Mr. Learmonth, that Mr. Bown would bring things forward. But risk analysis to me was inherent in the process that we were engaged in if we wanted to know the cost and the potential for increased cost.

MR. LEARMONTH: Yup.

MR. KENNEDY: So I – you know, the word risk, Commissioner, has been used in various –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – ways here. It's – like, I wanted to know the number – what is the real number and what are the potential for problems in future.

MR. LEARMONTH: Yes, I realize that, but if the paragraph Roman numeral xi in the first draft from Mr. Wilson, which dealt with a risk analysis and review of Westney documents, if available, if you took – if that was taken out from their scope of work, how would it be possible –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – for MHI to meet your objective?

MR. KENNEDY: That's a fair point, Mr. Learmonth.

MR. LEARMONTH: You agree with that, do you?

MR. KENNEDY: Yeah.

MR. LEARMONTH: So –

MR. KENNEDY: If risk analysis, Commissioner, involves that – giving us that number that we’re looking for – the final number – along with –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – issues of not just there is a risk that there will be an overrun, but how real –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – is the risk. What are the risks? That’s the way I use the word “risk,” Sir.

MR. LEARMONTH: Yeah. But, you know, I can refer you to that Roman numeral (inaudible) –

MR. KENNEDY: I remember it. Yeah.

MR. LEARMONTH: – the risk analysis. So we know it’s a specific recommendation, I guess, that there be a risk analysis and there is reference to Westney and so on. So when you took that out –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – your government took that out, wasn’t it open to Manitoba Hydro to say they don’t want that done?

MR. KENNEDY: Sir, I – it’s not consistent with what I was attempting to do but I do accept that it was done and that Mr. Bown – there’s reference to the notes which indicated it was – it appears to have been discussed with various ministers and/or officials. Yeah.

MR. LEARMONTH: Yeah. Well, I’m not saying you’re the only one, but there seems to have been quite a few people in government that were dealing with this issue when we look at the document that was sent to the – to – from Department of Natural Resources on May 28. It was prepared by a number of different individuals.

MR. KENNEDY: Yeah.

MR. LEARMONTH: So I’m not suggesting you’re the only one, but it just strikes me as –

MR. KENNEDY: You’re right, Mr. Learmonth, it’s not consistent with what I was trying to do.

MR. LEARMONTH: And it seems to be a contradiction to –

MR. KENNEDY: It is, yeah. It is a contradiction.

MR. LEARMONTH: Because when we accept that that was your determination –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – to get the best cost estimate, I mean –

MR. KENNEDY: Yeah, I can’t –

MR. LEARMONTH: – it just doesn’t make any sense.

MR. KENNEDY: I can’t disagree with you, Sir.

MR. LEARMONTH: Okay. Thank you.

Now, Mr. Kennedy, can you confirm or will you confirm that the reason that the risk analysis item, that being which I referred to as Roman numeral xi in Wilson’s draft, the reason that that was removed was that Nalcor didn’t want to have to do this because they hadn’t completed all their work on it?

MR. KENNEDY: All I can see, Sir, I went – you took me through the various emails, Commissioner, the various emails that were there that obviously I wouldn’t have seen. Mr. Fitzgerald put forward a certain scenario. What you’re saying again, Sir, seems to be consistent with –

MR. LEARMONTH: Yes.

MR. KENNEDY: – those emails and what’s being said.

MR. LEARMONTH: Yeah. But while it may be true that Nalcor did not have its risk analysis completed in early April when you were – or April and May when you were negotiating the

terms with MHI, you know, Nalcor had in its possession a risk analysis report from Westney at DG2 indicating a 300-to-600-million recommendation.

MR. KENNEDY: That's my understanding now, Sir, yes.

MR. LEARMONTH: You didn't know that at the time? They didn't –

MR. KENNEDY: No, I knew that I've heard that at some point over the years, Commissioner, I heard that Westney were a company who had done work. That was the only recollection I have of Westney.

MR. LEARMONTH: Yeah.

MR. KENNEDY: And my recollection was 2010, Mr. Learmonth, yeah.

MR. LEARMONTH: And, also, in – we know that the contract with MHI wasn't finalized until June 5. That's when the contract –

MR. KENNEDY: That's when my –

MR. LEARMONTH: That's when the contract –

MR. KENNEDY: Yeah, my signature –

MR. LEARMONTH: That's when your signature is –

MR. KENNEDY: – appears on June 5, Commissioner.

MR. LEARMONTH: Well, it's on the documents in the – it's in the evidence.

But, you know, just a couple of days before that, on June 3 and June 4, Mr. Harrington and Mr. Kean of Nalcor were in Houston, Texas, consulting with Westney on the strategic risk management reserve just two days before that contract was signed. You weren't aware of that were you?

MR. KENNEDY: No, I wasn't aware of any of that, Sir.

MR. LEARMONTH: Yeah.

And in fact, we know that the Westney – the MHI report wasn't completed until October – late October 2012, but by that time – the time the report was finalized and submitted to government by MHI – Nalcor had received many drafts of the strategic risk report from Westney, the first one being, I think, on August 23, which didn't differ substantially from the final report that I showed you.

So you weren't aware of that, were you?

MR. KENNEDY: Not aware of any of that, Sir.

MR. LEARMONTH: But at any time during your dealings with Nalcor on this strategic risk matter – because they didn't like the terms of reference and the scope of work, did they? The emails (inaudible) –

MR. KENNEDY: It appeared from the emails that they didn't, Sir, yeah.

MR. LEARMONTH: Yeah.

But at any time did Nalcor advise you that, you know, a position like – we haven't got everything finalized, we have some reports and we're expecting to get a report very, very soon. In fact, you know, we met in Houston on June 3 and 4, so why don't you just hold off a little bit, we'll have everything finalized soon and then a full review can be done. Did Nalcor ever say anything along those lines?

MR. KENNEDY: Sir, I went through in my notes in detail and there was never any reference. We were never informed of that.

MR. LEARMONTH: You were never informed.

MR. KENNEDY: No.

MR. LEARMONTH: So at the same time that Nalcor is pressing government to amend the scope of work to take out the risk analysis, at that very time, Nalcor, number one, has a strategic risk report from DG2 and was also in the process of meeting with Westney on a strategic risk report for DG3. And that was never communicated to you?

MR. KENNEDY: It was never communicated, Sir, and I find it very unusual.

MR. LEARMONTH: Yeah. It's unfair from – or it's wrong, don't you think?

MR. KENNEDY: Yes, Sir.

MR. LEARMONTH: That you weren't told that? Yes, okay. Thank you.

And in terms of the – my last point on that, based on Mr. Fitzgerald's comments – but it – you know, at first glance one might think that the removal of the risk analysis from the scope of work was an oversight. It just was something that happened, fell through the cracks. But when that clause was taken out, government had to know that they weren't gonna be able to get the cost estimate that you wanted and were striving to get.

MR. KENNEDY: Yeah, I can't help you there, Mr. Learmonth. It doesn't make sense to me. It was all about risk for us. What is the cost of this project?

MR. LEARMONTH: Yeah.

MR. KENNEDY: Can you define the cost of the project and tell us – not in a general way, but as specific as you can – as to what we should expect? In other words, my note says it best, Commissioner: Is the cost of this –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – project 8 or 9 billion or what is the cost of –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – the project?

MR. LEARMONTH: Anyway, you've agreed with the –

MR. KENNEDY: I agree with you, yes.

MR. LEARMONTH: – what I submitted to you on that so ...

MR. KENNEDY: I just can't give you an explanation, Mr. Learmonth.

MR. LEARMONTH: Yes, okay.

Now, on the LNG and this once – this is something else that came –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – from Mr. Fitzgerald's questioning of you, and what he said that, you know, Mr. Bown is going to testify, or he believes Mr. Bown will be testifying on in certain areas.

Now, the – what I took from Mr. Fitzgerald's questioning is that Mr. Bown will be saying something like: The LNG – consideration of LNG was, you know, taken off the table and was removed from the – excuse me – from the Wood Mackenzie report – was removed from the Wood Mackenzie report because government had somehow changed its mind and it only wanted to deal with the pipeline issue for –

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: – for gas.

Well, did you participate in that decision?

MR. KENNEDY: I don't remember, Sir. I don't remember having those discussions, but it appears to me that there were discussions. To me, I looked at natural gas as the – we had looked at – as I've indicated in my notes, Commissioner, I had discussed LNG with Wood Mackenzie.

MR. LEARMONTH: Yeah.

MR. KENNEDY: I discussed LNG with Ziff. To me, I saw no reason that Wood Mackenzie couldn't comment on both, so I don't know at the end of the day –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – you know –

MR. LEARMONTH: But –

MR. KENNEDY: – but Mr. Bown, I do accept, though, that I don't think Mr. Bown would make that decision on his own (inaudible).

MR. LEARMONTH: No, I was just gonna get to that.

MR. KENNEDY: Yeah.

MR. LEARMONTH: I mean, he's a senior civil servant; you have great respect for him.

MR. KENNEDY: Yeah.

MR. LEARMONTH: You said that very clearly yesterday. He knows how the system works, so we'll have to wait 'til Mr. Bown –

MR. KENNEDY: Okay.

MR. LEARMONTH: – testifies, but do you think that it would be very difficult to understand why – how Mr. Bown would make a decision like that on his own?

MR. KENNEDY: Yes, I do. I don't think he'd make that decision on –

MR. LEARMONTH: No.

MR. KENNEDY: – his own.

MR. LEARMONTH: Okay.

And that the problem with the natural gas question, is this – I'll put it to you this way, or one –

MR. KENNEDY: Sure.

MR. LEARMONTH: – one problem that – what might become apparent.

You have the Ziff report, and it deals with both the pipeline and liquefied natural gas.

MR. KENNEDY: Correct, yeah.

MR. LEARMONTH: Deals with both.

MR. KENNEDY: Yup.

MR. LEARMONTH: Then you get a report from Wood Mackenzie that deals with both.

MR. KENNEDY: I had –

MR. LEARMONTH: Both the – yeah?

MR. KENNEDY: I had discussed both with Wood Mackenzie –

MR. LEARMONTH: So they do both –

MR. KENNEDY: – on separate occasions.

MR. LEARMONTH: So they do both, but the Wood Mackenzie report is – provides more support for the LNG importation issue than Ziff. It says that you can –

MR. KENNEDY: There was a difference in opinion. I can't remember specifically what it was –

MR. LEARMONTH: Well, we can look it –

MR. KENNEDY: Yeah, sure.

MR. LEARMONTH: – but there's two points –

MR. KENNEDY: (Inaudible.)

MR. LEARMONTH: – that makes it much more favourable as an option.

MR. KENNEDY: Yeah.

MR. LEARMONTH: On the price, you know, that 70 per cent that was – you referred to this morning –

MR. KENNEDY: Yeah, yeah.

MR. LEARMONTH: – and also the cost of building the regasification facility. So it was much more in support of the LNG option than Ziff.

MR. KENNEDY: Yeah, I –

MR. LEARMONTH: You can accept –

MR. KENNEDY: Okay –

MR. LEARMONTH: – that for the sake of the question.

MR. KENNEDY: – I accept it, Sir.

MR. LEARMONTH: So the question is: If government were being consistent, why wouldn't – and there was a policy directive that

government didn't want to consider LNG in the reports – why wouldn't you have it taken out of both the Ziff report and the Wood Mackenzie report, because that would be consistent?

MR. KENNEDY: I can offer no explanation, Commissioner. I was looking at both. It's – I mean – as late as October 31 –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – 2012, I'm meeting with – no, excuse me, October 10, I got my date wrong.

MR. LEARMONTH: Okay.

MR. KENNEDY: As late as October 10, 2012, I'm meeting with Wood Mackenzie in New York and we're still talking about –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – LNG and the –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and pipelines.

MR. LEARMONTH: Yeah, and then we had the – you know, the suggestion from Mr. Keating that, you know, I've referred you to that yesterday. But it just strikes one as curious –

MR. KENNEDY: Yeah.

MR. LEARMONTH: – that, you know, you're taking the LNG comments from Wood Mackenzie that were supportive to a greater extent than Ziff of the LNG option. That goes out the window because government isn't considering the LNG option. But then you have the Ziff report, which considers both, and you leave it in and release them to the public.

It looks, I suggest to you that you're trying to – government in doing that, is presenting a very distorted picture on liquid natural gas to the public. Because you're putting in one report that, sort of, puts it out of the question, and you're suppressing the other report that takes a contrary view on it. I suggest to you that that's a distortion of the facts in a very selective release of reports. Do you agree?

MR. KENNEDY: Sir, I can see how on the facts that you're putting to me – and you'll have to hear from Mr. Bown on that –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – and I guess the premier might have some knowledge, but it certainly wasn't my intention, Sir. I was exploring –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – all I can tell you is I was exploring both, I was aware of – I liked the fact, Commissioner, that there was a difference in opinion on several issues. I can't remember specifically because I thought that indicated –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – a degree of independence that they weren't simply parroting what one – what the other was saying.

MR. LEARMONTH: Yeah.

MR. KENNEDY: So I can't offer an explanation, Mr. Learmonth.

MR. LEARMONTH: But the way I've presented it, and it's confirmed by the documents – that's cherry-picking. You're selecting one report on LNG and you're hooking the other one that supports LNG to a greater extent than the Ziff one. I suggest to you that's a degree of manipulation of the facts that you had in your – I don't mean you personally, but government is manipulating the message and the research that government has conducted on LNG.

Do you agree?

MR. KENNEDY: It certainly wasn't my intention, Sir. And I think if we actually went to the House of Assembly, went to *Hansard* – my notes indicate, Sir, and I don't know where they are, but the index – I thought I spoke about LNG and pipeline in the House of Assembly.

MR. LEARMONTH: Yeah, because LNG was still considered in the Ziff report.

MR. KENNEDY: But it was considered by me in terms of the Wood Mackenzie.

MR. LEARMONTH: Well then, why didn't –

MR. KENNEDY: I can't offer an – I don't know, Sir.

MR. LEARMONTH: Why –

MR. KENNEDY: The only thing that I see there is that email you pointed out by Mr. Keating, whether or not that had undo influence, Sir, or had influence in terms of the decision being made, I don't know. But there was certainly – all I can tell you Mr. Learmonth –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – that with all the work I did, Sir, there was nothing sinister there. I wasn't – I wanted everything – I was trying, Commissioner, to get everything out.

MR. LEARMONTH: Well, I'm not saying that there was something sinister on your part, because you said you don't have any recollection of this.

But I'm suggesting that, yes, there is something sinister on the scenario I've just given you. That you have two reports on liquefied natural gas, one is higher, the Ziff one, the higher cost, less appealing, and the lower one and you released the Ziff report, which was a – which puts liquefied natural gas, sort of, out of the question, and you suppress the other report. I suggest there is something sinister about that.

MR. KENNEDY: No, I don't agree with that characterization, Mr. Learmonth. There was nothing, there was no reason to suppress, there was no reason to be sinister, Sir.

MR. LEARMONTH: (Inaudible.)

MR. KENNEDY: It was all there. Neither one of them – my understanding, Mr. Learmonth, based on what both of them had told us – Commissioner, I can again, you know, it's all in my notes – that neither one of them was a viable option. In fact, one was 50 per cent higher CPW and one was 75 per cent higher CPW, was my – my recollection, Mr. Learmonth.

So no, I can't agree with – I have agreed with you on a lot, Sir, but I can't agree with you on that that there was any desire or any decision to suppress anything.

MR. LEARMONTH: Well then, if that's – if I'm wrong on that, can you give me any rational, sensible reason why the WoodMac text on liquefied natural gas was not released to the public?

MR. KENNEDY: Other than what you've pointed out to me, Sir, that the email of Mr. Keating could've had influence in the decision being made.

MR. LEARMONTH: Mr. Keating, yeah.

MR. KENNEDY: That's the only thing that I can suggest, Sir.

MR. LEARMONTH: Okay.

I'd like you to look at Exhibit 01301. That's tab 122, volume 3.

MR. KENNEDY: Yes.

MR. LEARMONTH: Do you have that, Mr. Kennedy?

MR. KENNEDY: Yes, I do. I remember that.

MR. LEARMONTH: Can I get – can you just read out the, say, right down to the middle of the page?

This is a meeting in the premier's –

MR. KENNEDY: Yup.

MR. LEARMONTH: – office.

Tell us who was there, and just read down to the end of the line which says –

MR. KENNEDY: Okay.

MR. LEARMONTH: – transmission, yeah.

MR. KENNEDY: December 17, 2012, meeting in the Premier's office. Premier, Brian Taylor, Ed W – which would be Ed Williams – Ed M – Ed Martin – Charles, myself and Lynn

Hammond, who would be the director of communications, and again I – conditions precedent, list B, any commercial arrangements. I don't know what that means, Sir.

A sanction agreement, Emera's completion of CPs? I don't – conditions precedent maybe?

MR. LEARMONTH: Okay. And then?

MR. KENNEDY: Keep going? Okay.

Even, and then I got underlined – even if Maritime Link did not proceed, we would pay 30 million and the FLG would still apply, and we would have transmission rights through New Brunswick into Maine. That's not my understanding of the federal loan guarantee. I thought that was a basically a regional project, that if the – Emera didn't sign on, there'd be no federal loan guarantee.

MR. LEARMONTH: Well, there would be no federal – Maritime Link, then.

MR. KENNEDY: Yeah. I –

MR. LEARMONTH: That's why –

MR. KENNEDY: I don't understand that.

MR. LEARMONTH: – I can't make any sense of that. I mean –

MR. KENNEDY: I –

MR. LEARMONTH: It's – sorry to interrupt you, but –

MR. KENNEDY: Sorry.

MR. LEARMONTH: – I think it's clear that, in order to get the federal loan guarantee, it was necessary to have Nova Scotia involved to make –

MR. KENNEDY: That was –

MR. LEARMONTH: – it –

MR. KENNEDY: – my understanding.

MR. LEARMONTH: – interprovincial.

So there was no possibility of exporting to New Brunswick or elsewhere on the mainland unless the federal loan –

MR. KENNEDY: That was –

MR. LEARMONTH: – guarantee –

MR. KENNEDY: – my understanding.

MR. LEARMONTH: – was signed. And that's inconsistent with what Mr. Sturge said.

But anyway, so just read that out: if – continue on, even if –

MR. KENNEDY: Yeah. Even if Maritime Link did not proceed, we would pay 30 million and the federal loan guarantee would still apply. Now, this –

MR. LEARMONTH: What is that – what do you mean by that?

MR. KENNEDY: I have no idea. I'm just writing down what's being said.

MR. LEARMONTH: Okay.

MR. KENNEDY: It didn't – it wasn't consistent with what I knew.

MR. LEARMONTH: Okay, and the next line?

MR. KENNEDY: And we would have transmission rights through New Brunswick into Maine.

There – this is Mr. Martin explaining these things, Sir.

MR. LEARMONTH: But –

MR. KENNEDY: Five-year sunset clause – I'm writing down what's being said –

MR. LEARMONTH: But do you agree that this doesn't make any sense –

MR. KENNEDY: Didn't make sense to me, no.

MR. LEARMONTH: – when you read it?

MR. KENNEDY: Not my understanding, no.

MS. O'BRIEN: (Inaudible.)

MR. LEARMONTH: Okay, and then five-year –

MR. KENNEDY: Five-year sunset clause. I don't know what that's about, Sir. It's five years after sanction in brackets; one, go back to the UARB and reconfigure; two, build ourselves; three, a different configuration. I don't know what that's about.

MR. LEARMONTH: So you can't offer any explanation –

MR. KENNEDY: No.

MR. LEARMONTH: – for what –?

MR. KENNEDY: I'm just writing down what's being said.

MR. LEARMONTH: Okay.

And did you hear any evidence of Mr. Sturge's evidence on this issue?

MR. KENNEDY: No, I didn't hear any –

MR. LEARMONTH: You didn't hear any –

MR. KENNEDY: I'm not familiar (inaudible) –

MR. LEARMONTH: Okay, very good.

Okay, and then transmission –

MR. KENNEDY: Transmission costs less than \$10 a megawatt hour if we have to reconfigure. Again, I can offer no – I'm just writing down what's being said.

MR. LEARMONTH: Okay. Well –

MR. KENNEDY: Then I have three – written down three scenarios re sanction agreement. 1.4 billion from Maritime Link. If 1.5 billion approved, Emera owes us 100 million. I have no – I don't know what it means, Sir. 80-20 principle has always applied.

MR. LEARMONTH: Yeah.

MR. KENNEDY: We could have to pay them 170 million. And then a term that would mean nothing to me, Commissioner, in quotation marks, "true-up." T-R-U-E –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – hyphen up –

MR. LEARMONTH: Yeah.

MR. KENNEDY: – 80/20. I have no idea what that means.

MR. LEARMONTH: Okay. So you're just writing down the –

MR. KENNEDY: I'm just writing down. I'm just a note taker here, Sir.

MR. LEARMONTH: And who would be giving you this information?

MR. KENNEDY: This would have to be coming from Mr. Martin. There's no one else in that room would have the degree of knowledge to talk about this. So you could ask –

MR. LEARMONTH: Okay.

MR. KENNEDY: – Mr. Martin. I'm sure he'll be able to explain.

MR. LEARMONTH: All right.

Well, I won't hold you past my time limit. It's almost 12:00, so I'll – I had a few things I might, but I'll let – we'll end it now because I think you have a flight to catch.

MR. KENNEDY: Okay. Thank you very much, Mr. Learmonth.

MR. LEARMONTH: Okay. Thank you.

THE COMMISSIONER: Thank you, Mr. Kennedy. I appreciate your time.

MR. KENNEDY: Thank you, Commissioner.

THE COMMISSIONER: Hopefully you get your flight.

All right. So are we calling Mr. Bown next?

MR. LEARMONTH: Yes.

THE COMMISSIONER: Is he here? Mr. Bown's here. All right. So we'll – Charles Bown.

MR. LEARMONTH: Can we just take five minutes (inaudible)?

THE COMMISSIONER: Yeah. Okay. So we'll take five minutes, and then, as soon as Mr. Bown is here and we're ready to go, just let me know.

MR. KENNEDY: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. Mr. Learmonth.

MR. LEARMONTH: The next witness is Charles Bown.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Can Mr. Bown be affirmed?

THE COMMISSIONER: Okay.

If you could stand, Sir, please? Thank you.

CLERK: Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. BOWN: I do.

CLERK: Please state your name for the record.

MR. BOWN: Charles Bown.

CLERK: Thank you.

MR. LEARMONTH: I'd like to enter the following exhibits: P-01358 to P-01400, P-

01402 to P-01435, P-01483, P-01531 to P-01534 and P-01548?

THE COMMISSIONER: Okay.

All right, those are entered as numbered.

MR. LEARMONTH: Thank you.

Mr. Bown, please tell us about your post-secondary education.

MR. BOWN: I have a degree in economics from Memorial University.

MR. LEARMONTH: When did you get that degree?

MR. BOWN: In 1990.

MR. LEARMONTH: That would be a B.A. in economics?

MR. BOWN: Correct.

MR. LEARMONTH: Okay.

And your work history? I think you got that after you'd worked for a few years at government –

MR. BOWN: Yes.

MR. LEARMONTH: – just give us your work history, please.

MR. BOWN: I started work full-time in 1988 with the Department of Mines and Energy as an economist.

From there, I moved to the Advisory Council on the Economy in 1994 as senior economist.

And in 1996, I returned back to the Department of Finance as the manager of economic impact analysis

From there, I moved to – the following year, on a secondment – to ACOA and was the senior analyst for major projects for Atlantic Canada.

And subsequent to that, I returned to government as the director of the Voisey's Bay secretariat, or Voisey's Bay Project and remained there until the project negotiations were finished.

And then, moved to the Department of Natural Resources as the director of urban development.

In 2006, I was appointed as the assistant deputy minister of Energy Policy.

And in 2010, I was appointed as the associate deputy minister of Energy.

In 2012, appointed as deputy minister of Energy.

MR. LEARMONTH: Okay. And your present position is?

MR. BOWN: I'm the chief executive, Major Projects in the Cabinet Secretariat of Executive Council.

MR. LEARMONTH: And what type of work does that involve?

MR. BOWN: Provide advice to the Premier on major economic policy.

MR. LEARMONTH: And that was a newly created position that you – you're the first occupant of that position?

MR. BOWN: Absolutely.

MR. LEARMONTH: All right.

Could you give us some information on your – the early days of your contact with Nalcor when you were working in government. When did you first start to have communications, dialogue and meetings, and so on with Nalcor?

MR. BOWN: My first engagement would have been in 2006 during the development of the Energy Plan. There were a number of workshops and engagements about different sectors that would be included in the Energy Plan. And eventually, I became part of a small team that was assigned to develop the objectives, goals and ultimately the plan itself.

MR. LEARMONTH: So did you have a hand in the preparation? Did – actually writing the text of the Energy Plan?

MR. BOWN: By the time that I arrived at the – in the Energy Branch, the decision to develop or create the Energy Plan had already been made.

The discussion paper had already been prepared and approved by Cabinet and released to the public. The consultation process had already taken place.

So by the time I got there, it was a long ways along the process. I didn't do a great deal of writing, but I was involved in the discussion sessions and strategy sessions.

MR. LEARMONTH: Were you the person that was primarily responsible for the development of the Energy Plan, preparation of the Energy Plan?

MR. BOWN: No, I was not. I was part of a team that included Ed Martin, Gilbert Bennett, Jim Keating, Chris Kieley was deputy minister of the Department of Natural Resources at the time, and one of our staff members, Tracy English, and there was another staff member from Nalcor, Ms. Squire, who was part of the team as well. And there were folks who would come in and out as we were working on different elements from (inaudible) the environment to et cetera.

MR. LEARMONTH: So – where there a series of meetings on a schedule basis and how are the – how is the work coordinated with the development of the Energy Plan?

MR. BOWN: It wasn't a regularly scheduled work. There'd be – it was – I guess it was ad hoc but there was a timeline that was set to have it completed as well. So some folks would go away and do particular elements of work and then the group would get back together.

MR. LEARMONTH: Okay.

And – there were – different persons were assigned to do different parts of the work, is that correct?

MR. BOWN: By and large, yes.

MR. LEARMONTH: Yeah.

And what – to what extent was Nalcor involved?

MR. BOWN: Nalcor was heavily involved in the development of the Energy Plan.

MR. LEARMONTH: Yeah.

Would Nalcor representatives have presented drafts to government for the work under the areas that they were considering?

MR. BOWN: The lead for the Energy Plan clearly was the Department of Natural Resources and the lead for that would have been Chris Kieley. But Nalcor was – I guess it was integrated team that was working on the plans and they would have been present.

MR. LEARMONTH: Yeah.

Now the Energy Plan, I think, was released to the public on September 11, 2007, is that –

MR. BOWN: Correct

MR. LEARMONTH: – correct? Or –

MR. BOWN: Yeah.

MR. LEARMONTH: – or thereabouts.

And so before it was released, did that take up a substantial part of your work at Natural Resources? The preparation of the Energy Plan and the coordination of it?

MR. BOWN: No, not at – not entirely. I had many other duties as well.

MR. LEARMONTH: Okay.

When did you first become involved in the Lower Churchill Project, the –

MR. BOWN: It would have been subsequent to the Energy Plan.

MR. LEARMONTH: Right.

And what was your role in the Lower Churchill plan in the early years? We'll say from 2000 – September 2007 to the end of 2008?

MR. BOWN: I think there was some kind of a strategy sessions ongoing that – in particular, one that we'll come to in the exhibits of what the regulatory environment would look like if indeed the Lower Churchill Project would proceed.

MR. LEARMONTH: Mm-hmm.

MR. BOWN: Matters like that.

MR. LEARMONTH: Were you given any official designation in terms of being the government representative for the – Lower Churchill Project?

MR. BOWN: No, I was never given that designation.

MR. LEARMONTH: Never?

MR. BOWN: No.

MR. LEARMONTH: So there was no –

MR. BOWN: It was just the nature of the position that I was in –

MR. LEARMONTH: Yes.

MR. BOWN: – being responsible for energy policy –

MR. LEARMONTH: Yeah.

MR. BOWN: – which included electricity –

MR. LEARMONTH: Yeah.

MR. BOWN: – which would indeed make me the individual in the department responsible for that task but when it came to the Lower Churchill Project, there were many other folks who were participating as well.

MR. LEARMONTH: So was there any structure inside government? In other words, like a protocol saying that okay the discussions with Nalcor on the Lower Churchill Project will be conducted by the following people. Here's the protocol and here's the lines of communication. Here are the lines of reporting and so on.

Was there ever any such document prepared?

MR. BOWN: No, I don't recall.

MR. LEARMONTH: Never?

MR. BOWN: No.

MR. LEARMONTH: So it was all ad hoc, was it?

MR. BOWN: Well again – given the nature of the position that I was in –

MR. LEARMONTH: Yeah.

MR. BOWN: – I would be involved in those discussions. Clearly, the deputy minister – given the role that he'd take – he would be involved in any of the discussions as well.

MR. LEARMONTH: Yeah. But there was never any line of demarcation between what you were supposed to do and what the deputy was supposed to do, and what the clerk was supposed to do and so on. Is that correct?

MR. BOWN: Yeah. I wouldn't say there was any kind of document that said that here's the Lower Churchill protocol and here are the things you're supposed to do. I was more of a coordinator.

MR. LEARMONTH: Coordinator. All right. So there's no such document and you're still in government. No such document defining the duties of the different people at government for the Lower Churchill Project was ever prepared. Is that correct?

MR. BOWN: No. There was no specific document about –

MR. LEARMONTH: Okay.

MR. BOWN: – how different government officials were responsible.

MR. LEARMONTH: Well how did you know what your – what the lines of authority or what the reporting lines would be if there was no such document?

MR. BOWN: I would receive my direction from the deputy minister or the minister or from the clerk.

MR. LEARMONTH: Okay. Did you have any specific authority or would that depend just, from time to time, on the task that you were performing?

MR. BOWN: Depending on the task I was performing but not authority to make major decisions. Rather it was to carry out certain activities and functions.

MR. LEARMONTH: And in those early years that I mentioned with whom at Nalcor did you have contact?

MR. BOWN: Initially, it would have been through the Energy Plan exercise and that would have been with Ed Martin and Jim Keating and Gilbert Bennett. As time went on, I got to know more people in the organization based on the activities that we were assigned to do.

MR. LEARMONTH: Yes. And how would you communicate with the people at Nalcor? Would it be by phone calls, emails, letters, meetings or a combination of all those?

MR. BOWN: Well, letters but all the others – yes – phone calls, meetings, email.

MR. LEARMONTH: Yeah. And when you would meet with Nalcor representatives, where would the meetings be held?

MR. BOWN: They would either be at the Nalcor office or they'd be at Natural Resources. Some meetings would occur in the Confederation Building, depending on whichever topic we were talking about.

MR. LEARMONTH: Okay. Well let's say up 'til the end of 2008 – what duties were assigned to you in terms of the Lower Churchill Project?

MR. BOWN: I was dealing mostly, then, with the initial planning stages of what the Lower Churchill Project would look like in terms of how it would impact government – the regulatory environment.

MR. LEARMONTH: It's mostly the regulatory environment?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. And that's part of your duties in the position that you occupied at the time?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. Do you – so – okay – that takes us up to – I know we’re going to go into greater detail, but I just wanted to get an outline about how this thing progressed – how your communications with Nalcor progressed. After say, January – starting in 2009 up to say, two – up to the signing of the term sheet – did your role evolve into something bigger than it was in earlier years?

MR. BOWN: Yes, it did. Ultimately, as we’ll come to, I was asked to join a negotiating session that was taking place in Nova Scotia on the Emera agreements. But prior to that, again it was receiving information inside the department and assisting the deputy minister in interpreting whatever information we were being provided at that time.

MR. LEARMONTH: Okay, what percentage of your time roughly would you be spending on the Lower Churchill Project from say, January 1, 2009 ’til November 18, 2010, when the term sheet was signed?

MR. BOWN: It would’ve been increasing as we got near the end of 2010, but initially 20 per cent maybe?

MR. LEARMONTH: 20 per cent?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

MR. BOWN: Again, within the function of the role of energy policy, all the intergovernmental responsibilities of the department went through that group.

MR. LEARMONTH: Yeah, and what role did you play in the negotiating – negotiations for the term sheet with Emera?

MR. BOWN: As I would have pre-indicated in our interview, at one point myself and Todd Stanley were asked to join a negotiating session that was already in progress in Nova Scotia. We attended, which we thought would be for a day, and it ended up to be many days, and we sat outside the room. So we didn’t participate in the act of discussions – we listened to the debriefs. And I think on one occasion, I was part of the

debrief where Ed gave a debrief to the premier and the minister.

MR. LEARMONTH: So if you were up there in – outside the room, why wouldn’t you be inside the room where the negotiations were taking place?

MR. BOWN: I think we were just asked to participate, whether there be any questions or any things necessary to have government respond to in terms of policy, legislation – that’s why myself and Todd would be there – regulatory environment. But the process had already commenced – the negotiating team had already been sat at the table, I guess, and we were there for a particular purpose.

MR. LEARMONTH: So who was on the Nalcor negotiating team?

MR. BOWN: As I recall from memory, it would’ve been Ed Martin, Gilbert Bennett, Paul Humphries, and I think there may have been legal council from McInnes Cooper from Halifax that was present as well.

MR. LEARMONTH: Yeah, and on what dates were you in Halifax like, you know, sitting outside the negotiating room?

MR. BOWN: I don’t recall the exact dates, Mr. Learmonth.

MR. LEARMONTH: Would that have been October 2010, do you recall?

MR. BOWN: I don’t recall the exact date, Mr. Learmonth.

MR. LEARMONTH: You don’t recall, okay.

After the term sheet was signed, did your role change in terms of your responsibilities for the Muskrat Falls Project?

MR. BOWN: Yes. I got more involved then. Of course, our attention turned then to the upcoming events that would be necessary to advance the project. So once the term sheet was signed, Cabinet had – made its decision and issued the MC to move forward with the project and the planning towards such things as the environmental assessment process, the –

advancing to the Government of Canada, looking for support. That was added to my responsibilities, as well.

MR. LEARMONTH: So were you the – the Newfoundland government representative or person designated to look after the Joint Review Panel?

MR. BOWN: No, that was held by the Department of Environment and Conservation at the time.

MR. LEARMONTH: In consultation with you?

MR. BOWN: There was a deputy minister steering committee, which the deputy minister, of course, at that time was Diana Dalton. She sat on. I sat with her there. There was a – intergovernmental – interdepartmental committee of officials from as many departments as who would be engaged in the project. And inside each department there were groups, as well, that were dealing with the – reviewing the materials and providing analysis through to the department of environment.

MR. LEARMONTH: And were you working on the Joint Review Panel matters with Nalcor or separately?

MR. BOWN: Separately from Nalcor.

MR. LEARMONTH: And no overlap of –

MR. BOWN: No.

MR. LEARMONTH: – of work at all?

MR. BOWN: They were responsible for preparing the materials and submitting them to the panel.

MR. LEARMONTH: But there was no coordination of effort or anything like that?

MR. BOWN: I don't recall. I wasn't – I did not participate in any coordination or joint effort at the panel.

MR. LEARMONTH: And did you attend the hearings of the panel?

MR. BOWN: Yes, I made a presentation at – to the panel – on need, purpose and rationale.

MR. LEARMONTH: For the project?

MR. BOWN: For the project.

MR. LEARMONTH: And did – in preparing your presentation, did you receive input from Nalcor?

MR. BOWN: I don't recall that I did. I think that presentation – I was directed by the department to go make the presentation, so clear – I just want to make clear I didn't do that of my own accord. I was directed by the deputy minister to make the presentation, as were a number of other deputies or other officials who gave presentations from other departments on different matters.

And the department – we would have prepared this with my officials. The presentation – it would have been vetted through the deputy minister and the minister.

But I don't recall sharing that – that presentation with Nalcor or receiving information or guidance from.

MR. LEARMONTH: So I take it you didn't prepare the presentation. You just delivered it?

MR. BOWN: I – my staff prepared.

MR. LEARMONTH: Yeah.

MR. BOWN: I gave them guidance. I would have made some changes to it. And yes, I delivered it.

MR. LEARMONTH: Yeah. And how long was the presentation?

MR. BOWN: If I recall from the Commission materials (inaudible) reviews – about 90 minutes, including the presentation and questions.

MR. LEARMONTH: So was that your only involvement at the Joint Review Panel hearings? Or did you make your presentation and continue to stay and watch the proceedings?

MR. BOWN: I made my presentation and left.

MR. LEARMONTH: And you left.

MR. BOWN: Yes.

MR. LEARMONTH: And that was your only involvement –

MR. BOWN: Correct.

MR. LEARMONTH: – until you got the report?

MR. BOWN: Correct.

MR. LEARMONTH: And then you had a role in the preparation of the report? Is that correct?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah. The responses of the government.

MR. BOWN: Yes.

MR. LEARMONTH: I think they were made in March 2012 or thereabouts?

MR. BOWN: Yes. And the way that that process worked was that the panel issued its recommendations. I mentioned a moment ago a structure of how government was dealing with the panel. The initial responses were drafted by the officials' working group inside of each department. They would come through the officials in – I guess in my instance it would come through me. Review, make whatever edits or comments were necessary. Then, it would go to the deputy minister for approval. Then, it would go to the minister for approval.

And why I highlight the importance of it going to the minister is that the minister had to approve the note that the department prepared on its response for inclusion in the Cabinet paper that the Department of Environment was bringing to Cabinet for approval of all the recommendations. So each minister had to approve the responses from their department so that they could defend those responses in Cabinet.

MR. LEARMONTH: But at this point, am I hearing you say that the Department of the Environment was the lead department –

MR. BOWN: Absolutely.

MR. LEARMONTH: – and the Natural Resources department was providing support?

MR. BOWN: We were only providing support in a context of the recommendations that were earmarked for Natural Resources. Many other departments were giving input as well.

MR. LEARMONTH: Yes. And so then the response was given to the Joint Review Panel – and we'll get into those later – but I'm just trying to get a –

MR. BOWN: Yes.

MR. LEARMONTH: – rough outline.

So after the responses to the Joint Review Panel were prepared, which I think was in March 2012 – I stand to be corrected on that – what – how did your role change or evolve in terms of dealing with the Muskrat Falls Project?

MR. BOWN: We (inaudible) became a little more involved as the project advanced. And as we proceeded beyond the Joint Review Panel, again we got into things like the Public Utilities review, subsequently MHI and then, the loan guarantee. Those would have consumed a greater portion of my time.

MR. LEARMONTH: Yes. And you were involved heavily, I suggest, with the Public Utilities Board reference? Is that correct?

MR. BOWN: To the degree that I was coordinating the activities inside the Department of Natural Resources. At that time we had – I had moved then to the associate deputy minister. Paul Scott had come to the department from the Department of Justice and I assigned the work to him to prepare the materials. He did that in conjunction with the Department of Justice. I would have had conversations with Don Burrage, Justice Burrage, about the overall structure of what this would – how this would be prepared.

But, again, the actual writing of the documents was carried out by Mr. Scott and other counsel, Todd Stanley, from the Department of Justice.

MR. LEARMONTH: And you didn't have any involvement in the writing of the documents that were filed by – for – by government (inaudible)?

MR. BOWN: Review and edits and comments, yes.

MR. LEARMONTH: Okay.

But were you not in charge of liaison with the Public Utilities Board because I know you met –

MR. BOWN: Right.

MR. LEARMONTH: – with Maureen Greene –

MR. BOWN: (Inaudible.)

MR. LEARMONTH: – on a few occasions.

MR. BOWN: So, subsequently, when the terms of reference, or the question was put to the PUB, Mr. – Minister Skinner made note in his letter to the PUB that if there should be any concerns, they should direct them to me.

MR. LEARMONTH: Yeah.

And then Mr. Skinner left in October of 2011 –

MR. BOWN: Yep.

MR. LEARMONTH: – and he was replaced by Mr. Kennedy –?

MR. BOWN: Correct.

MR. LEARMONTH: – Minister Kennedy, and – okay, the report was received on March 30, 2012, and then, I believe you were – had some participation in the retaining of MHI. Is that right?

MR. BOWN: Correct.

I was directed to make contact with MHI and see if they – if it was impossible they could be engaged.

MR. LEARMONTH: Yes.

And then, you got the report, and then – well, we'll get into more detail, of course –

MR. BOWN: Yeah.

MR. LEARMONTH: – I just wanted to carry you through a few – just highlights.

So, after you got the MHI report – that would have been in October – late October 2012, correct?

MR. BOWN: Yes.

MR. LEARMONTH: And were you involved in the – retaining of Ziff and Wood Mackenzie for the natural gas question?

MR. BOWN: The retention of a consultant to do work on natural gas I assigned to Wes Foote, who was our assistant deputy minister of petroleum development, and I asked him to canvas the appropriate firms that would be able to do this. And that was the recommendation he returned with.

MR. LEARMONTH: So, did he report to you?

MR. BOWN: Yes.

MR. LEARMONTH: He reported to you.

MR. BOWN: Actually, if I might – and I know, Commissioner, you're always pressed for time, but yesterday there was the question about the role of the associate deputy minister. Minister Kennedy gave an answer, but I think I'd like to elaborate on that, if I could?

Normally, in departments, there aren't associate deputy ministers. But in those departments where the scope of work is very large, there's an opportunity to break up the executive team to ensure that proper focus is being placed on specific areas.

Inside the Department of Natural Resources, prior to 2005 there was one assistant deputy minister of energy.

And in 2006, the decision was made to break that up into three branches. So an associate deputy minister was appointed, and then there were three assistant deputy ministers: petroleum

development, which is engineering and geoscience; royalties and industrial benefits, fiscal relations with oil companies and industrial benefits as it relates to oil projects and mining projects; and energy policy.

So as the associate deputy minister, when you talk about my time that I spent working on the Lower Churchill file, it was only a portion of the time that I had available to me because I had all these other responsibilities as well.

MR. LEARMONTH: All right, now there isn't an associate deputy minister in every government department, is there?

MR. BOWN: No there is not.

MR. LEARMONTH: It's –

MR. BOWN: Rare.

MR. LEARMONTH: – rare?

MR. BOWN: Absolutely, it's rare. Minister Kennedy highlighted three yesterday; the other two being Health and Justice.

MR. LEARMONTH: And right now as we speak, how many associated deputy ministers are there?

MR. BOWN: There are none.

MR. LEARMONTH: There are none?

MR. BOWN: And the reason being is this is a – the result of fiscal restraint within government.

MR. LEARMONTH: Right, so the assistant deputy ministers report to the associate deputy minister?

MR. BOWN: Correct.

MR. LEARMONTH: Who in turn, reports to the deputy minister?

MR. BOWN: Correct.

MR. LEARMONTH: That's the line of communication?

MR. BOWN: That's the line of command.

MR. LEARMONTH: Yes, before we – we got a little bit of time before we break. I want to cover a topic – the topic of conservation and demand management, and integrated resource planning.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Are you familiar with those terms?

MR. BOWN: The former more than the latter.

MR. LEARMONTH: Okay, well they're related.

MR. BOWN: Yeah.

MR. LEARMONTH: Yeah, well we'll call that CDM then, is that acceptable to you?

MR. BOWN: That's acceptable to me.

MR. LEARMONTH: Yeah, was that something that fell within your – on your desk? Development of – or consideration of conservation and demand management for – hydro?

MR. BOWN: First and foremost, the responsibility for demand management or energy efficiency programs rest with the utilities themselves, and they'd bring those programs as they'd see fit to the Public Utilities Board for funding. That's not to say that there isn't a role for government – inside of government, initially that rested with the Department of Environment, the roles and responsibilities related to energy efficiency.

With the energy efficiency plan, those functions moved over to the Department of Energy. And inside the energy efficiency – inside the Energy Plan, there was specific energy efficiency functions that were laid out that included funding that was subsequently approved for energy efficiency.

MR. LEARMONTH: But was that something that you personally had some control over, or some involvement in?

MR. BOWN: Only the deliver – only the development of programs within government's

budget, but not the actual assignment or whether the utility should or should not do CDM.

MR. LEARMONTH: But I think you said earlier that that's something that the Public Utilities Board would handle in terms of ordering –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – Hydro to implement these procedures. But surely government could have done that also. Is that correct?

MR. BOWN: That was correct. No, I don't think we – I don't – in my time in dealing with energy efficiency matters, rightly or wrongly, it was never considered that government would be the one who would direct –

MR. LEARMONTH: No.

MR. BOWN: – utilities to do energy efficiency programs. That was well within their own purview to be able to do that.

MR. LEARMONTH: But it was within – I'm saying government could have done it.

MR. BOWN: Right. Yeah. And I'm agreeing with you.

MR. LEARMONTH: It may have been within the purview of the Public Utilities Board, but government wasn't prevented from doing it?

MR. BOWN: No.

MR. LEARMONTH: It could have done that itself.

MR. BOWN: Yes, I'm agreeing with you.

MR. LEARMONTH: Because with the Joint Review Panel, one of the recommendations was to implement integrated – an integrated plan to (inaudible) CDM.

MR. BOWN: Yeah.

MR. LEARMONTH: And do you know whether – was ever that recommendation, which was accepted by the Government of

Newfoundland – do you know whether anything was ever done to implement it?

MR. BOWN: I don't recall.

MR. LEARMONTH: You've got no information on that?

MR. BOWN: No. No. Shortly after we commenced the work on the energy efficiency program and we're, I guess, a couple of years into developing programs, we created a climate change office that took over responsibility for energy efficiency, CDM. So that was only resident in the department for just a number of years.

MR. LEARMONTH: Yeah. Can you tell us what your understanding is of CDM? How it operates?

MR. BOWN: I think the best way to identify it is that – it is the easiest way to generate new megawatts is to reduce the amount of megawatts that you're using.

MR. LEARMONTH: Yes. And, like, do you agree that Hydro implemented that CDM only to a very limited extent, never really went into it on a, you know, on a really serious basis?

MR. BOWN: That's my understanding.

MR. LEARMONTH: Okay. Do you know why?

MR. BOWN: I don't – I don't know why.

MR. LEARMONTH: Because there was a report done by Marbek Resource Consultants Ltd. in January 31, 2009.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: By the way, the reference to that is at C – I'm not going to bring it up, but it's CP-00246. And it was a Marbek – it's indicated that they were retained by Newfoundland and Labrador Hydro and Newfoundland Power, both of them, to do a study on CDM. And they made recommendations, prepared a report.

MR. BOWN: Yeah.

MR. LEARMONTH: And we've found little or no evidence that the recommendations in that report were ever implemented.

Do you know why?

MR. BOWN: Were those recommendations directed to government, or –

MR. LEARMONTH: No.

MR. BOWN: – directed to the utilities themselves –

MR. LEARMONTH: No, no –

MR. BOWN: – to put forward to the PUB?

MR. LEARMONTH: – they were – yeah.

They were directed to the utilities, but I thought you might know what, if any, follow-up was done to implement these procedures. The –

MR. BOWN: No, I don't recall.

If those recommendations were made to the utilities themselves, then that would become part of their capital plans that they would put before the PUB each year.

MR. LEARMONTH: Yeah.

And this conservation of – this CDM – are you aware that it's used almost universally by utilities in North America?

MR. BOWN: Generally, yes.

MR. LEARMONTH: Yeah.

So, do you – can you – do you have any information for us as to why it wouldn't be implemented here in Newfoundland and Labrador?

MR. BOWN: No, I have no answer for that.

The focus for us, with the Energy Plan, were the specific programs that we had identified to – energy-efficiency programs to help reduce the cost of electricity – home heat – to customers.

MR. LEARMONTH: Yeah.

But do you agree that, you know, if you have a reasonable amount of – or any amount of CDM, it would reduce the load forecast for electricity?

MR. BOWN: Agree.

MR. LEARMONTH: Yeah.

And that would result in – if the load forecast is reduced as the result of CDM measures – that would reduce the amount of fuel that would be burned at Holyrood during the months it's in operation?

MR. BOWN: Yes, I understand that. To the degree to which it would do that, I don't have an understanding, and I don't think the number is that significant.

But, nevertheless, I assume that that would be part of the capital program that the utilities bring forward – in particular, Hydro and the case of oil – would bring forward to the Public Utilities Board each year on their review of fuel costs. The PUB would –

MR. LEARMONTH: Yeah.

MR. BOWN: – the PUB – Public Utilities Board –

MR. LEARMONTH: Yes.

MR. BOWN: – would challenge them on what efforts they're making and what investments they're making to reduce demand, so as to reduce the fuel costs, so as to reduce the cost of electricity to customers.

MR. LEARMONTH: And that would have – if there was a reduction as a result of CDM measures, that would have an effect on the CPW analysis for the Muskrat Falls Project, wouldn't it?

MR. BOWN: Would – to what degree –

MR. LEARMONTH: Yeah.

MR. BOWN: – I would expect it wouldn't be significant.

MR. LEARMONTH: Yeah.

But you say you expect it wouldn't be significant, but isn't it true that we have no information to go on because it's never been implemented?

MR. BOWN: Correct.

MR. LEARMONTH: So, we'd have to look to, you know, the results in other jurisdictions to get a reasonable handle on that. Would you –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – agree?

MR. BOWN: I accept your point.

MR. LEARMONTH: Yeah.

And also, if you have a CDM program, it's not just, you know, if you achieve two per cent per year, that has a cumulative effect. So if you're looking at it over a 50-year term, for example, it could be a significant input into a CPW analysis. Do you agree with that?

MR. BOWN: I agree with you.

MR. LEARMONTH: All right. Thank you.

It's twenty-five to 1, Commissioner. Would you like to break now?

THE COMMISSIONER: If it's a good spot, we will, and come back at 2 o'clock this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is in session.

Please be seated.

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

MR. LEARMONTH: Okay. Yeah.

We were talking about conservation and demand management. There's just a couple of other

documents I want to refer you to. If we could bring up the Energy Plan, which is Exhibit P-00029 at page 65 – that's not in your book but it'll come up on the screen. Yeah, 65. Now, there's a – I'm going to take you through a few pages here dealing with conservation and related matters.

Under the heading Energy Efficiency and Conservation halfway down the page there are a number of paragraphs. Did you have any role in the preparation of these paragraphs?

MR. BOWN: No, they were prepared with staff and with the staff of the Department of Environment.

MR. LEARMONTH: But you're aware of them –

MR. BOWN: Yes.

MR. LEARMONTH: You're aware that this was contained in the Energy Plan?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

And in the second paragraph under the heading Energy Efficiency and Conservation it says: "The advantages of both energy efficiency and conservation are clear: they help protect our environment – locally and globally – by minimizing pollution and GHGs. They also decrease energy costs" for both "individuals and businesses, and help us make our resources go farther" And then so this is in – generally, do you agree that in the Energy Plan the government's policy was clearly focused on supply and demand management or conservation and demand management?

MR. BOWN: It was one of the strategies that – I think, if you go further down the page – that would help address the – or assure that we have electricity until the Lower Churchill Project is developed. So it was one of the strategies –

MR. LEARMONTH: Yeah, but –

MR. BOWN: – of government.

MR. LEARMONTH: Yeah, but the policies apply, like, if there was –

MR. BOWN: Correct, so –

MR. LEARMONTH: Policies apply –

MR. BOWN: – generally.

MR. LEARMONTH: – regardless of whether the Muskrat Falls Project went ahead or not.

MR. BOWN: Yes.

MR. LEARMONTH: The principles apply.

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah.

If we look at Planning and Coordination on page 66, please – under Planning and Coordination: “As part of our energy conservation and efficiency strategy, the Provincial Government will establish” an “Energy Conservation and Efficiency Partnership (ECEP) with an initial investment of \$5 million to coordinate and assist with energy conservation and efficiency initiatives” et cetera. Was this ECEP – was this implemented?

MR. BOWN: Yes, it was.

MR. LEARMONTH: And for \$5 billion dollars?

MR. BOWN: There were several programs that were run from ECP including the Home Energy Rebate Program.

MR. LEARMONTH: Okay, so it was \$5 million spent?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. And is that program still in existence?

MR. BOWN: No, that – the responsibility transferred over to the Climate Change office that’s currently resident in the Department of Environment.

MR. LEARMONTH: Okay, is it still funded? Is the Energy Conservation and Efficiency Partnership program still funded?

MR. BOWN: No, it’s – right now it’s renamed as the climate – I can’t even remember the name of it, Commissioner, I apologize. But it’s the Climate Change office and it has its own programs and funding.

MR. LEARMONTH: Okay. Do you know how much funding it has as we speak today?

MR. BOWN: No, I’m sorry, I don’t, Sir.

MR. LEARMONTH: You don’t have any information on that?

MR. BOWN: No.

MR. LEARMONTH: The – on page 67, the last paragraph says: “The Provincial Government will lead by example through a vehicle policy that Departments ‘buy what they need,’ and by adopting an initial target that 25 per cent of all cars and SUVs purchased in the next four years will be energy-efficient vehicles, including, but not limited to, hybrids” et cetera. It – was that program implemented?

MR. BOWN: Absolutely, it was.

MR. LEARMONTH: And are they still – is the government still buying hybrids and –

MR. BOWN: And rightsizing. So it was two elements there: It was not only to buy hybrids, but also to ensure that the fleet that, government was using was the appropriate size, so where a small SUV could do, or a small pickup truck could do, in place of a larger vehicle.

MR. LEARMONTH: All right.

And on page 68 – the bottom of page 68 it says: “As part of this Energy Plan, the Provincial Government will support residential pre- and post-retrofit energy audits for Newfoundlanders and Labradorians with an initial investment of \$500,000” Was that program implemented?

MR. BOWN: Yes it was, and actually we ran that for about three years until that government – and, actually, we spent more than \$500,000.

MR. LEARMONTH: Okay.

MR. BOWN: Until government came to restraint measures and that program was no longer funded.

MR. LEARMONTH: Okay, so it's no longer funded?

MR. BOWN: No.

MR. LEARMONTH: Okay. When did the funding run out?

MR. BOWN: I think it was about three years or four years into this program.

MR. LEARMONTH: So that'd be 2010, 2011?

MR. BOWN: Yes, yeah.

MR. LEARMONTH: Okay, page 69, under the heading: Building Energy Codes. And midway through or about: "The application of energy codes across Newfoundland and Labrador will be investigated for new residences, businesses and public buildings. The Provincial Government will lead by example and implement a policy, where appropriate, that all new government and government-funded buildings, and major renovations, must be 25 per cent more energy-efficient than required by current codes, and must achieve, where possible, a Silver Standard under the Leadership in Energy and Environmental Design (LEED) program."

MR. BOWN: Yes.

MR. LEARMONTH: Is that program implemented?

MR. BOWN: Absolutely, and it's still in place. And that's been in place for every provincial government building that's been built since that time. And I think the most recent example is a school that was constructed actually made LEED Gold, which is the highest standard we've achieved to date.

MR. LEARMONTH: But has it been applied for – it said it's going to be "investigated for new residences, businesses and public buildings." You just –

MR. BOWN: Government-owned buildings.

MR. LEARMONTH: Yeah, but has it been pursued for other types of structures, like new residences, buildings and public buildings.

MR. BOWN: Oh yes. And energy codes – I'm sorry; you're referring back to the previous section. The –

MR. LEARMONTH: No, I'm referring to the same paragraph.

MR. BOWN: No, the application of energy codes –

MR. LEARMONTH: Yes.

MR. BOWN: – across Newfoundland and Labrador.

MR. LEARMONTH: Yes.

MR. BOWN: Yes, energy codes were updated. That's part of a national initiative that all provinces did to update building codes to make not only government buildings through a LEED program, but also residences and commercial buildings more energy efficient.

MR. LEARMONTH: All right.

When we spoke of conservation and demand management this morning, we had some discussion about the, you know, potential effect of implementing a CDW policy. And I think you indicated that it may not be a big saving. Did you say something like that?

MR. BOWN: I didn't think that it would be substantial.

MR. LEARMONTH: Okay.

MR. BOWN: But I'm not aware. I don't have a number to quantify.

MR. LEARMONTH: All right.

Now, if we – could you bring up the Grant Thornton report, P-00014 and that's tab 146, volume 4. I'm just going to refer to one page of this for now, so you don't really need to look at your book if you don't want to.

Page 54 – now, this is a table, line 1: “2.1.36 Sensitivity Analysis Performed by Nalcor.

“Nalcor, with the help of ... external consultants, performed a number of sensitivities on the CPW inputs at both DG2 and DG3.

“At DG2, sensitivities completed are shown” in the bottom “in the following summary.”

And then if you go down – let’s see, well, you see where it says: Moderate Conservation?

MR. BOWN: Yes.

MR. LEARMONTH: 375GWh by – do you see the impact of that?

MR. BOWN: Yes, it’s significant.

MR. LEARMONTH: It’s very significant, yeah.

MR. BOWN: Yes, I agree with you.

MR. LEARMONTH: And then if you go to the next line: Aggressive Conservation, 750 by – do you see the impact of that?

MR. BOWN: Right.

MR. LEARMONTH: That brings – that reduces the difference – it almost cuts the difference in the CPW in half, doesn’t it?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Yeah.

MR. BOWN: I agree.

MR. LEARMONTH: But that – would you change your answer earlier that –

MR. BOWN: Yes.

MR. LEARMONTH: I mean, this seems to be –

MR. BOWN: Yes.

MR. LEARMONTH: – very significant.

MR. BOWN: I had forgotten that the sensitivity was done for DG2.

MR. LEARMONTH: Yeah.

MR. BOWN: I agree with you.

MR. LEARMONTH: Yeah. It’s significant or –

MR. BOWN: Yes.

MR. LEARMONTH: – substantial, yeah. Okay.

And I can just – the Marbek report that I referred to earlier, if the – I can say that if the initiatives described in that report were implemented, the savings would be even greater as a more aggressive plan. I can’t tell you exactly how much but it was even more substantial than the table we just left.

MR. BOWN: I’m not familiar with that but –

MR. LEARMONTH: Okay.

MR. BOWN: Well, like, I can’t agree or disagree, I’m sorry.

MR. LEARMONTH: You don’t know. That’s fine.

I’d like to turn to the subject of wind – not wind, natural gas. Have you followed the evidence of Mr. Kennedy on that subject?

MR. BOWN: Yes, I have.

MR. LEARMONTH: You watched it both yesterday and today?

MR. BOWN: Yes, I did.

MR. LEARMONTH: So you know generally the issues and the line of questioning that we put to Mr. Kennedy?

MR. BOWN: Yes, I do.

MR. LEARMONTH: Okay.

Now, I may not have to take you through all the documents but it depends on your answers. But

just for the record, the Ziff report dated October 30, 2012, on natural gas is Exhibit P-00060, and that's at tab 134, volume 4 of your documents.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Are you familiar with this report?

MR. BOWN: Yes, I am.

MR. LEARMONTH: And do you acknowledge that it is a study of the possibilities of natural gas, both by pipeline from the Grand Banks and LNG?

MR. BOWN: Yes, it is.

MR. LEARMONTH: Yeah.

And the next document is Exhibit P-00064, which is at tab 40, volume 4 of your documents. And this is the Wood Mackenzie report.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Or a portion – well it's a three-page report –

MR. BOWN: Correct.

MR. LEARMONTH: – which deals just with the pipeline.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And then – well, at Exhibit P-01312 – it's volume 4, tab 132 – we have the full Wood Mackenzie report. Are you familiar with that?

Do you want to bring that up, because if we turn to page 6 of that exhibit, you'll see ...?

MR. BOWN: That's fine. I've looked at it over the past couple of weeks.

MR. LEARMONTH: You know what I'm talking about.

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah.

Now, the – and on page 6 of the last referenced exhibit, that's 01312, in the introduction it says: "Wood Mackenzie has been engaged by the Newfoundland and Labrador Department of Natural Resources ... for the purpose of reviewing and commenting on two reports prepared" by DNR by Ziff Energy Group.

Now, do you acknowledge that the report of Ziff dated October 30, 2012, was a combination of two earlier reports?

MR. BOWN: Yes. We had commissioned them to do two reports and –

MR. LEARMONTH: One on the pipeline –

MR. BOWN: And one on LNG.

MR. LEARMONTH: Yes.

MR. BOWN: Thank you for the clarification.

And at some point it looked like they were so similar – same introduction, and the like, same background information – that we asked them to combine them into one.

MR. LEARMONTH: Okay.

Now, on Exhibit P-01312 – that's page 6, that's the Wood Mackenzie report – it says: "Wood Mackenzie has been engaged by the Newfoundland and Labrador Department of Natural Resources ... for the purpose of reviewing" – oh, I just read that.

"Wood Mackenzie has used its" – dependent – "independent views on the LNG markets and its in-depth knowledge of the costs of production and transportation of natural gas from off-shore plays, such as ... White Rose field to reach the conclusions herein."

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Okay, so that was what they were engaged to do. Is that correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yes.

And just tell us a little bit about the relationship between the Government of Newfoundland and Labrador and Wood Mackenzie; I think it's a long-standing relationship or a long-standing retainer. Is that correct?

MR. BOWN: Yes, Wood Mackenzie has been the government's energy advisor for well in excess of 10, 12 years – probably even longer. And they've provided us with oil price information but, also, as we've been doing negotiations with oil companies, they've been providing us with strategic advice as well. And not only that, they have given us advice on fiscal systems.

MR. LEARMONTH: Yeah.

MR. BOWN: So as we've made modifications to our royalties and to our taxes, they've given us advice as well.

MR. LEARMONTH: And how long have they been your advisor?

MR. BOWN: Well in excess of 10 years.

MR. LEARMONTH: Okay, yeah.

So you have confidence in them, obviously.

MR. BOWN: We do.

MR. LEARMONTH: Government does.

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah.

All right, now, I'll come right to the point. The LNG study, or review, by Wood Mackenzie was pulled. Do you agree with that?

MR. BOWN: Yes.

MR. LEARMONTH: Meaning that only the first part, that dealing with the pipeline, was released to the public?

MR. BOWN: Correct.

MR. LEARMONTH: And the full report dealing with LNG was not provided to the public.

MR. BOWN: Correct.

MR. LEARMONTH: Yeah.

Nevertheless, the Ziff report, dealing with both the pipeline – that's the way I'll refer to it – and the liquid natural gas was released to the public.

MR. BOWN: Correct.

MR. LEARMONTH: And do you agree that in the full Wood Mackenzie report, that – meaning that – the one dealing with both – that the analysis by Wood Mackenzie of the LNG option was more favourable to – in pricing – than the Ziff report?

MR. BOWN: There were conclusions drawn by Wood Mackenzie that would indicate that costs would be less than that proposed by Ziff.

MR. LEARMONTH: Yeah, and they would be – just if we go to page 9, that would be the: “Wood Mackenzie believes that a gas-to-oil price arrangement in the range of 70% would be more reflective of:” those “evolving market conditions.” That's 70 per cent of the figure selected by Ziff. And then the cost of the gas – regasification plant was a lot lower also, wasn't it?

MR. BOWN: Yes.

MR. LEARMONTH: By hundreds of millions of dollars.

And if we look at page 10, the last paragraph under the heading “Wood Mackenzie's Conclusions”.

“Relative to the use of LNG imports as a fuel, Wood Mackenzie's research would tend to have lower costs than those determined by Ziff for the reasons stated within” – this – “the report. Looking at the costs of some recently constructed facilities, and possibly evaluating the FSRU technology could lower the costs from Ziff's estimates. That said, we agree ... it will be

difficult for Newfoundland to secure LNG in the relatively low quantities required at other than globally competitive prices that are related to NBP. They may indeed have to pay a premium due to that fact.”

So there’s the possibility that the pricing may be more difficult because of the low amounts.

MR. BOWN: Right.

MR. LEARMONTH: But, in any event, this – if you’re looking at the Ziff report and comparing it to the Wood Mackenzie report, Wood Mackenzie is more supportive of the liquefied natural gas initiative than the Ziff report, is that correct?

MR. BOWN: Correct.

MR. LEARMONTH: Okay.

Now why was the full Ziff report not released to the public – or I’ll put it another way – why was the Wood Mackenzie report on LNG suppressed?

MR. BOWN: This would not have been the – so this full version that we see here would not been the first full version that I would seen. This is probably the third, and we had no comments for them on the first two versions of this. If I had an opportunity to go back through the Commission documents and have a – I got access to my email just a very short period of time ago, and we didn’t have any comments on it then.

The last version that I would have received – this – I’m not sure if it’s actually this one, Mr. Learmonth –

MR. LEARMONTH: I think – isn’t this the one – I think you described it as being static in one of your emails?

MR. BOWN: The – not sure. It would have been the 26th.

MR. LEARMONTH: Yeah.

MR. BOWN: And on the 27th, I would have sent a copy of this – and the 27th being, I believe, a Friday. I sent a copy to – sent to the minister.

MR. LEARMONTH: Well, okay.

So my question is why was the LNG portion suppressed or why wasn’t the whole report released to the public?

MR. BOWN: Direction was provided that we would only go with the pipeline portion, as that was the part that was most relevant or prevalent in the public debate or discussion that was going on at that time.

MR. LEARMONTH: Who gave that order or direction?

MR. BOWN: I can’t be absolutely specific who that order came from, but I was directed to make the call to Bill Fleck, [sp Bob Fleck] –

MR. LEARMONTH: Mm-hmm

MR. BOWN: – I did that on the 31st.

MR. LEARMONTH: Yeah.

And that’s after you got the letter or the email that I’ll refer to later, from Mr. Keating at Nalcor.

MR. BOWN: No, Mr. Keating’s email was subsequent to that.

MR. LEARMONTH: I think it was the 31st, was it not?

MR. BOWN: I don’t believe so.

MR. LEARMONTH: Well, we’ll check that out.

MR. BOWN: Sure. But I think the direction wasn’t from Mr. Keating. I think his comments, as I read them, were to cleanups that were required after the LNG portion of the report was taken out.

MR. LEARMONTH: Okay, well who gave the order then?

MR. BOWN: I don’t recall specifically but I was directed –

MR. LEARMONTH: Well –

MR. BOWN: – to do so. Otherwise, I would not have done it.

MR. LEARMONTH: Okay, so I think Mr. Kennedy said this morning words to the effect that you wouldn't have done it –

MR. BOWN: Correct.

MR. LEARMONTH: – unless you were directed. That's the first part of the issue, but I want to know who gave that direction. It had to be someone above you and you were deputy minister.

MR. BOWN: Yeah.

MR. LEARMONTH: Well, who was it?

MR. BOWN: It doesn't immediately come to mind, the actual moment of that direction. I'm not being evasive, I'm being honest.

MR. LEARMONTH: Oh. You remember getting the direction and – but you're saying you don't remember who gave it?

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Is that what you're saying?

MR. BOWN: Well, I would say with the best of my recollection, that that direction would have come from Minister Kennedy.

MR. LEARMONTH: That would be your best –?

MR. BOWN: Absolutely.

MR. LEARMONTH: Okay, that's fair.

Is it possible it came from –

UNIDENTIFIED MALE SPEAKER: I didn't get the name, was it Mr. Kennedy.

UNIDENTIFIED MALE SPEAKER: Minister Kennedy.

UNIDENTIFIED MALE SPEAKER: Thank you.

MR. BOWN: Sorry, I said Minister.

MR. LEARMONTH: Yeah.

Minister Kennedy, Jerome Kennedy.

Yeah.

Now he said he didn't have any recollection of that. He didn't deny it but – so that's your best –

MR. BOWN: And whether he had conversations with other people over the weekend, when I had provided that copy of the report to him – that I can't verify. But I know that I was instructed in – my email evidence shows that, that I immediately was seeking out Mr. Bob Fleck from Wood Mackenzie. It took me two days to reach him and the purpose of the call was to make the change in the report.

MR. LEARMONTH: Why? What was the reason for this direction to change the report?

MR. BOWN: As I recall, the debate in the public was focused singularly around the pipeline and bringing gas ashore from the Jeanne d'Arc Basin and Husky in particular. And that we should focus this review singularly on that.

MR. LEARMONTH: But you knew those facts before you commissioned and retained Wood Mackenzie.

MR. BOWN: Yes.

MR. LEARMONTH: So why – I mean that wouldn't have been a sudden revelation. I mean, you hire someone to do a report on both and then after you get their report, which favors LNG more than Ziff, all of a sudden you say, well oh no, we only need part of it.

MR. BOWN: But that wasn't me saying that.

MR. LEARMONTH: It wasn't you saying it.

MR. BOWN: No.

MR. LEARMONTH: Yeah. Do you see a problem with this? With not releasing the full report?

MR. BOWN: I was fine with the previous two versions of the report.

MR. LEARMONTH: So the – you were fine with releasing the full Wood Mackenzie report that dealt with both the pipeline and the LNG?

MR. BOWN: I didn't think that the points that they raised were so bad as to change the decision on whether Muskrat Falls was the least-cost choice.

MR. LEARMONTH: But isn't the purpose of getting these reports to have a full public debate; to circulating these documents, encouraging debate?

MR. BOWN: Agree.

MR. LEARMONTH: So if that was the case, can you give me any reason why the LNG portion of the Wood Mackenzie report was suppressed?

MR. BOWN: As I explained, I was directed to have that portion taken out.

MR. LEARMONTH: And you weren't given any reason for it?

MR. BOWN: It was that we wanted to focus singularly on the pipeline option.

MR. LEARMONTH: Well why would, at that point – and that would be October 27 – after having reviewed and met with Wood Mackenzie as Mr. – as Minister Kennedy did, why at that point, would he come to the conclusion that you wanted to focus on the pipeline part of it only?

MR. BOWN: I can't answer for that – Mr. Kennedy.

MR. LEARMONTH: Did you ever discuss this with Mr. Kennedy?

MR. BOWN: I took my direction from Minister Kennedy very clearly.

MR. LEARMONTH: Very clearly – what were the words?

MR. BOWN: We're not going to release that portion.

MR. LEARMONTH: But wouldn't you have said why?

MR. BOWN: As I explained, it would be –

MR. LEARMONTH: Yeah.

MR. BOWN: – to focus only on the pipeline option.

MR. LEARMONTH: And that was the end of it?

MR. BOWN: That was it.

MR. LEARMONTH: Was it.

Did you make any record of that telephone conversation with Mr. Kennedy?

MR. BOWN: No, I did not.

MR. LEARMONTH: So there's no record in existence, to your knowledge, of that discussion?

MR. BOWN: No.

MR. LEARMONTH: Yeah, but you're certain it happened.

MR. BOWN: I'm saying that's my best recollection. That's why I was hesitant at the beginning, that – you know, can I say 100 per cent?

MR. LEARMONTH: Yeah.

MR. BOWN: But like you say, this is my best recollection.

MR. LEARMONTH: Okay, well let's just assume for the sake of argument that it wasn't Minister Kennedy. It would have to have been another minister, wouldn't it?

MR. BOWN: Absolutely. Minister Kennedy was all over these papers on natural gas because it was particularly a strong interest of his. I would not have made a change in any of these reports.

MR. LEARMONTH: You would not have?

MR. BOWN: No.

MR. LEARMONTH: No. But I guess my point is, in narrowing down the choices, if the minister of social services had asked you to take it out, I mean –

MR. BOWN: Yeah.

MR. LEARMONTH: – would you have done it?

MR. BOWN: I would advise Minister Kennedy that the request was made.

MR. LEARMONTH: Yes. And if, hypothetically, I have no evidence of this, but if the premier told you to take it out, would you –?

MR. BOWN: I would have done exactly the same.

MR. LEARMONTH: You would have told Mr. Kennedy?

MR. BOWN: Correct.

MR. LEARMONTH: Okay.

So that narrows it down, doesn't it?

MR. BOWN: Yes, it does.

MR. LEARMONTH: It had to be someone above you, and the only possibility, based on what you said, is Mr. Kennedy – if the direction had come from another minister or from the premier, you would have definitely have communicated that to Mr. Kennedy?

MR. BOWN: I apply the same logic, yes.

MR. LEARMONTH: So he would have known about the order or the direction?

MR. BOWN: He was very interested in these – the two pieces of work, yes.

MR. LEARMONTH: Yeah.

Were you – I know that, in your position, you didn't have any choice; I suppose you could have quit or – no – you know, but realistically,

did you have any problem with implementing this direction?

MR. BOWN: I carried out Minister –

MR. LEARMONTH: Yeah. But did –

MR. BOWN: – Kennedy's direction.

MR. LEARMONTH: – you do it cheerfully, willingly or reluctantly?

MR. BOWN: I did it because it was part of my job to respond to the request of the minister.

MR. LEARMONTH: Yeah. But you weren't happy with it, were you?

MR. BOWN: I felt that the report itself stood on its own and that it didn't completely – it didn't disparage the use of LNG, as reported in Ziff and it didn't, in anyway, change the decision or the conclusion that Muskrat Falls was the least cost.

MR. LEARMONTH: Well, that being the case, why not just release it?

MR. BOWN: Myself, and in the absence of –

MR. LEARMONTH: No. I'm just searching for reason why – the real reason – why this report was not released in full?

MR. BOWN: As was described to me, it was the focus only on the pipeline option as that was the element that was part of the public debate at the time. That's as it was described to me.

MR. LEARMONTH: Well, then why didn't you take off – take the LNG out of the Ziff report to be consistent?

MR. BOWN: I can't answer that.

MR. LEARMONTH: Do you see my point?

MR. BOWN: I understand.

MR. LEARMONTH: Yeah. I suggest to you the reason was that it gave a much more favourable consideration to LNG and that the government was determined to eliminate all options other than Muskrat Falls, and therefore,

this had to go. I suggest that to you, that was the reason. What comment do you have to that?

MR. BOWN: All I can tell you is the way it was described to me. So I can't make any – I can't make another conclusion; I can only go on the direction that I was provided.

MR. LEARMONTH: But you were the deputy minister of the time; you knew what was on the go. And I take it you knew that Muskrat Falls was the strong choice of the government?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah. Yeah.

And we'll get into these emails, but it – I'll put this to you. It looks to me, and I'll show you the emails that I think support this position, that by examining natural gas, it wasn't a open choice to have an honest look at how natural gas stacked up against Muskrat Falls. The purpose of getting these reports was to eliminate natural gas. Do you agree with that?

MR. BOWN: My understanding of all the papers that we engaged in – and right from the outset, Minister Kennedy provided a long list of issues that he wanted to test and challenge, and to have a better understanding, to be able to deal with the concerns and/or questions that were being raised in the public and natural gas, be it pipeline or LNG, was one of those.

MR. LEARMONTH: Yeah.

Well, I suggest that the conduct in suppressing that report is not consistent with an open, objective assessment. Do you agree?

MR. BOWN: It was limited.

MR. LEARMONTH: What do you mean limited?

MR. BOWN: The Wood Mackenzie review.

MR. LEARMONTH: What do you mean it was limited?

MR. BOWN: That only one portion of it was released.

MR. LEARMONTH: Yeah.

Okay, so I guess you're not going to budge on your reluctance to give any more information on that.

MR. BOWN: That's my response, Mr. Learmonth.

MR. LEARMONTH: Okay.

So do you – what do you say to my suggestion that this decision to review natural gas was not to see whether it was a valid alternative but rather to eliminate it as an alternative? In other words, a negative approach: We have to get rid of this option, so we'll get these reports, and that'll do the job.

MR. BOWN: I recall going into this entire exercise as one being – having an open mind and wanting to gain all the necessary information to be able to answer questions. Minister Kennedy had a very open mind and wanted to test all options.

MR. LEARMONTH: Well, I suggest something changed, though, didn't it? Because if there was – if it's an open-minded approach to test all alternatives, there'd be no reason to suppress the Wood Mackenzie review of LNG.

MR. BOWN: Sure. And I can't tell you what happened between the time that I provided this copy of the draft to when I was given direction.

MR. LEARMONTH: Okay.

You acknowledge my point, though, do you?

MR. BOWN: I acknowledge your point, Sir.

MR. LEARMONTH: Yeah.

Now, Nalcor had a big hand in this review by Ziff and Wood Mackenzie. Is that true?

MR. BOWN: From a technical basis, yes, absolutely. Jim Keating provided us with an understanding on some elements that we didn't have any expertise in.

MR. LEARMONTH: Okay, well, he did more than that. I mean, he had a three-hour discussion with Ziff, and he was –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – talking to Husky. That's a lot more than –

MR. BOWN: Sure. I mean, it was part of our integrated approach. I had assigned this piece of work to Wes Foote. Wes, as he would normally do – he didn't have the complete technical capability within his group –

MR. LEARMONTH: Mm-hmm.

MR. BOWN: – for some of these matters, and he would reach out to Jim – he would either speak to Jim or have one of Jim's staff help support him in the work that he was doing.

MR. LEARMONTH: Well, I mean, Ziff's – Ziff was supposed to be the expert here. How much technical information would they need?

MR. BOWN: Not for sure, but I think sometimes some understanding, some context, of the way things were on the east coast and the way that the oil industry worked here versus their home base in Calgary, I think Jim was able to provide information on that.

MR. LEARMONTH: So they could have figured that out themselves. Why did you let Nalcor step in and give this information to them?

MR. BOWN: Well, just part of our integrated approach – the way that we dealt with these matters.

MR. LEARMONTH: Okay.

Tell us a little more about this integrated approach? What do you mean by an integrated approach?

MR. BOWN: Well, we were – we worked together. No different than we did on any other pieces of work that we did over the years. There would be select teams within Natural Resources, or within other government departments, where we would pool resources with staff at Nalcor,

who had specific skill sets, who could help us do our work.

MR. LEARMONTH: Okay.

So there was no distinction between the Nalcor players on the team and the government players on the team. Is that right?

MR. BOWN: I would say no.

MR. LEARMONTH: No.

It was an integrated team –

MR. BOWN: Absolutely.

MR. LEARMONTH: – in every respect?

MR. BOWN: Yeah.

And we were encouraged to work together.

MR. LEARMONTH: Who encouraged you to do it that way?

MR. BOWN: It was – been long-standing since my first engagement with – when I came to the department in the energy role – that we were generally encouraged to work together with Nalcor and to complete our work and try and get the best result.

MR. LEARMONTH: Yeah.

So this integrated team – do you see the problem that that could present from an oversight point of view? I mean, how can –

MR. BOWN: Just elaborate, please.

MR. LEARMONTH: Well, how can government – the – Nalcor is a Crown corporation owned by the people –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – ultimately. And they're spending public money, and government is the steward of the Treasury. I suggest to you that logic dictates that there has to be some degree of separation between government and a Crown corporation, some kind of oversight, to make

sure that they're discharging their duties properly.

Do you agree with that?

MR. BOWN: I agree with that, but in this context where you're working on a specific work activity, would it be unreasonable to draw in support from Nalcor where they have technical capacity?

MR. LEARMONTH: Well, I'm not talking about drawing in support. You used the term "integrated team."

MR. BOWN: Yes.

MR. LEARMONTH: There's a difference between government seeking some technical support from Nalcor and being a completely cohesive, united team. I mean, the latter is just much more comprehensive than the former.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Do you agree?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So in (inaudible) why – in order to get some technical information from Nalcor, why would it be necessary to be all in with them, like a complete team?

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Just using that as an example.

MR. BOWN: Sure. I don't think we were "all in with them."

MR. LEARMONTH: Well, what part of the relationship would prevent you from saying that you were all in with them?

MR. BOWN: Well, as a general statement, we wouldn't be all in with Nalcor on anything that we ever engaged them with. It wouldn't always be the case.

MR. LEARMONTH: Well, it was in terms of the Muskrat Falls Project, I suggest, based on the evidence we've seen to date.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Do you agree?

MR. BOWN: In large part, yes.

MR. LEARMONTH: Yeah.

I would – I suggest completely. You say a large part. What part of it –?

MR. BOWN: There were still some elements of policy and regulation and decisions that were – government retained unto itself.

MR. LEARMONTH: Like what? Give me some examples.

MR. BOWN: As we dealt with environmental assessment, the decisions on environmental assessment were made separate from –

MR. LEARMONTH: Right.

MR. BOWN: – Nalcor. They were a proponent and they – Department of Environment kept a firewall between them.

MR. LEARMONTH: Hmm.

Okay, I'd like you to turn to Exhibit 01194. That's at tab 66, volume 2 of your documents, Mr. Bown.

This is an email. Sunday, March 18, 10:27 a.m. from Dawn Dalley of Nalcor to Ed Martin at Nalcor, to you and to Jim Keating.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: So Ms. Dalley says: "So here's my first cut at an approach for consideration. I can meet today if we need to get together and discuss (I'm holding court at Starbucks on Kenmount" – Road – "if you'd like to come by!)"

And then – now, Dawn Dalley is a public relations specialist, is that right?

MR. BOWN: Correct.

MR. LEARMONTH: I don't know her – but that's the area she works –

MR. BOWN: Vice-president of communications at the time.

MR. LEARMONTH: Communications, okay.

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Yeah.

Now, if we go down – three-quarters down the page, this is about – this is a strategy on natural gas, right?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: So you're in with Nalcor right there. You're – this is part of the cohesive team that you're talking –

MR. BOWN: If you go right to the bottom –

MR. LEARMONTH: Yeah.

MR. BOWN: – it's a – that was prepared in response to a request by Ed Martin to pull together something like this. This was unsolicited –

MR. LEARMONTH: Yeah.

MR. BOWN: – and something that I didn't request.

MR. LEARMONTH: Okay, but you nevertheless – Ms. Dalley felt comfortable at – sending you a copy of it.

MR. BOWN: Ed would've included me in the initial email, so she was just following through.

MR. LEARMONTH: Yeah. Okay, and it says:

“Goal

“Reinforce our position that gas was considered and screened.” That means screened out, right?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: So this is the mindset of Nalcor.

MR. BOWN: That's the mindset of Nalcor.

MR. LEARMONTH: That's it.

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So it was to eliminate – any further work on natural gas would've been done for the purpose of eliminating natural gas as an option; screening it out, correct?

MR. BOWN: Sure, from their point of view. But I don't think Minister Kennedy held that view.

MR. LEARMONTH: No, no. But Nalcor did.

MR. BOWN: Yes.

MR. LEARMONTH: So what I said before, that Nalcor wanted to get rid of the natural gas option, is that a correct way to put it?

MR. BOWN: I don't know if they wanted to get rid of the natural gas option, but they wanted to confirm that the decisions that they had made already were appropriate.

MR. LEARMONTH: Yeah, and is that a good mindset to have when you're going into a consideration of options?

MR. BOWN: I think that we were appropriately positioned inside the department with Mr. Foote, and with Minister Kennedy, to not be – to be led along. He was searching and he wouldn't stand for anybody pulling him in a particular direction.

MR. LEARMONTH: Are you sure about that?

MR. BOWN: Well, that's my belief.

MR. LEARMONTH: All right.

So this here is what they're – so this is the – this is a strategy to – the goal is to “Reinforce our position that gas was considered and screened.” I think we can add the word “out.” This is March 18, 2012, a couple of weeks before Ziff was retained, correct?

MR. BOWN: I don't know the exact date that they were retained, but I'll accept your (inaudible).

MR. LEARMONTH: Well, you know, not to the day, but –

MR. BOWN: Yeah.

MR. LEARMONTH: – yeah, around April 1.

MR. BOWN: Yeah.

MR. LEARMONTH: Okay.

Would – the next page of this report, Mr. Bown, which is page 2 – and I'm not gonna go through the whole page. But at the bottom it says:

“Tactics

“Media briefings on Tuesday/Wed (need to consider whether trying to ‘get ahead’ of Bruneau may actually have people think there is some truth to his position)

“Three blogs: domestic gas, LNG and Shale gas impact on markets in US and our ability to sell into that market.”

So we know that Professor Bruneau had given a presentation at the Harris Centre – I think it was on March 18 or March 17, 2012.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: So we're talking about a day or two after – if my date is correct – or shortly thereafter.

MR. BOWN: Sure.

MR. LEARMONTH: Though Dr. Bruneau is a – I think everyone will acknowledge – is a very professional, reputable, eminent professor. Do you agree?

MR. BOWN: Agree. I met with Dr. Bruneau – myself and Mr. Foote.

MR. LEARMONTH: Yeah, yeah.

So if Dr. Bruneau comes out with a presentation that he says is worthy of consideration and that

was – his focus was on building the pipeline or considering it as an alternative. Why would Nalcor's initial reaction to that initiative be: We got to ahead of him?

MR. BOWN: I can't –

MR. LEARMONTH: What –

MR. BOWN: I can't speak for why they would behave this way. Again, this would've arrived unsolicited –

MR. LEARMONTH: Yeah.

MR. BOWN: – and it probably would not – this is not the first time – and I'm sure that as you read through many of the documents made available to the Commission, it wouldn't be the first that these types of strategy-type approaches have been provided – provided to government – be it to me or to a minister or to the communications branch or even to the premier's office. It would not necessarily be used by us – when I say “us” I'm saying the department – were used by government as the view that it wanted to – that it wanted to share.

MR. LEARMONTH: Yeah. But if you're part of an integrated team you have to go along with –

MR. BOWN: That's why I said that it's not always that you agree with whatever Nalcor says. It's not always the way it's going to be.

MR. LEARMONTH: Well, can I ask you to point me to one email or one document that suggests that there's any separation between government and Nalcor in the consideration of this natural gas initiative? One document.

MR. BOWN: I've reviewed as much as I could.

MR. LEARMONTH: Yeah.

MR. BOWN: But I didn't review everything.

MR. LEARMONTH: Yeah. Well, based on what you did review can you show –?

MR. BOWN: No.

MR. LEARMONTH: No. Okay.

MR. BOWN: But then again, it doesn't necessarily require a response when somebody sends you something unsolicited.

MR. LEARMONTH: Well, did you write Ms. —

MR. BOWN: This would've been discussed internally.

MR. LEARMONTH: Yeah. Did you write Ms. Dalley back and say: Why are you sending this to me?

MR. BOWN: No.

MR. LEARMONTH: No.

MR. BOWN: No. We would've discussed this internally and said: Is this the way we want to deal with this? And if the answer was no, then we didn't do it.

MR. LEARMONTH: But the answer wasn't no. It was yes, right?

MR. BOWN: Specific to each one of these elements?

MR. LEARMONTH: Mmm.

MR. BOWN: I haven't read that in — fully to say —

MR. LEARMONTH: But, you know —

MR. BOWN: — it's everything.

MR. LEARMONTH: — I suggest to you that when — if you're looking at all the options in an open-minded, fair-minded way, when someone of Dr. Bruneau's calibre makes a presentation at the university, relying on publicly available information, that an open-minded person, or open-minded government, would say we're going to have to have a look at this, not how are we gonna get ahead of them.

MR. BOWN: Right. And that goes back to the point that I made earlier. I firmly believe — and as I know because I worked very closely with Minister Kennedy — should I say minister or Mr. — Minister Kennedy — Mr. Kennedy on these matters. And my understanding of the way that

he approached this was very open. And he wanted to know and understand and didn't want to be led.

MR. LEARMONTH: Well, I think — I'm not talking about Mr. Kennedy necessarily personally, but the department was led by Nalcor on this study of natural gas, I suggest.

MR. BOWN: No, we were led by the direction from Mr. Kennedy.

MR. LEARMONTH: Okay.

Now, the next document is Exhibit P-01195. That's tab 67, volume 2 of your documents, Mr. Bown.

MR. BOWN: Yes.

MR. LEARMONTH: Now, by this point — now, I said that Ziff had been retained in April. I'm wrong. This is an email from — well, it starts off as a — it seems to be a report by representatives of Ziff on Dr. Bruneau's presentation. Is that correct? If you look at the bottom, it says, "Charles ... please" —

MR. BOWN: Oh, that's the one I think that starts with tea? Yes.

MR. LEARMONTH: T-E-A, yeah.

MR. BOWN: T-E-A.

MR. LEARMONTH: Yeah.

MR. BOWN: And if you go to the bottom it's — that's a summary of the presentation that Dr. Bruneau gave at the Harris Centre. And I think you note that — if you go up a little higher — that Wes Foote and one or two representatives of Ziff watched that online.

MR. LEARMONTH: Right.

MR. BOWN: And then what follows above is his summary.

MR. LEARMONTH: Right. And then at the top, it's an email from Jim Keating to Ed Martin, Gilbert Bennett, right?

MR. BOWN: Yes.

MR. LEARMONTH: Because they received this report?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So they're right with you right from the beginning? Nalcor is. Is that correct?

MR. BOWN: I was providing them with a copy of Wes's briefing, yes.

MR. LEARMONTH: So why would you provide a copy of Ziff's briefing?

MR. BOWN: I guess we had had some conversations beforehand about what would be in the presentation, and I felt it appropriate that they should get an understanding of Wes's view.

MR. LEARMONTH: Why?

MR. BOWN: Again, that would follow from conversations prior to and maybe their acknowledgement that Wes was going to participate and requested that.

MR. LEARMONTH: No. But why? Why would you need to inform Nalcor of this at this time?

MR. BOWN: Well, again, because we working together, moving forward with a review of LNG.

MR. LEARMONTH: Okay. And just turn to page 2 of this report, and he says – this is Ed, I think that's Ed Kallio, is it?

MR. BOWN: Yeah, Ed Kallio.

MR. LEARMONTH: Ed Kallio. And he says "Many good points made by speaker; ... availability of resource, - no quibble with his conclusions, lots of gas available" –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – "in offshore ..." Next: "timing: no quibble ...; 3. no quibble..."

So is there some – there are some criticisms, but there's –

MR. BOWN: Yeah.

MR. LEARMONTH: – these are points, major points, that are supportive of Dr. Bruneau's presentation. Is that correct?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah. Okay. So this is March 29.

Now, the next email I'd like you to look at is 01196, which is tab 149, volume 4, in your book, Sir.

MR. BOWN: Let's try that again.

THE COMMISSIONER: 01196

MR. BOWN: Tab?

THE COMMISSIONER: Forty-four, I believe.

MR. LEARMONTH: Tab 149.

THE COMMISSIONER: One-forty-nine, actually.

MR. BOWN: Tab 49?

THE COMMISSIONER: One-forty-nine.

MR. LEARMONTH: One-forty-nine, volume 4.

MR. BOWN: I don't have a 149, volume 4.

THE COMMISSIONER: It's under 49 in volume 4. If you look at 49 –

MR. BOWN: I have it now. Thank you, Commissioner.

MR. LEARMONTH: Okay. Well, it's – yeah, it's 149, but the tabs are numbered without the first digit.

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So you've seen this email before, I take it?

MR. BOWN: Yes.

MR. LEARMONTH: So this is – so Bruneau's – this is shortly after Dr. Bruneau's presentation,

and it's from – well – on page 2, there's an email from Colleen McConnell, and she's at – we know that she's at Husky –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – in Calgary. And Paul McCloskey is a senior official at Husky.

MR. BOWN: Yes.

MR. LEARMONTH: And so Colleen McConnell says: "Government says Ziff Energy has been commissioned to study natural gas, in order to inform Muskrat Falls debate." So this comes.

Then the next email at the bottom of page 1, it's from Paul McCloskey, he's the senior person, to Jim Keating, forward "For information: NL government to study natural gas." So do you have any idea Husky would be contacting Jim Keating on this subject?

MR. BOWN: They were partners –

MR. LEARMONTH: Yeah

MR. BOWN: – in business.

MR. LEARMONTH: Mm-hmm.

MR. BOWN: And I guess he was wanting to understand why government was retaining Ziff to study natural gas.

MR. LEARMONTH: Yeah.

And then the next email, up on page 1, it's from Jim Keating to Paul McCloskey: "Paul; I should have added that its 'all under control.' The province used Ziff to do a report on LNG. We had used PIRA. In a public forum, its better to use a 3rd party ... We will work with Ziff so they understand our NG opportunity or lack thereof."

So do you have any concern about this – that you're commissioning Ziff to do an independent report, and Nalcor is intervening at a very early stage saying that they will – that everything will be "under control."

Do you have a problem with that?

MR. BOWN: Yeah.

But again, we went into the exercise on natural gas –

MR. LEARMONTH: Yeah.

MR. BOWN: – under the direction – and if I say this once, I'll say it many times – I take the direction of Mr. Kennedy very clearly. And it was an open mind to do a fulsome review of natural gas pipeline and LNG.

MR. LEARMONTH: Yeah.

MR. BOWN: And – without any constraints.

MR. LEARMONTH: Yeah.

So why is Nalcor involved at this stage?

MR. BOWN: Again, responding to an email from one of their business partners.

MR. LEARMONTH: Oh, I know what they're – I mean –

MR. BOWN: Yeah.

MR. LEARMONTH: – I can tell that from reading it, but – okay, why are they involved at this stage?

MR. BOWN: I guess they would have been aware –

MR. LEARMONTH: How?

MR. BOWN: – that we were – either from Wes or myself, or from the minister, or from Ed that there was going to be some work done on natural gas.

MR. LEARMONTH: Yeah.

So right away, they're communicating with Husky?

MR. BOWN: Yes.

MR. LEARMONTH: And that's not a problem for you in terms of the independence of your – the work that would lead to the report?

MR. BOWN: Well, yeah – well, the phrase “all under control” – yes, I have a problem with that because we had an open mind. It's not –

MR. LEARMONTH: (Inaudible.)

MR. BOWN: It wasn't “all under control.”

MR. LEARMONTH: Jim Keating didn't, did he?

MR. BOWN: No.

MR. LEARMONTH: He didn't have an open mind.

MR. BOWN: No.

MR. LEARMONTH: That's what I was saying before, that Nalcor was trying to get rid of this gas option, and I think that this – words “all under control” is – confirms that –

MR. BOWN: Yeah.

MR. LEARMONTH: – or corroborates that. Do you? Do you agree?

MR. BOWN: Well, as I said, they were trying to give the assurance that the recommendations they had made earlier were appropriate, yes.

MR. LEARMONTH: Yeah.

MR. BOWN: But I know for a fact Mr. Foote is a man of very high integrity, and he would have taken the direction from Minister Kennedy – Mr. Kennedy – the same way that I did.

MR. LEARMONTH: Yeah.

MR. BOWN: He was to do a fulsome review –

MR. LEARMONTH: Yeah.

MR. BOWN: – without any constraints.

MR. LEARMONTH: But how can you – how can there be a fulsome review when, without your knowledge, I guess – I'm not sure, but presumably, without your knowledge, Nalcor is jumping in right away and communicating with your expert probably before you even gave them instructions?

MR. BOWN: Sorry, I don't understand you point? He's communicating with Husky.

MR. SIMMONS: Excuse me, Commissioner, I don't read that in the message. I don't read anything here about Nalcor communicating at this point with –

MR. BOWN: Communicating with Husky.

MR. SIMMONS: – Ziff.

THE COMMISSIONER: With Ziff, I don't think so.

MR. LEARMONTH: Oh, excuse me. With Husky. This communication is with Husky.

THE COMMISSIONER: But you had mentioned Ziff.

MR. BOWN: That's not the expert.

MR. LEARMONTH: Oh no, okay. With Husky. Sorry about that.

MR. BOWN: Yeah.

MR. LEARMONTH: But did you have any problem with that? Since you know that Husky is the one who, if there's going to be a natural gas supply it would probably come from the White Rose field.

MR. BOWN: Absolutely, and myself and Mr. Foote had a number of conversations with Husky and with others about gas development. So it wasn't a case of all of a sudden we decided that natural gas or LNG was an option that should be pursued over the intervening five, six, seven years. We had had dealt with not only Husky but another of other companies. We did have an active interest in understanding how to develop natural gas offshore. Like I said, what I do take – issue with is the “It's ‘all under

control.”” Because that wasn’t the approach that we went into this exercise with.

MR. LEARMONTH: No. It’s a bad sign, isn’t it? When you’re using words like that.

MR. BOWN: Yeah. Yes.

MR. LEARMONTH: Yes.

The next exhibit will be 01199.

Now this brings Mr. Foote into the discussion. He sends an email to Jim Keating on April 12, 6:38 p.m. “Jim. Did Ziff call go ahead? If so how did it go?” – (inaudible) go.

So there must have been some communications between Mr. Foote and Mr. Keating. Wouldn’t you surmise that?

MR. BOWN: Yeah, and I wasn’t aware of that.

MR. LEARMONTH: Yeah. So that means that your Mr. Foote is aware that Jim Keating is going to call Ziff.

MR. BOWN: Yes.

MR. LEARMONTH: Do you have a problem with that?

MR. BOWN: I don’t understand – well, what I don’t have is the context of why Jim was calling him at all.

MR. LEARMONTH: Right.

MR. BOWN: So I don’t have that and I can’t comment on – it could have been to make arrangements for conversations with Wes. I have no idea. I don’t understand what the context of that is.

MR. LEARMONTH: Yes.

And then at the top, Jim Keating writes back to Wes Foote, April 12, 7:02 p.m. “Really good. Call u tomorrow. Gone to Bryan Adams.”

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Okay.

So you’re not – you weren’t aware of these communications until the Commission was established, is that right?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. The next exhibit is P-01200.

THE COMMISSIONER: Tab?

MR. LEARMONTH: Tab – 50.

THE COMMISSIONER: 150. Yeah.

MR. LEARMONTH: Volume 4.

THE COMMISSIONER: Volume 4. 50.

MR. BOWN: Okay, next page. Okay.

MR. LEARMONTH: So this is an email from Jim Keating. I guess it’s referring to the discussion he had with Ziff. He says – this is Jim Keating to Ed Martin, April 12 – “Spoke with Ziff 3 hours. Real good. Ziff said ‘Husky says they are considering using gas for pressure support in the future. That’s it. End of story.’ I pile driven another dozen issues. They most like the one that ‘oil runs out in 2023 or 2028 at latest.’ End of pipe option.”

When is the first time you saw that email?

MR. BOWN: When I reviewed the Commission materials.

MR. LEARMONTH: Was it – did it surprise you?

MR. BOWN: Yes.

MR. LEARMONTH: Why did it surprise you?

MR. BOWN: It wasn’t consistent with the initiative that we had committed to do, which was to review, not eliminate.

MR. LEARMONTH: But Mr. Foote of your department knew about this.

MR. BOWN: Yeah.

MR. LEARMONTH: You may not have personally. And I take it you're saying you weren't aware of it. Is that what you're saying?

MR. BOWN: Yes.

MR. LEARMONTH: But Mr. Foote was.

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Because he knew that Mr. Keating was gonna contact – make the contact with Ziff.

MR. BOWN: I don't recall, yeah. Don't recall that.

MR. LEARMONTH: Well, you don't recall what?

MR. BOWN: Of being advised that –

MR. LEARMONTH: Okay.

MR. BOWN: – this was taking place.

MR. LEARMONTH: So this – and if you had been aware of these types of communications, what would you have done?

MR. BOWN: I would have shared that with Minister Kennedy, Mr. Kennedy.

MR. LEARMONTH: Why?

MR. BOWN: Because I wanted to ensure if this was how he wanted to definitely approach this piece of work 'cause it wouldn't have been in line with the way that I thought that he wanted to proceed.

MR. LEARMONTH: Yeah. But you see this word "end of pipe option," it looks like Mr. Keating at least was confident that as a result of this three-hour telephone call, that was it.

MR. BOWN: Which would have been premature in April when we didn't finish the report until October.

MR. LEARMONTH: Yeah. Yeah. But Mr. Keating's a very senior person in oil and gas, isn't he?

MR. BOWN: Yes, he is.

MR. LEARMONTH: There's a three-hour conversation. Anyway, and then he sends the news to Martin. Says at the top, "April 12, 2012, 8:17 ... Bingo. Are they definitely done? We still need your stuff, with a bow."

MR. BOWN: Yeah.

MR. LEARMONTH: Do you see what's going on here?

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah. As far as Nalcor's concerned –

MR. BOWN: It's done and dusted.

MR. LEARMONTH: It's done.

MR. BOWN: Yeah.

MR. LEARMONTH: So I don't know why they didn't tell you that and then – or if they told Mr. Foote, why did you bother wasting money on that portion of Ziff's report if it's a done deal?

MR. BOWN: Right.

MR. LEARMONTH: Can you answer that?

MR. BOWN: I just did, I said correct.

MR. LEARMONTH: Yeah, correct, okay.

Now there's another – there's an email, I'll refer to it and Mr. Kennedy gave evidence on this. I'm not going to go through it in detail but I'll just refer to it.

It's 01269, volume 115 – tab 115, volume 3, this is about a trip to – a trip where he met with Wood Mackenzie in London –

MR. BOWN: Yes.

MR. LEARMONTH: – in August 31 –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – 2012?

MR. BOWN: Yeah.

MR. LEARMONTH: Maybe we'll just bring that up actually, in second thought, 01269. Were you –

THE COMMISSIONER: Tab 115?

MR. LEARMONTH: Yes. Volume 3.

Did – I'll wait 'til you find it.

MR. BOWN: I prefer to have it in front of me because I – all I can see is a small portion on the screen.

MR. LEARMONTH: Okay. Well, take your time, we're in no rush.

MR. BOWN: Okay.

MR. LEARMONTH: Okay.

So this is a September 3 meeting. So I guess Mr. Kennedy – Minister Kennedy doesn't think it's a done deal, does he?

MR. BOWN: No.

MR. LEARMONTH: Even though Nalcor thinks it is –

MR. BOWN: Yeah but –

MR. LEARMONTH: – based on those emails.

MR. BOWN: – that would be consistent with my earlier statements that –

MR. LEARMONTH: Yeah.

MR. BOWN: – I went into this process –

MR. LEARMONTH: Yeah.

MR. BOWN: – looking for a full review –

MR. LEARMONTH: Yeah. But –

MR. BOWN: – not an elimination.

MR. LEARMONTH: Yeah. But – so this a meeting August 31, 2012 in London. Were you there with Mr. Kennedy for that meeting?

MR. BOWN: Yes, I was.

MR. LEARMONTH: Okay. And you discussed there – you know – Wood Mac at that point had expressed a concern about Ziff's capital cost estimate of the regasification facility.

MR. BOWN: Mm-hmm – sorry.

MR. LEARMONTH: And also the – on the other issue that I raised about the pricing of LNG. So this is – at this point, you – certainly Mr. Kennedy, and he gave evidence on this was – you know – pursuing this with an open mind.

MR. BOWN: Correct.

MR. LEARMONTH: Yeah.

And the next exhibit is Exhibit 01229. I think it's tab 29, volume 1. This is an earlier meeting actually February 13, 2012. It's out of order a little bit.

MR. BOWN: What was the tab number again, Mr. –?

MR. LEARMONTH: February 13 – it's tab 29 – volume 1.

Perhaps I should confirm before we look at that, is it correct that you retained Ziff in February two thousand –?

MR. BOWN: I recall it was, yeah, when you mentioned a moment ago that it was –

MR. LEARMONTH: It was February.

MR. BOWN: – April but I thought it was earlier.

MR. LEARMONTH: It – you retained them in February according to one document –

MR. BOWN: Yes.

MR. LEARMONTH: – I referred – yeah. Yeah.

MR. BOWN: I'm not –

MR. LEARMONTH: Well, because – it wasn't April, because they were obviously auditing Dr. Bruneau's presentation which was in March. So I think –

MR. BOWN: Yes. We had retained them in February.

MR. LEARMONTH: – they had to be retained by then. Yeah.

MR. BOWN: I'm not at the right binder, Mr. Learmonth.

MR. LEARMONTH: 01229.

MR. BOWN: No, I'm in tab – I'm in volume 1.

MR. LEARMONTH: I have tab 29.

MR. BOWN: In binder 1?

MR. LEARMONTH: Yeah.

MR. BOWN: Tab 29.

MR. LEARMONTH: If it's not 1, it's 4.

MS. O'BRIEN: (Inaudible.)

MR. LEARMONTH: Right here.

Well, maybe it isn't. Okay, well, anyway, maybe it isn't in the binder then. But, anyway, you can see it on your screen.

MR. BOWN: Sure.

MR. LEARMONTH: It's just a one-page or one-and-a-half-page email. So were you with Mr. Kennedy on this – for this meeting?

MR. BOWN: I don't recall seeing this one before.

MR. LEARMONTH: Okay.

MR. BOWN: This doesn't look familiar.

MR. LEARMONTH: Doesn't ring a bell?

MR. BOWN: No.

MR. LEARMONTH: All right.

MR. BOWN: Sorry.

MR. LEARMONTH: That's all right. Exhibit 01275.

THE COMMISSIONER: I don't think that's in our list.

MR. LEARMONTH: No, it may not be. 01275 – do you see that, Mr. Bown?

MR. BOWN: Okay. You're referring to Ziff? Yes.

MR. LEARMONTH: One – okay, it says –

MR. BOWN: Yes.

MR. LEARMONTH: It's an email from you to Jerome Kennedy dated September 23, 2012.

MR. BOWN: Yeah.

MR. LEARMONTH: "Worked through some additional edits in MHI DG3 report over the weekend. We're close to final."

And then there's a notation in Mr. Kennedy's handwriting: September 24, 2012. What is it? Update from Charles and Heather? Does that suggest there was a meeting on September 24, 2012, or a phone call?

MR. BOWN: Right. I'm missing your reference.

MR. LEARMONTH: Right above, right near the top, September 24, 2012. You see the handwritten notation?

MR. BOWN: Oh, sorry, I was looking at the text.

MR. LEARMONTH: Yeah. The email's dated September 23 and this is September 24 update. Would that have been in person or by phone or some other means?

MR. BOWN: I think – okay, I recall Minister Kennedy responding to this one. It's likely that I sent him this email and then followed up. He would likely have followed up with me to give him greater detail, what I meant by each of these updates.

MR. LEARMONTH: Okay, so MHI was well in the game at this time. I mean –

MR. BOWN: Yeah.

MR. LEARMONTH: There's no suggestion of doing anything to alter their – the scope of their review, is there?

MR. BOWN: No.

MR. LEARMONTH: All right.

And you also say in this email: "Worked through some additional edits in MHI DG3 report" Is that – that has to do with the –

MR. BOWN: Reviewing edits that came in from MHI.

MR. LEARMONTH: Okay.

The reference lower down is – says: "I asked Wes to contact Wood Mac to have them review Ziff again ... to give us a letter of support."

MR. BOWN: Correct.

MR. LEARMONTH: Okay. What do you mean by letter of support?

MR. BOWN: That they've reviewed the document. It was – it's been clear in all the – support may have not been the right word. In all the messaging that we gave to Wood Mackenzie it was a review of.

MR. LEARMONTH: Okay.

Next is Exhibit 01276, that's tab 125 – probably 25 in volume 4. The reason there's some confusion is that the tab numbers don't go above a hundred, so they start off with just –

MR. BOWN: I understand.

MR. LEARMONTH: Yeah.

MR. BOWN: I got that now.

MR. LEARMONTH: You see that?

MR. BOWN: Yes.

MR. LEARMONTH: Okay, so this looks like you had another meeting in – with WoodMac on October 10 in New York. And you were with Mr. Kennedy at this point.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Right?

MR. BOWN: Yes.

MR. LEARMONTH: And so this was still being actively pursued, this LNG thing, with WoodMac. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: And would you have received their draft report by then, their first draft? Or would you be able to tell?

MR. BOWN: I can't tell.

MR. LEARMONTH: Can't tell.

MR. BOWN: At this stage.

MR. LEARMONTH: All right.

Next exhibit is 01427, that's volume 4, tab 28. Do you have that?

MR. BOWN: Yes.

MR. LEARMONTH: What's this? From Charles Bown – from you to Jerome Kennedy and Heather MacLean, and one, two, three, four paragraphs down you say: "I spoke to Ed Kallio" – he's at Ziff, right – "about the LNG and pipeline papers. He's going to use" So what is this discussion about? You're discussing different costs with him?

MR. BOWN: Yeah, he had decided to make a – as I understand from reading it, he had decided to make a change in his analysis, that the landing point for a pipeline would change from a – change to Placentia Bay and that would impact the cost.

MR. LEARMONTH: All right. And then, the bottom paragraph of this email: "I've advised David Barrowman and Bob Fleck that we would like a letter from" Wood Mackenzie noting

they've reviewed the Ziff reports. I guess at that point the – there was two Ziff reports –

MR. BOWN: Correct.

MR. LEARMONTH: – one on –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – that was before they were combined.

MR. BOWN: That was before they –

MR. LEARMONTH: Yeah.

MR. BOWN: – were combined.

MR. LEARMONTH: "... and for them to comment on the reasonableness of the analysis and the conclusions. In order to supply this ... they'll no doubt want to see the final reports from Ziff. There's no reason why we can't have this letter by" end of week.

MR. BOWN: So, I can report – again, point back to, very clearly, what our objective was. It was reasonableness and – on the conclusions.

MR. LEARMONTH: Right.

MR. BOWN: Yes.

MR. LEARMONTH: But by that point there was full – an expectation that Ziff would be presenting in two reports.

MR. BOWN: Two reports.

MR. LEARMONTH: As would Wood Mackenzie.

MR. BOWN: They'll be reporting on two.

MR. LEARMONTH: Yeah, but would – at this point, would –

MR. BOWN: For two options. Yes.

MR. LEARMONTH: Yeah, but there were two reports. Wasn't there a point when Ziff was supposed to prepare one – one report on the pipeline and another one on LNG?

MR. BOWN: You are correct.

MR. LEARMONTH: Yeah. And this – that's a reference to that, is it?

MR. BOWN: You are correct.

MR. LEARMONTH: Ziff reports.

MR. BOWN: You are correct.

MR. LEARMONTH: Okay, thank you.

Next document is Exhibit 01428, tab 120 – tab 29, volume 4, if you could have a look at that, please.

This is a – it starts at the bottom of page 1. You can see it's October 15, 2012, from you to Ed Kallio, subject: Husky.

You say: "Have you cleared with husky your references to data and conversations in the pipeline report?"

MR. BOWN: Yeah.

MR. LEARMONTH: And then you – he says to you – this is on page 1: "I assumed that would be okay. I will have that conversation with them today if you think it is necessary, - don't know" who "else to make the point" et cetera.

And then you reply: "I'd recommend ... you at least make a call. you don't have to share."

What are you saying there?

MR. BOWN: So he had prepared a draft report and there was a reference in there saying Husky stated that. I wanted him to confirm that if he was making a specific reference to Husky's statement, that he cleared it with them before that document went public.

And the point is you don't have to share, is if you didn't want to share your report with them, read it to them over the telephone, just say: Here's what we're going to be saying in our report, are you okay with that?

MR. LEARMONTH: Okay, well, why wouldn't you just give him a copy of the report?

MR. BOWN: But I'm just saying to him –

MR. LEARMONTH: Oh yeah.

MR. BOWN: – that that was his choice, whether he wanted to do it or not.

MR. LEARMONTH: All right. Okay.

MR. BOWN: But what are – the important point was I wanted him to confirm with Husky that they were okay with the statement.

MR. LEARMONTH: Okay.

So right up to – right up to this point, I mean there's no – Wood Mackenzie is still retained to provide the reports on both the pipeline and the LNG. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

And then October 26 there's an email – it's Exhibit P-01429, tab – volume 4, tab 31.

Now, this is October 26, "Front Section" – at the bottom – the second to last email – well, the first one Ed – right at the bottom of the page, Edward Kallio, October 26: "Charles, revisions have been incorporated. Have you given thought to dropping the NA Gas Price Influences sections from the LNG section?"

Well, he's preparing a report. Why is he asking you if you're going to drop the NA Gas Price Influences?

MR. BOWN: He was asking us if we wanted it reduced. So it was in response to a question that he had posed to us.

MR. LEARMONTH: Yeah. But he's supposed to be preparing the report, right?

MR. BOWN: Yeah, and I didn't give him an answer on that. I don't think I did.

MR. LEARMONTH: Well then –

MR. BOWN: Oh, I said keep it in.

MR. LEARMONTH: Yeah, "I'd like to keep ..." it in.

MR. BOWN: Yeah.

MR. LEARMONTH: But he's giving you the option of taking it out, is he?

MR. BOWN: Yes. I saw no reason why we'd take it out.

MR. LEARMONTH: So why did you want to keep it in?

MR. BOWN: I think – as I say here: "... it's important to those who have proposed this option to see that we have done the analysis and to understand the rationale why it's not reasonable."

MR. LEARMONTH: Okay. And then you're –

MR. BOWN: So why would I take out something that was important or germane?

MR. LEARMONTH: Okay. And then you're saying: "In terms of the new Exec Summary ..." – I guess it means – I'd "like to see the following" – through – "though train." What does that mean?

MR. BOWN: I have no idea.

MR. LEARMONTH: Thought train, probably, right?

MR. BOWN: Yeah. I'd like to see the following thought train.

MR. LEARMONTH: Yeah. So you're making these suggestions to him, to what he should put in his report?

MR. BOWN: What I'm suggesting is these are the findings of his report. His exec summary that he provided to us wasn't very good. They weren't great drafters. And we had suggested to them that they do an executive summary. And I was just giving my thoughts based on the findings of his report of what he should indicate in there. That's entirely up to him. He didn't have to do that.

MR. LEARMONTH: Okay.

Exhibit P-01431; that's volume 4, tab 35. If you go to page 5 of that report, Mr. Bown.

At the bottom, on October 20 you're asking Bob Fleck and copy to Dave Barrowman – they're at Wood Mackenzie, are they?

MR. BOWN: Yes.

MR. LEARMONTH: Saying:

“Bob;

“Ziff has provided us with two new versions of the papers. They are attached for your review.”

So why did Ziff prepare two papers at this stage? Originally it was going to be one, was it?

MR. BOWN: No, originally it was two and then decided to make it one.

MR. LEARMONTH: Okay. But who made the decision to make it one?

MR. BOWN: That would've been a collective decision inside the department in consultation with the minister and myself and Wes.

MR. LEARMONTH: Okay.

MR. BOWN: Again, just for context, Commissioner, the two reports were very similar in terms of the introduction and the background –

MR. LEARMONTH: Yeah.

MR. BOWN: – and et cetera.

MR. LEARMONTH: Yeah. But up 'til this point Wood Mackenzie is still fully engaged, right –

MR. BOWN: Correct.

MR. LEARMONTH: – for the two reports?

MR. BOWN: Absolutely.

MR. LEARMONTH: Okay.

And Exhibit 01432, it's tab 36, volume 4. And this is, I take it, when you receive the revised report from Wood Mackenzie?

MR. BOWN: This would've been the near final, yes.

MR. LEARMONTH: Okay, so just give us those dates when you were ordered to direct Wood Mackenzie to take out their LNG content from the report. When were you ordered to do that?

MR. BOWN: There was a draft that was provided to me on the 26th.

MR. LEARMONTH: Yes.

MR. BOWN: I forwarded that to the minister on the 27th.

MR. LEARMONTH: Okay.

MR. BOWN: And I recall – and this is just my recall – my first email back to Bob Fleck was on the 30th –

MR. LEARMONTH: Right.

MR. BOWN: – looking for a call. And then I think we finally managed – or probably it's the 29th, I apologize. The 29th was the first time, 30th he responded and we spoke later on the 30th and on the 31st the next draft came in.

MR. LEARMONTH: But at what point did they know that – you got the order from, well, we'll say Minister Kennedy on what date?

MR. BOWN: It would've been between the 27th and 29th.

MR. LEARMONTH: Twenty-seventh. And you don't have any record of it at all?

MR. BOWN: No. That was over a weekend.

MR. LEARMONTH: Yeah, so it would've been a phone call over the weekend? Or did you work weekends?

MR. BOWN: I worked every weekend.

MR. LEARMONTH: Okay. And Mr. Kennedy did also, did he?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

So, anyway, so you were told between the 27th and 29th to take – to get Wood Mackenzie to take that out. Is that right?

MR. BOWN: I was directed to make a call to Wood Mackenzie and make a change in the paper.

MR. LEARMONTH: And when did you make that call?

MR. BOWN: The first attempt was on the 29th through email to connect and then the – successfully made the contact on the 30th.

MR. LEARMONTH: Okay.

Now, were you in communication with Nalcor at this time?

MR. BOWN: I don't recall.

MR. LEARMONTH: All right, because Exhibit 01206, just at volume 4, tab 37 –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – there's an email that I refer to you from Jim Keating at Nalcor to Wes Foote, copying to you. And he says – there's a question at the bottom – Mr. Foote writes, on October 31: Comments on WM review – "... refers to reports separately whereas the most recent ... has the domestic gas and imported LNG combined.

"... states that the Ziff report does not factor in any assumption for future cost" (Inaudible)
"... Ziff states the importance of correcting past costs for inflation."

So at this point, would Mr. Foote – this – on October 31, would he have known that the – you had that order to get Wood Mackenzie to drop the LNG content?

MR. BOWN: Yes. If you refer back to tab 37, the report was received from Bob Fleck at 10:20 a.m.

MR. LEARMONTH: Yeah.

MR. BOWN: And this conversation takes place that evening at 8:13 and 8:29.

MR. LEARMONTH: Okay. But then Mr. Keating writes on October 31, 2012 – he wouldn't have known about this would he? About this change in the report?

MR. BOWN: I don't recall.

MR. LEARMONTH: Well he –

MR. BOWN: Yeah.

MR. LEARMONTH: – says: "yes.. WM should say that they were to comment only on the pipeline piece."

MR. BOWN: This was his commentary after he had reviewed the new version.

MR. LEARMONTH: Well, why would he say – do you know why he would say that they should – that they were to comment only? If he had the report where the LNG was removed, why would he write this?

MR. BOWN: No idea.

MR. LEARMONTH: Do you see my point?

MR. BOWN: I understand your point.

MR. LEARMONTH: Yeah. I mean, I suggest it's more likely that he had the report with the combination of the pipeline and he was suggesting that it be changed for the reason that he stated.

MR. BOWN: No, I think that would – I don't think that that would be consistent in time. The –

MR. LEARMONTH: Well –

MR. BOWN: Just let me try.

The revised version with the amount of the WoodMac reduced to only one of the reports, as opposed to (inaudible) –

MR. LEARMONTH: Mm-hmm.

MR. BOWN: – or of the topics – when we refer to them as topics.

MR. LEARMONTH: Mm-hmm.

MR. BOWN: That was received on the 31st, so Jim's comments are later that evening on the 31st –

MR. LEARMONTH: Yeah.

MR. BOWN: – when he would have reviewed the version that had already changed.

MR. LEARMONTH: Assuming he got it.

MR. BOWN: A copy of it.

MR. LEARMONTH: Yeah, assuming he got it, when there's no record that he got it.

So what I'm suggesting to you is it's more logical that it went like this; that when he wrote this email, he didn't – he hadn't seen the revised report because he's asking that –

MR. BOWN: Right.

MR. LEARMONTH: – we “should say that they were to comment only” If he had received a report with LNG removed, he wouldn't have made that comment, I suggest to you. Do you see my point?

MR. BOWN: I see your point.

MR. LEARMONTH: And isn't that reasonable?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Okay. Thank you.

So do you know why Mr. Keating would be proposing to you or, you know, saying that WoodMac should say they were to comment only on the pipeline piece?

That's just simply not true. They weren't asked to, they were asked to consider both LNG and the pipeline, isn't that correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So do – why would he say that? Do you have any –

MR. BOWN: No, I don't. I don't have an answer for that, sorry.

MR. LEARMONTH: What right would he have to make that suggestion to you?

MR. BOWN: I guess he felt that based on the engagement that he had to date, that he would have had that right to make that statement.

MR. LEARMONTH: What engagement?

MR. BOWN: Well, you showed evidence earlier on that he was part of the process.

MR. LEARMONTH: So he was part of the – he was engaged by who?

MR. BOWN: No, he was part of the process early on, as you indicated. He had spoken to Ziff.

MR. LEARMONTH: Yeah.

MR. BOWN: So he – I'm assuming that because Wes sent to him – copied to him what the review was, he felt, based on his engagement from whatever stage, that he had the ability to make that comment. I'm only supposing now, Mr. Learmonth.

MR. LEARMONTH: Yeah, yeah.

But I find that comment odd if he had already received the – saw the Wood Mackenzie report with the LNG taken out. And I think you agree with me, do you?

MR. BOWN: Could you say that again, please?

MR. LEARMONTH: Well, I'm saying that if, before he wrote this email at the top of P-01206

–

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – if he had seen the amended report with the LNG content taken out, that there'd be no reason for him to say: WM should say that they were to comment only on the pipeline piece because the pipeline – the other part would have been taken out.

MR. BOWN: Right.

MR. LEARMONTH: You agree with that?

MR. BOWN: I agree with you, yes.

MR. LEARMONTH: Yeah, okay.

MR. BOWN: That he wouldn't have seen it.

MR. LEARMONTH: Wouldn't have seen it.

THE COMMISSIONER: Can I just go back just for a second here because something else is bothering me about this timeline.

So, if you look at the email below that, the one from Wes Foote to you, there doesn't seem to be any indication there that Mr. Foote was aware on October 31, 2012 that Wood Mackenzie was not going to be referring to liquid – LNG?

MR. LEARMONTH: Yeah. It's the contrary actually.

THE COMMISSIONER: Right. Just –

MR. LEARMONTH: Yeah.

THE COMMISSIONER: So could you be mistaken about the fact that this change was made before the 31st of October?

MR. BOWN: I thought that the – just the – I thought that the draft – the copy that we received that was amended was – arrived on the 31st. That's my recollection of the timeline.

MR. LEARMONTH: No. Do you have an email where that would have been sent to you? I mean, they wouldn't have couriered it; it would have been sent by email.

MR. BOWN: No, absolutely.

MR. LEARMONTH: Where is the email?

MR. BOWN: There's an email that I sent to Jerome Kennedy on the 26th that had the copy of the – no, sorry, I apologize.

I thought I had my timeline straight, Commissioner, I'm sorry. I thought –

MR. LEARMONTH: Well, we don't wanna –

MR. BOWN: (Inaudible) I looked through so many of those documents; it was my understanding that it was received on the –

MR. LEARMONTH: Okay, did you –

MR. BOWN: – 31st.

MR. LEARMONTH: – do you think your timeline was wrong?

MR. BOWN: No, I don't believe so, but –

MR. LEARMONTH: Well –

MR. BOWN: – subject to check.

MR. LEARMONTH: Yeah.

But, as the Commissioner pointed out, that Wes Foote, on October 31 at 8:13 p.m. is referring to: "WM refers to reports separately whereas the most recent final draft has the domestic gas and ... LNG combined"

Well, he could have been referring, I guess, to the Ziff report, I don't know.

MR. BOWN: Yes.

MR. LEARMONTH: But it says: "Comments on Wood Mackenzie Review of Ziff Reports" so that wouldn't be the case. He's talking about the Wood Mackenzie report.

MR. BOWN: If you – I can help with that 'cause, again, I looked through many of the materials.

So, in previous comments that Mr. Foote would've made about his review of the WoodMac report, he would've had three bullets. And the second bullet there refers to the pipeline option where they don't

include inflation; whereas, in his previous email that he had shared would include a third bullet that indicated that there was a variance in – not a variance, but there was a comment from WoodMac about the difference in the costs for the facilities.

MR. LEARMONTH: Mm-hmm.

MR. BOWN: So, yes, I firmly believe that my timeline is correct.

MR. LEARMONTH: Yeah. Well, why is this entitled – this email at the bottom of 01206 says: “Comments on Wood Mackenzie Review of Ziff Reports”?

MR. BOWN: Is that probably a holdover from previous emails that he had sent or not, because we’re only down as one report.

MR. LEARMONTH: Yeah, but you’re guessing now, aren’t you? You say it’s probably a holdover; that’s a guess, isn’t it?

MR. BOWN: That’s a guess, absolutely.

MR. LEARMONTH: Just a guess. You can’t say that with certainty.

MR. FITZGERALD: With respect, Commissioner, Mr. Learmonth is going down this line, he’s allowed to go down this line, and I know we’re on a tight timeline here, but Mr. Wes Foote is still in the province and he can answer all these questions; he’s not on the witness list. I just –

MR. LEARMONTH: (Inaudible.)

MR. FITZGERALD: – put it out there. If we have a big problem with this, there is a witness available that can answer these questions.

MR. LEARMONTH: Well, that may be the case, but I’m still entitled to ask this witness these questions.

THE COMMISSIONER: Right.

But I don’t think he can say what – why Wes Foote did anything. I think what’s clear to me from looking at this is that there’s something wrong somewhere with regards to the timing because it looks to me like on October 31, Wes Foote, who

was the person who, as I understand it, was the person Mr. Bown designated to deal with these reports, is talking about a report that includes both natural gas – pipeline natural gas and LNG.

And then we get another email from Mr. Keating that evening that says – seems to reflect the fact again we’re still talking about liquid natural gas. So, somehow, some way, they either didn’t have the revised report that came in October 31 or something is not correct there with the timing.

But, you know, whether it is or whether it isn’t, I’m not sure how much this is going to play in this.

MR. LEARMONTH: All right.

THE COMMISSIONER: But it is important in one sense because, you know, again, in looking at the influence that Nalcor potentially had on this whole topic, and so it’s – I guess the best I can say is right now I’m not clear on it, but anyway.

MR. LEARMONTH: Yeah.

MR. BOWN: May I offer a piece of evidence there?

THE COMMISSIONER: Sure can.

MR. LEARMONTH: Yes.

MR. BOWN: On tab – just trying to be helpful, Commissioner, but on tab 39 of the same volume, November 1 –

CLERK: Exhibit number?

THE COMMISSIONER: P-01433.

MR. BOWN: Thank you.

There was an email that goes back from me to Bob Fleck on the evening of the 31st: Can you edit the first sentence to say that it was pipeline solution and that LNG option was not subject to this review?

THE COMMISSIONER: So that’s at 7:11 p.m.

MR. BOWN: Yeah, on October 31.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: This is from (inaudible). This is (inaudible).

MR. BOWN: And then the following day another version arrives; November 1.

MR. LEARMONTH: 01432?

MR. BOWN: Says: "I had to go through the paper to make it read correctly, reflecting analysis instead of report.

MR. LEARMONTH: Okay, well, there's just something –

MR. BOWN: So, Commissioner, I affirmed my timeline.

MR. LEARMONTH: The – well, if we can just –

MS. O'BRIEN: 01432.

MR. LEARMONTH: – 01432, volume 4, tab 36. This indicates on Wednesday, October 31, at 10:20 a.m. – now that's when you received the Ziff –

MR. BOWN: Right.

MR. LEARMONTH: – Ziff report.

MR. BOWN: The final version.

MR. LEARMONTH: No, Wood Mackenzie's –

MR. BOWN: Wood Mackenzie.

MR. LEARMONTH: – review.

MR. BOWN: Right.

MR. LEARMONTH: So, it was the 31st that you received that.

MR. BOWN: The final version –

MR. LEARMONTH: Yeah.

MR. BOWN: – with the changes in it, as I had indicated earlier.

MR. LEARMONTH: Okay. So that doesn't change your evidence, is that what you're saying?

MR. BOWN: No, absolutely not.

MR. LEARMONTH: Okay.

MR. BOWN: It confirms.

MR. LEARMONTH: Okay, very good.

Okay, well, I'm going to stop this but I just want – this part of the questioning, but did Minister Kennedy's order or direction to you with respect to the Wood Mackenzie report come out of the blue? In other words, were there preliminary discussions leading up to it or just, all of a sudden, you're called into his office or phoned by him and told to do this?

MR. BOWN: We had received at least two versions of this previously that he would have seen.

MR. LEARMONTH: Yeah.

But do you know what my question is?

MR. BOWN: The answer to your question is yes.

MR. LEARMONTH: It was just out of the blue?

MR. BOWN: Yes.

MR. LEARMONTH: It was a very short discussion, and you acted on it?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

Perhaps we can take our break now, Commissioner.

THE COMMISSIONER: All right. Let's take 10 minutes here now.

UNIDENTIFIED MALE SPEAKER: We're 3:30 already.

CLERK: All rise.

Recess

CLERK: Please be seated.

MR. LEARMONTH: Okay.

I want to ask you some questions about the MHI review engagement.

MR. BOWN: Yes.

MR. LEARMONTH: You know what I'm talking about?

MR. BOWN: Yes, Sir.

MR. LEARMONTH: Yeah.

Now, just to give a little background, I understand that government received the report from the Public Utilities Board on Friday night, March 30 at 10 o'clock, we're told.

MR. BOWN: Yes.

MR. LEARMONTH: Is that correct?

MR. BOWN: I believe so.

MR. LEARMONTH: And –

MR. BOWN: Around that time; it was late in the day.

MR. LEARMONTH: Were you there when it came?

MR. BOWN: Yes, I was at work.

MR. LEARMONTH: At 10 o'clock on a Friday night?

MR. BOWN: Yes.

MR. LEARMONTH: Was that – is that unusual?

MR. BOWN: Not when we were waiting for something like that.

MR. LEARMONTH: Okay, you were waiting for the report. Okay, so did you –

MR. BOWN: I didn't want to be there at 10:30 on a Friday night.

MR. LEARMONTH: Well, why not? Anyway, the – so was the report received by you, like, put in your hands? Were you the first person to get it?

MR. BOWN: No, it was – we were given an indication where we could find it online, if I recall.

MR. LEARMONTH: Oh, it was online –

MR. BOWN: Yes.

MR. LEARMONTH: – it wasn't –

MR. BOWN: It wasn't pre-released to us.

MR. LEARMONTH: Okay.

So who – did you discuss the report with anyone on March 30?

MR. BOWN: We had – that evening?

MR. LEARMONTH: Yes.

MR. BOWN: No, I think we had a few folks in to – who started their review, but we had a team in on the next day –

MR. LEARMONTH: That would've been March 31?

MR. BOWN: – doing a full review, so I had my own staff doing a review and preparing a briefing note on it.

MR. LEARMONTH: Is there any record of that review or any emails? I didn't see anything.

MR. BOWN: Yeah, I thought there was a briefing note in the package on the PUB review from my staff.

MR. LEARMONTH: Not on the 30th, was there?

MR. BOWN: No, sorry. Sorry, I'm confusing the times now.

MR. LEARMONTH: You're talking about the 1st.

MR. BOWN: Yes.

MR. LEARMONTH: Saturday is the 31st.

MR. BOWN: Right.

MR. LEARMONTH: Sorry.

MR. BOWN: So it was Saturday that the work was done.

MR. LEARMONTH: Saturday the 31st. Yeah, okay, I got the wrong date.

MR. BOWN: I apologize.

MR. LEARMONTH: No, I think I've made a mistake.

MR. BOWN: Okay.

MR. LEARMONTH: Okay, so there was a briefing note prepared – just a review of the document.

MR. BOWN: Correct.

MR. LEARMONTH: And when did you first discuss the report with Minister Kennedy?

MR. BOWN: I don't recall. I don't recall that.

MR. LEARMONTH: Okay, but did you go in and work on that Saturday?

MR. BOWN: I was in work on Saturday and on Sunday.

MR. LEARMONTH: Okay, and was Minister Kennedy in on Saturday, do you know?

MR. BOWN: I don't recall.

MR. LEARMONTH: Okay, well, let's turn to Exhibit 01237. That's tab 60, volume 4.

MR. BOWN: Yes.

MR. LEARMONTH: Okay, this is – you recognize the handwriting of Jerome Kennedy.

MR. BOWN: Correct.

MR. LEARMONTH: So this is a note of a meeting re: PUB report. Robert – that's Robert Thompson, I think we were told.

MR. BOWN: Yes

MR. LEARMONTH: Premier –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Premier Dunderdale. Brian, is it?

MR. BOWN: Brian Taylor.

MR. LEARMONTH: Brian Taylor, that's the chief of staff for the premier's office. A Glenda?

MR. BOWN: Glenda Power.

MR. LEARMONTH: Who –

MR. BOWN: Worked at communications.

MR. LEARMONTH: Ed?

MR. BOWN: Ed Martin.

MR. LEARMONTH: And who is in – who's the next one?

MR. BOWN: Charles.

MR. LEARMONTH: Oh, Charles – sorry. Yeah, that's you and Jerome Kennedy.

MR. BOWN: Yes.

MR. LEARMONTH: Okay, what – when did this meeting begin?

MR. BOWN: I don't have a recollection of the time that this would've happened, but given the events of that weekend, it would've been earlier on the 1st.

MR. LEARMONTH: 9 o'clock, say?

MR. BOWN: Ish, yeah.

MR. LEARMONTH: Yeah.

And why do you say that –?

MR. BOWN: Because we would've been preparing for April. The House of Assembly was open. Also, they would've been preparing for media and scrums that day.

MR. LEARMONTH: All right.

So why was Mr. Martin there? And Mr. – yeah, why was Mr. Martin there? Do you know?

MR. BOWN: He would've been invited by the premier.

MR. LEARMONTH: By the premier? For what purpose?

MR. BOWN: I guess to discuss his view on the report. She would have wanted to hear that.

MR. LEARMONTH: Okay.

So how long did the meeting last?

MR. BOWN: I don't recall.

MR. LEARMONTH: Was there any discussion about retaining MHI that you recall at this meeting?

MR. BOWN: I thought that that was referenced in Mr. Kennedy's notes. There was a reference to MHI.

MR. LEARMONTH: Well, this is the record I have of –

MR. BOWN: Okay.

MR. LEARMONTH: – this meeting, so ...

MR. BOWN: I don't recall, but I don't have my own notes from that meeting.

MR. LEARMONTH: Was there a discussion about retaining MHI, to your recollection, at this meeting?

MR. BOWN: I don't recall.

MR. LEARMONTH: You don't recall.

When was the decision made to retain MHI?

MR. BOWN: Well, I made the call to MHI on the 1st, I recall, wasn't it? So the decision would've been made prior to that.

MR. LEARMONTH: Who made the decision to retain MHI?

MR. BOWN: That would've been government's decision.

MR. LEARMONTH: Okay, who in government?

MR. BOWN: It would've been the collective of the premier's office and likely the minister as well.

MR. LEARMONTH: Well, was that decision made at this April 1 meeting?

MR. BOWN: That I don't recall.

MR. LEARMONTH: You don't recall.

MR. BOWN: No.

MR. LEARMONTH: So what did Mr. Martin have to say at this meeting?

MR. BOWN: I don't have a clear recollection of his –

MR. LEARMONTH: Well, actually on point 4 it does say – of this note –

MR. BOWN: Okay.

MR. LEARMONTH: – says DG3 – could be numbers, I'm not sure – need a complete package, June time frame –

MR. BOWN: That's right – MHI review.

MR. LEARMONTH: – MHI review.

MR. BOWN: There, yup. (Inaudible.)

MR. LEARMONTH: (Inaudible) – yeah.

MR. BOWN: I apologize. I thought I had seen it in Minister Kennedy's notes.

MR. LEARMONTH: All right. So it was discussed at this meeting.

MR. BOWN: Yeah.

MR. LEARMONTH: And was a decision made at this meeting to retain MHI for the DG3 review?

MR. BOWN: I don't know if the MHI decision was made actually at this meeting or was made prior to.

MR. LEARMONTH: Prior to this meeting?

MR. BOWN: I said I don't recall if it was made at this meeting or prior to.

MR. LEARMONTH: Prior to this meeting, you mean.

MR. BOWN: Yes.

MR. LEARMONTH: So that would have had to been before April 1.

MR. BOWN: Yes.

MR. LEARMONTH: In other words, on March 31st.

MR. BOWN: It could have been made at any time during March.

MR. LEARMONTH: (Inaudible) so –

MR. BOWN: That was the likelihood. It may have been discussed as a potential and the decision made on this day.

MR. LEARMONTH: Now the words are here – June time frame. DG3 something, need a complete package to June time frame. Well what's the discussion about a June time frame?

MR. BOWN: Well, Mr. Learmonth, there was no doubt that come April, there was clear time pressure. The target was a sanction decision at the end of the year. Or – sorry, House of Assembly, and sanction decision at the end of the year. There were a number – there was legislation that had to be prepared, there – 2012 was very busy. The loan guarantee as well.

MR. LEARMONTH: Right.

MR. BOWN: So there were a lot of things that were lining up – the DG3 numbers, as indicated here, had not yet been prepared, and there was a time push to have this done early in the year.

MR. LEARMONTH: Well, on what basis could you consider retaining MHI if the DG3 numbers weren't done?

MR. BOWN: It would have been prepared in advance of the DG3 numbers being ready.

MR. LEARMONTH: Say that again?

MR. BOWN: We would be having them engaged –

MR. LEARMONTH: Yeah.

MR. BOWN: – in advance of having the DG3 numbers ready.

There were other – there was other pieces of work that we engaged MHI to do, such as AC integration studies, SOBI review, etc. So there was other work that they could do.

MR. LEARMONTH: When were the DG3 figures and package – when was it prepared?

MR. BOWN: When we would have discussed it at this time, it was expected to have been ready earlier.

MR. LEARMONTH: Well I know, but –

MR. BOWN: It wasn't ready until July, I believe?

MR. LEARMONTH: So did you get a copy of the DG3 package from Nalcor in July?

MR. BOWN: I don't recall the DG3 package in July.

MR. LEARMONTH: Did you ever see the DG3 package?

MR. BOWN: The decision package?

MR. LEARMONTH: No, not the decision package. The DG3 –

MR. BOWN: Numbers.

MR. LEARMONTH: Yes.

MR. BOWN: Yes.

MR. LEARMONTH: How many pages was it?

MR. BOWN: Two, three.

MR. LEARMONTH: Oh, yeah, no, I'm talking about the full report. That wouldn't have been a summary, right?

MR. BOWN: Yeah. No.

MR. LEARMONTH: Did you ever see the full package with –

MR. BOWN: No, I didn't.

MR. LEARMONTH: – the back-up documents and all the data?

MR. BOWN: That's what I asked you, the decision package. No, I never saw that.

MR. LEARMONTH: You never say that?

MR. BOWN: No.

MR. LEARMONTH: At any time?

MR. BOWN: No.

MR. LEARMONTH: So you just accepted a summary of it?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah. Is there any reason you didn't ask for a detailed package or a complete package, I should say?

MR. BOWN: Well, MHI was reviewing that for us and if there were any issues there, they would have highlighted, but we relied on Nalcor to, you know, give us the appropriate information.

MR. LEARMONTH: Yeah. And did they?

MR. BOWN: At the time we firmly believed we had the best information available.

MR. LEARMONTH: Now do you think that was a false assumption?

MR. BOWN: I think the issue that's been discussed here, really is around the notion of strategic risk and – so did we receive that? No, I don't recall seeing anything on DG3 on strategic risk.

MR. LEARMONTH: And do you recall ever having any discussion with anyone about strategic risk at DG3?

MR. BOWN: No, we discussed risk as risk; a generic term.

MR. LEARMONTH: Yeah.

Well, we'll get into this later, but you know there were – you know, you're familiar with that report that – with a \$497 million amount identified for strategic risk?

MR. BOWN: Yes, we reviewed that my interview.

MR. LEARMONTH: And at that time you said you were shocked when you saw it.

MR. BOWN: Correct.

MR. LEARMONTH: Yeah. And why were you shocked when you saw it?

MR. BOWN: I had a firm believe that we were receiving all the information about costs.

MR. LEARMONTH: Yeah, but you found out at the interview that you weren't. Is that what you're saying?

MR. BOWN: That's correct.

MR. LEARMONTH: And that shocked you?

MR. BOWN: Yes.

MR. LEARMONTH: Well, actually I think what you said – it's not too different, but I believe you said at the interview, I can check the – you first became aware of this about when you read the Grant Thornton –

MR. BOWN: When I read the –

MR. LEARMONTH: – Grant Thornton report.

MR. BOWN: You are correct.

MR. LEARMONTH: Yeah, okay.

MR. BOWN: But the term was – the term I used –

MR. LEARMONTH: Yeah, and that was – I think you went even further than shocked, or said that you had some other words for it but –

MR. BOWN: I chose shocked.

MR. LEARMONTH: – you chose shock.

MR. BOWN: Yes.

MR. LEARMONTH: Yeah, yeah. Anyway, it was a strong reaction, we'll say. Is that correct?

MR. BOWN: As strong as you're going to get from me.

MR. LEARMONTH: Yeah. And do you – because – I understand that you and Gilbert Bennett had close association. Is that right? I mean a close business relationship.

MR. BOWN: Yeah, okay.

MR. LEARMONTH: Not social, no, no.

MR. BOWN: No.

MR. LEARMONTH: I don't mean social but a close, you know, business relationship.

MR. BOWN: Sure. We usually engaged at least once a week and we'd bump into each other at meetings and the like. So, yes, I knew Gilbert well and Gilbert knew me well from the business relationship perspective.

MR. LEARMONTH: And would you have expected that he would have given you that report or referred you to it before sanction?

MR. BOWN: I would have – I wouldn't limit it only to Gilbert. There are others in the company who I dealt closely with at the executive level. If they were aware of that, then yes, I would have

expected them to share that with – not with me, with government.

MR. LEARMONTH: With government.

MR. BOWN: Absolutely.

MR. LEARMONTH: I don't mean you, personally –

MR. BOWN: Yeah.

MR. LEARMONTH: – but someone in government.

MR. BOWN: Yes.

MR. LEARMONTH: And if there was an explanation for the report, you know, that look we've done this – you could have that discussion.

MR. BOWN: Yeah.

MR. LEARMONTH: But you expected to receive the report, is that correct?

MR. BOWN: There are a number of issues that we discussed over the years, which would be – okay– this is this, but we've done this, this, this, and this.

MR. LEARMONTH: Mm-hmm.

MR. BOWN: We've done that a number of times. So, I would have expected no less – that if indeed there was a number, but yet there was mitigation that they had –

MR. LEARMONTH: Yeah.

MR. BOWN: – planned or there were strategies that they were going to put in place, I would have expected the government to have received that same type of briefing as we had on other issues.

MR. LEARMONTH: Yeah.

So it would be – just to emphasize this – if there was a report that – and just correct me if I'm wrong – are you saying that if Nalcor had this report identifying 497 million and they weren't going to go by it – they say: Look, here's the

report, but we're gonna tell you why there's no need to rely on this report because we've mitigated in this way.

Is that what you're talking about?

MR. BOWN: Yes.

MR. LEARMONTH: That would have been your expectation.

MR. BOWN: And that would have –

MR. LEARMONTH: Correct?

MR. BOWN: – that would have been very appropriate and something that we would have expected.

MR. LEARMONTH: Yes. Yeah.

All right. I'm gonna turn to the next exhibit, which is Exhibit 00259, tab – volume 4, tab 61, please.

MR. BOWN: Yes.

MR. LEARMONTH: Okay now at the bottom of page 1 is an email – or the start of an email from you to Paul Wilson. And this is 10:50 a.m.?

MR. BOWN: Yes.

MR. LEARMONTH: So is it likely that that would have been after the meeting?

MR. BOWN: Like – likely I was charged with a task that I immediately jumped on.

MR. LEARMONTH: Yeah. So if the meeting started at 10 – at 9, say –

MR. BOWN: Yeah.

MR. LEARMONTH: – as you surmised it may have –

MR. BOWN: Yeah.

MR. LEARMONTH: – this timeframe would be compatible with that –

MR. BOWN: Yes.

MR. LEARMONTH: – is that correct?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. So how did you know Paul Wilson at this time?

MR. BOWN: I had been familiar with Paul's work on the DG3 – sorry –

MR. LEARMONTH: DG2?

MR. BOWN: DG2 – having watched the PUB hearings – actually I had been present at some, so I was familiar with – he was a representative.

MR. LEARMONTH: You knew him, did you?

MR. BOWN: I didn't know him. I knew of him.

MR. LEARMONTH: But had you been introduced to him?

MR. BOWN: I think I had been introduced to him –

MR. LEARMONTH: Okay.

MR. BOWN: – at some point, but we didn't have a – if I was introduced, it was probably the one time.

MR. LEARMONTH: Yeah.

So at this point, I think, do you agree that it's likely that you would have been instructed, following this April 1 – following the meeting at 9 o'clock on April 1 – to contact Mr. Wilson?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. And is that just your recollection or is that the inference you draw from the times and dates?

MR. BOWN: Mostly from the times and dates, but also from recollection that I was pressed into action.

MR. LEARMONTH: Okay.

Well, what discussion took place with respect to the advisability, or lack thereof, of retaining MHI for this important assignment?

MR. BOWN: The context of any discussion that we would have had is that, given the time pressure that was presented to us, that if we were going to do a review of DG3 – which was necessary, because work on DG2 had been done, it would be – it wouldn't – I guess the view of the government would be that it's incomplete if you only had it – sanction work done on DG2 and not on DG3.

And that the most appropriate consultant to do that is one who was fully – well-versed in the project and could – after having done all the background work and done the due diligence and have an understanding – is one who is best suited to do the next piece of work.

MR. LEARMONTH: Yeah. But wasn't the contrary view put forward, that maybe they're the worst people to do it because they'd already formed an opinion on the reasonableness of the DG2 numbers, which made up the large portion of the DG3 numbers?

You know, I'm just thinking of the opposite – you know, MHI did their – they have already signed off on this, to a certain extent, so we definitely want a fresh set of eyes on this.

MR. BOWN: There wasn't – the report that they prepared for DG2 wasn't completely clean. They had criticisms of the project.

MR. LEARMONTH: Yes.

MR. BOWN: And they felt that certain things weren't done the way that they would do them.

MR. LEARMONTH: Yeah.

MR. BOWN: So we didn't – they weren't chosen because they would've given a clean report. Rather, they had presented some concerns and some recommendations for further work. So again, it would've been based on the fact that they were familiar with the project.

MR. LEARMONTH: But they didn't have any complaint about the numbers, did they?

MR. BOWN: I don't recall. No, I don't think so.

MR. LEARMONTH: No.

MR. BOWN: No.

MR. LEARMONTH: No, you see the point I'm making –

MR. BOWN: Yes

MR. LEARMONTH: – or suggesting, that maybe it's better to have someone who has never seen these numbers and they could dig in right from the bottom and give a fresh viewpoint on it?

MR. BOWN: But I would also add that some of the some concerns that they had with the project had the potential to have a significant impact on the costs.

MR. LEARMONTH: Right.

MR. BOWN: Such as the return periods for the HVDC transmission line.

MR. LEARMONTH: Yeah.

MR. BOWN: Return periods being the reliability.

MR. LEARMONTH: Yeah. Well, anyway, are you saying that there was no consideration – or reservations – expressed at the April 1, 2012, meeting about the advisability of retaining MHI?

MR. BOWN: I don't recall any.

MR. LEARMONTH: None. Okay.

Now, you mentioned there was a – the time frames. What were the time pressures that existed at this – on April 1 for getting the DG3 numbers and the DG3 review by MHI? What were the time – what were the pressure points for – from a time point of view?

MR. BOWN: Politically there was a time scheduled to have a debate in the House. The premier had committed to do that. And presumably in order to have a debate you have to have the most recent, most up-to-date information. There was also some project pressure, that there were certain elements of the project that needed to get done. And that we were on a schedule for project sanction and start

at a certain period of time. So we needed to stick to that schedule.

MR. LEARMONTH: Yeah, but – okay, that – so that was coming – there’s pressure coming from Nalcor also, wasn’t there?

MR. BOWN: Right. That’s what I mean.

MR. LEARMONTH: But isn’t an easy response to Nalcor, look, you get your DG3 reports done and then you come to us with them and then we’ll deal with it from there after?

MR. BOWN: In a meeting with the premier and the minister and other staff, that would be something that they would say. That’s a point of view that they would share.

MR. LEARMONTH: But did they?

MR. BOWN: I don’t recall.

MR. LEARMONTH: You don’t know –

MR. BOWN: But I didn’t say that at that meeting.

MR. LEARMONTH: No. But at this meeting on April 1, was Ed Martin saying that there was time pressures?

MR. BOWN: I think we had known – not necessarily only at that meeting but through other discussions that – we were three, four months into 2012 already. So it was clear that there was pressure to get through to the end of the year for a sanction decision.

MR. LEARMONTH: Okay, well that – I’ll return to this email, but the next communication in sequence is at Exhibit 00739 which is volume 2, tab 60.

MR. BOWN: Sorry.

MR. LEARMONTH: Do you see it?

MR. BOWN: Yes. (Inaudible.)

MR. LEARMONTH: Yeah.

MR. BOWN: (Inaudible.)

MR. LEARMONTH: So this is an email from Gilbert Bennett to you April 1, 2012 at –

MR. BOWN: This is not (inaudible).

THE COMMISSIONER: It has to be tab 4, I guess, Mr. –

MR. LEARMONTH: It’s Exhibit 00739.

THE COMMISSIONER: Right.

MR. LEARMONTH: I have volume 2, tab 60.

THE COMMISSIONER: I think you said volume 4.

MR. LEARMONTH: Oh, I’m sorry.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible) tab 60.

THE COMMISSIONER: My volume 2, tab 60 isn’t that same exhibit.

MS. O’BRIEN: I have 00739, volume 2, tab 69.

THE COMMISSIONER: 69.

MR. LEARMONTH: Oh, right, that’s what it is then.

MR. BOWN: (Inaudible.)_

THE COMMISSIONER: Tab 69, volume 2.

MR. BOWN: No. It was 4.

Thank you, Commissioner.

THE COMMISSIONER: No problem.

MR. BOWN: Okay.

MR. LEARMONTH: Okay. So this is an email from Gilbert Bennett to Paul Wilson dated April 1, at 4:43. “Charles Bown, the Associate Deputy Minister for Energy with the Government of Newfoundland and Labrador, asked me to pass a message along to you. He would like to have a conversation with you some time today. He can be reached at ... his email address is ...”

So I presume that you would have had some discussion or communication with Gilbert Bennett?

MR. BOWN: If you follow the timeline I would have made the initial email at 10:50. I would assume Paul Wilson had no idea who I was and hadn't replied by that time so I contacted Gilbert with, would he send a message to prompt him.

MR. LEARMONTH: Well, I mean it was a Sunday so you shouldn't expect, I don't think, an immediate reply, should you?

MR. BOWN: Was that a Sunday? April the 1st?

MR. LEARMONTH: Yes.

MR. BOWN: Okay.

MR. LEARMONTH: But you were in a rush.

MR. BOWN: I would have appreciated one, yes.

MR. LEARMONTH: Yeah, but you were in a rush, weren't you?

MR. BOWN: Absolutely.

MR. LEARMONTH: Under pressure?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

Okay, so you called Gilbert Bennett, did you?

MR. BOWN: And asked him if he would send an email. See if he could prompt Paul Wilson.

MR. LEARMONTH: Okay.

So this seems to be a pretty pressure-filled time for you, is that right?

MR. BOWN: All of 2012 was a pressure-filled time.

MR. LEARMONTH: Yeah.

But you were directed to make immediate contact with MHI. You didn't even wait 'til Monday?

MR. BOWN: It was: get the ball rolling, see if we can engage them.

MR. LEARMONTH: All right.

Now we'll just go back to the earlier Exhibit 00259, which is tab 61, volume 4.

MR. BOWN: Sorry.

I have it.

MR. LEARMONTH: Do you have it?

MR. BOWN: Yes.

MR. LEARMONTH: So this is from you to Gilbert Bennett on Monday, April 2, 10:36. "Work Scope ... I've provided a draft work scope. We can discuss to refine ..."

So why are you sending a scope of work – a draft scope of work to Gilbert Bennett on April 2nd?

MR. BOWN: A little bit of context first. Following that meeting on the 1st, I would have had a conversation with Todd Stanley, who prepared this document for me, prepared the scope of work. And then I had shared it with Gilbert to understand whether this work, this scope – could this be completed within the time frame that we were prepared – or being asked to do.

MR. LEARMONTH: And so what did he say?

MR. BOWN: I think the responses from Gilbert came a little later.

MR. LEARMONTH: Were you having discussions with Gilbert Bennett about the scope of work around this time?

MR. BOWN: I would have asked him for his view of whether this scope of work could be completed within that time frame.

MR. LEARMONTH: Okay. And what'd he say?

MR. BOWN: I believe there's more email in the –

MR. LEARMONTH: But do you remember what he said?

MR. BOWN: Not off the top of my head, no.

MR. LEARMONTH: Okay.

Then the June 2012 date was necessary because, for some reason, there was thought to be pressure to have it debated in the House of Assembly?

MR. BOWN: Correct, but I believe –

MR. LEARMONTH: But why was that such a big rush? Like, why was it important? And we know it was subsequently postponed to the fall but why pressure to have an early debate on such a big, important project like this?

MR. BOWN: Mr. Learmonth, that's a – that is a political question. I can't answer what the motivation was. It would be best asked to the premier – or Ms. Dunderdale.

MR. LEARMONTH: So you can't give any answer to that?

MR. BOWN: I can't give an answer to that.

MR. LEARMONTH: Yeah.

Did you have concerns about the rush on this, given the magnitude of the project and the need to make sure everything was done properly?

MR. BOWN: I was given my instruction, and I set out to do my level best to try to accomplish it within the time frame –

MR. LEARMONTH: Yeah.

MR. BOWN: – that was I instructed to do.

MR. LEARMONTH: Yeah, but did you have any view as to whether this was being –

MR. BOWN: Not at that time, no.

MR. LEARMONTH: No. So everything was fine?

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah.

The next email on the Exhibit 00259 that I just referred to is from Don Burrage to you – Work Scope: “The Minister did indicate (and Brian agreed) that we have ‘moved on’ from the least cost option question, so item 1 may not be where gov is. Rather a due diligence on the DG 3 numbers.”

Did you provide any response to Mr. Burrage on that email?

MR. BOWN: No, I would've followed up with Minister Kennedy.

MR. LEARMONTH: Yeah.

Well, on that question of the DG3 numbers, how could you do a DG3 – review of the DG3 numbers or a due diligence review if you didn't have the reports? You didn't have the DG3 numbers, right?

MR. BOWN: No, the anticipation would – or the understanding would be that those reports would be provided within that time frame and MHI could do their analysis.

MR. LEARMONTH: All right.

Next, Exhibit 00740, that's tab 70, volume 2.

MR. BOWN: Okay.

MR. LEARMONTH: So this is an email from Paul Wilson, April 2, DG3 Items, Maureen Greene. He sends a draft letter that he had, I guess, prepared in anticipation of being retained by the Board of Commissioners of Public Utilities. If you look on page 2, it's: Items to be Completed for DG3 Decision.

MR. BOWN: Correct.

MR. LEARMONTH: And then page 3, the last item: “Update of the Project Risk Assessment and an appropriate strategic reserve amount to be applied to the project.”

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So he was, I guess, sending this for your consideration?

MR. BOWN: No – oh, yes. The copy of the letter to Maureen Greene –

MR. LEARMONTH: Yeah.

MR. BOWN: – and I have to assume that her question to him was, as a developer, if you were going to go through Gate 3, what are the list of things that you have to accomplish to go through Gate 3.

MR. LEARMONTH: Yeah.

MR. BOWN: Yes.

MR. LEARMONTH: Or include an update of project risk assessment and appropriate strategic reserve amount to be applied to the project.

MR. BOWN: Right.

MR. LEARMONTH: That'd be an appropriate item to be considered –

MR. BOWN: To be through –

MR. LEARMONTH: – before you move through DG3. Is that correct?

MR. BOWN: Yes. Yes.

MR. LEARMONTH: Okay.

So did you use this letter as a reference point in preparing your scope of work?

MR. BOWN: I wouldn't have received this – hmm.

I don't recall if I had provided this to Todd Stanley or not. I think I had – Todd just prepared it independently, this piece of work.

MR. LEARMONTH: Yeah. Well, because this came later, didn't it?

MR. BOWN: Right.

MR. LEARMONTH: Yes.

So who – at this time, who was responsible for preparing the scope of work or the terms of reference or the schedule of work, whatever you want to call it. Whose responsibility was it?

MR. BOWN: It would have been the client's responsibility – ours – to prepare a scope of work.

MR. LEARMONTH: No, but who in government would be in charge of that?

MR. BOWN: Oh, it would be the department – Natural Resources – with Justice.

MR. LEARMONTH: And you were the associate deputy at this time?

MR. BOWN: Yes, and I would have assigned that to my staff.

MR. LEARMONTH: Okay. Who did you assign it to?

MR. BOWN: That would have been Paul Scott.

MR. LEARMONTH: Paul Scott?

MR. BOWN: Yes, and Walter Parsons.

MR. LEARMONTH: So you would have told them, look, get this straightened up?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

After you gave those instructions, did you continue to be involved in the developing of the terms of reference? Or the scope of work?

MR. BOWN: The scope of work from Paul Wilson came very shortly thereafter.

MR. LEARMONTH: Yeah.

MR. BOWN: Though –

MR. LEARMONTH: But were you –

MR. BOWN: Attention changed, then, to the document that he provided as opposed to us developing one ourselves.

MR. LEARMONTH: Yeah. But did you ever tell Mr. Wilson, look, don't deal with me, deal with those two individuals you just named? It seems that you're involved all the time with Mr. Wilson.

MR. BOWN: Yes, but I was working with my own staff back and forth as we went through that all that time.

MR. LEARMONTH: Okay.

Now, the next is Exhibit 00741, tab 71, volume 2. Do you have that?

MR. BOWN: What's the tab?

THE COMMISSIONER: Seventy-one. The next one after the one you just looked at.

MR. BOWN: Oh. Sorry. Thank you, Commissioner.

MR. LEARMONTH: Do you see it Mr. Bown?

MR. BOWN: Yes, I see it.

MR. LEARMONTH: Okay. So he says – this is an email to you dated April 3, 2012. Third paragraph: “Attached is a draft SOW” – I think that means scope of work?

MR. BOWN: Yeah.

MR. LEARMONTH: “to get our discussions started and I have begun identify what information we are going to request under each areas of review” – et cetera. And then if you turn page 4 – or, excuse me, 5 – at the top of the page, Roman numeral xi –

MR. BOWN: Mm-hmm.

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

“Information required: Strategic Risk Assessment Updated Report, and Westney update if available.”

MR. BOWN: Correct.

MR. LEARMONTH: And do you agree that would be a reasonable item to be included in the scope of work before moving through DG3?

MR. BOWN: I believe that we had no comment back to him on the scope of work, and I believe another one was sent subsequent to our next conversation; I think he had refined it a little.

MR. LEARMONTH: Yeah.

MR. BOWN: And we had no issue with that either.

MR. LEARMONTH: No, but – this – do you agree that a risk-analysis review is an integral part of any kind of review of the DG3 numbers?

MR. BOWN: We had no issue with the fact that they wanted to do that piece of work, no.

MR. LEARMONTH: Yeah, but this was removed later?

MR. BOWN: Right.

MR. LEARMONTH: Why?

MR. BOWN: I believe as – do you want to go through the full –?

MR. LEARMONTH: I will, yeah. But just ask your – at this stage.

MR. BOWN: Okay. We're – as we had started the conversation, this task was started with a great deal of time pressure.

MR. LEARMONTH: From who?

MR. BOWN: From the premier's office and also from Nalcor as well – and that, in order to complete this task within the time period that we were given, it was clear that all the pieces of work, that MHI had indicated that they felt should be done as part this, could be done, because there was insufficient time to do it because those pieces of work would not be available. And that was agreed internally that – I had briefed internally –

MR. LEARMONTH: By who? As agreed by who?

MR. BOWN: That would have been agreed inside the department.

MR. LEARMONTH: Well – but I’m talking about names now.

MR. BOWN: Well, it would have been clear – if you go to – we’ll start at the beginning. If you go to the handwritten notes of Mr. Kennedy, clear on the December 6 – or sorry, April 6.

As we – the start of this discussion – there was a full discussion that day –

MR. LEARMONTH: Okay.

MR. BOWN: – at that meeting on this scope of work. I would have brought this scope of work to that meeting.

MR. LEARMONTH: Okay.

MR. BOWN: It would have been discussed.

MR. LEARMONTH: Okay.

MR. BOWN: And there would have been input from Nalcor at that time, based on the records that I have reviewed through the Commission – records that I had not seen – some that I had and some that I hadn’t – that there was a clear view inside of Nalcor that this work could not be completed; in particular, the risk analysis. And that view would have been brought to the meeting on April the 6th.

MR. LEARMONTH: Yeah.

MR. BOWN: So I would –

MR. LEARMONTH: Well, we’ll get to that but my question is that: Do you agree that Minister Kennedy was focused – extremely focused – on the question of cost, like, how much is this going to cost us?

MR. BOWN: Yes.

MR. LEARMONTH: And he was – well, I’m not saying he was compulsive about it, but that’s something he – that was on his mind all the time?

MR. BOWN: Yes.

MR. LEARMONTH: How much is this going to cost us?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Well, how on earth can you get an opinion on how much it’s going to cost if the person doing the review is not doing an analysis of the risks? How is it possible?

MR. BOWN: I understand that, but the decision was made and confirmed inside the department.

MR. LEARMONTH: Yeah.

MR. BOWN: So I would have shared, I would have briefed with Minister Kennedy that –

MR. LEARMONTH: Well, I’ll put it another way – you haven’t answered the question – do you agree that it would not be possible to do a thorough review of the cost estimates unless you had a risk review done? Do you agree with that?

MR. BOWN: I agree.

MR. LEARMONTH: Okay.

And Mr. Kennedy was heavily focused on this?

MR. BOWN: Absolutely.

MR. LEARMONTH: Okay.

Well, we’ll get in – we’ll move through a few more documents here.

Okay, Exhibit 01236, tab 57, volume 4. So this is an email from Brian Crawley. He’s a senior person at Nalcor, is that correct?

MR. BOWN: Yes.

MR. LEARMONTH: It says: “Charles ... I understand Ed was trying to reach you” Do you know who Ed is?

MR. BOWN: Ed Martin.

MR. LEARMONTH: “We are still working it but” we “do have major concerns with what has been proposed. Will be in touch.” So they’d received the draft scope of work that Paul Wilson had sent, right?

MR. BOWN: Correct.

MR. LEARMONTH: And he's telling you they have major concerns?

MR. BOWN: Yes.

MR. LEARMONTH: But if you're doing – if you're asking for the review to verify, among other things, the numbers, why would Nalcor have any input into defining the scope of work? You know, they have major concerns, one might actually – well, I don't care if you have concerns, this is the way we're going to do it and you can like it or lump it.

MR. BOWN: The way the conversation would have went in the premier's office on April the 1st was that engage MHI, make sure that the – this is a process whereby whatever you're going to do you get it done on that time.

MR. LEARMONTH: So the time –

MR. BOWN: That would have meant that work together with Nalcor and make sure that whatever you need to get done, they're able to do it.

MR. LEARMONTH: And if Nalcor couldn't get the work that Paul Wilson had proposed done by June 15, then the work – scope of work was going to have to be cut back. Is that right?

MR. BOWN: Right.

MR. LEARMONTH: Because the date was more important than the extent of the review.

MR. BOWN: They were driven by time pressure.

MR. LEARMONTH: Yeah, more than the details of the review.

MR. BOWN: Right.

MR. LEARMONTH: Yeah.

Then we have Exhibit 01178, tab 72, volume 2. This is an email from Mr. Harrington, Paul Harrington.

MR. BOWN: Yes.

MR. LEARMONTH: Did you know Paul Harrington?

MR. BOWN: Yes, I knew of Paul, met him a number of – couple of times, but I didn't do direct work with Mr. Harrington.

MR. LEARMONTH: Okay.

So he says: "Please find my comments" Now, this is not to you, it's to Brian Crawley, Paul Humphries and Jason Kean at Nalcor.

"Please find my comments to the MHI proposal – In order for this to be performed in the time available 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, the Basis of Design is fixed and we should not invite commentary on that – MHI should focus on the updated CPW analysis using updated numbers. This has to be an apples to apples comparison so the expansion plan used in this review has also to" – include – "the Maritime Link" et cetera. This will make the "review more straightforward and achievable in the timeframe –

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

"We must get MHI here in St John's to do the work and not have IR's flying back and forth – these will only go public. MHI should work directly with us... avoiding a lot of papaerwork and we should compress the schedule to a couple of weeks when we have the data. Unless this scope is controlled we will have a repeat performance with the same 'experts'" and the same opinions.

So this is the project manager's – were you aware of his views on this?

MR. BOWN: No, not until I read the Commission materials.

MR. LEARMONTH: Okay.

Was that email of April 4 compatible with or consistent with the pressure that Nalcor was putting on government to revise the scope of work in order to meet the June 15 target date?

MR. BOWN: This would've been consistent with the view that was brought to the meeting on April the 6th.

MR. LEARMONTH: It would've been, yes.

MR. BOWN: Yes.

MR. LEARMONTH: And then if we look on page 8, we've got a note – and this is a marked up copy of Mr. Harrington's – well, actually, we'll go to, first, page 6. Do you see the third full paragraph down, the Risk Analysis review, Roman numeral xi, has been deleted?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah

And then if you go to page 8, the notation – the comment on the scheduled completion date. It said: "Commented [PH1]: It is not possible for MHI to review the data in this timeframe – April to May 15, we are still working on the estimate, risk analysis etc – this is setting us up to fail and we cannot do that."

That's, once again, compatible with the issue, and I would say the fixation on the schedule, right?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah.

Now, the April 6 meeting; we're going to get into that. That's 12 – Exhibit 01237, tab 60, volume 4. Now, we referred to this meeting earlier, or you did, I think, Mr. Bown, in your evidence.

MR. BOWN: Yes.

MR. LEARMONTH: Are you familiar with this document?

MR. BOWN: Yes, I've reviewed it.

MR. LEARMONTH: Okay.

So a meeting of – just tell – just – you must be able to decipher Mr. Kennedy's writing better than most.

MR. BOWN: I –

MR. LEARMONTH: Can you just tell me who it's referring to there?

MR. BOWN: I couldn't read his handwriting then and I can't read it now.

MR. LEARMONTH: Okay.

Well, he has said: Meeting of Ed – that would be Ed Martin, is that –?

MR. BOWN: Are we on –

THE COMMISSIONER: What page –

MR. BOWN: I don't think I have the right page.

THE COMMISSIONER: – are we on here, Mr. –

MR. LEARMONTH: It's page 10.

MR. BOWN: Okay.

MR. LEARMONTH: I didn't say that?

MR. BOWN: No.

THE COMMISSIONER: No.

MR. LEARMONTH: No, it's Exhibit – whoops. Oh, I'm sorry. Yeah, it's Exhibit 01237, page 10.

MR. BOWN: I got it.

MR. LEARMONTH: You got it?

MR. BOWN: Yes.

MR. LEARMONTH: Okay, meeting with Ed. Do you know who Ed would be?

MR. BOWN: Ed Martin.

MR. LEARMONTH: And Brian?

MR. BOWN: Brian Taylor.

MR. LEARMONTH: Robert?

MR. BOWN: Thompson.

MR. LEARMONTH: Next.

MR. BOWN: Yeah.

MR. LEARMONTH: Glenda?

MR. BOWN: Glenda Power.

MR. LEARMONTH: Charles.

MR. BOWN: Yes.

MR. LEARMONTH: And the next one: And JPK.

MR. BOWN: Right.

MR. LEARMONTH: That's Jerome Kennedy.

MR. BOWN: Yeah.

MR. LEARMONTH: Okay.

So do you have – apart from what's recorded in this note, do you have an independent reflection of what was said at that meeting?

MR. BOWN: No, I don't.

MR. LEARMONTH: You're just going by the ...?

MR. BOWN: I'm going by Mr. Kennedy's notes.

MR. LEARMONTH: And we've got here, about a quarter of the way down: June 7 cut-off something for group and then risk analysis, contingency backup.

Do you remember any discussion about risk analysis and contingency backup at this meeting?

MR. BOWN: No, but if I follow Mr. Kennedy's notes, it would indicate that in order to meet the June 7 cut-off, those were the types of things that could not be done by that time.

MR. LEARMONTH: Yeah.

And was Mr. Kennedy fine with that?

MR. BOWN: I don't recall but I – if I trace his notes – again, having worked with him and seen his notes – he would've drawn right at the bottom right-hand corner what we need – schedule – we need to maintain the schedule that we're on and we need the DG3 numbers in order to maintain that schedule.

MR. LEARMONTH: Yeah. But what about risk analysis and contingency backup?

MR. BOWN: Indicated there that it would not be available for the June cut-off to go to the House of Assembly – have this done and then go to the House of Assembly for the debate.

MR. LEARMONTH: So as early as April 6 it was known that the risk analysis could not be completed?

MR. BOWN: Correct. And if you follow through –

MR. LEARMONTH: Yeah.

MR. BOWN: – Mr. Harrington's comments on Exhibit 01178, he indicates there that it cannot be done.

MR. LEARMONTH: Yeah, but if the – one of the objectives of having this review done was to get a very firm handle on costs. It seems astonishing that there'd be a decision made to have this review done in order to comply with a June time date when it was known that there couldn't be any risk analysis. I find that astonishing.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Do you?

MR. BOWN: That was what we were being advised at that time, that it could not be done.

MR. LEARMONTH: But did you have any reaction to that?

MR. BOWN: I don't recall.

MR. LEARMONTH: Okay.

But why not move the time date? Instead of moving the scope, why not say: Well, look, this

is just not feasible; we have to get this work done, the risk analysis done, so forget about the June date.

Was there any consideration given to that?

MR. BOWN: I don't recall. And that would be a political decision of when things were going to take place in the House of Assembly. That's – that would be decided by the premier and her staff.

MR. LEARMONTH: But that's – you know, you're a senior civil servant. I don't know what the role of a – but aren't you supposed to give advice –

MR. BOWN: Yes.

MR. LEARMONTH: – to your ministers?

MR. BOWN: Uh-huh.

MR. LEARMONTH: So if you felt that that approach was wrong and you knew how determined Mr. Kennedy was to find out the real number, right, isn't it incumbent on you to speak up and say: Well, Minister, we can't have it both ways. If you want to meet the June 15 deadline, you're not going to be able to get a good handle or MHI's opinion on how much the costs are. So if you are determined to get that information, the best estimate on costs available, we're going to have to move the date.

Isn't it incumbent on you in these circumstances to make that recommendation?

MR. BOWN: We would've had a discussion like that in a meeting like this. And the only reason that we would have –

MR. LEARMONTH: You would have?

MR. BOWN: Absolutely.

MR. LEARMONTH: So that was discussed at that meeting?

MR. BOWN: We would have discussed at this meeting. And the only reason that we would have continued to move forward is if the decision was made to do it in the absence of the risk.

MR. LEARMONTH: But was there any protest at this time?

MR. BOWN: I don't recall protests.

MR. LEARMONTH: No, by people saying –

MR. BOWN: I know

MR. LEARMONTH: No, but someone saying that this is –

MR. BOWN: Yeah.

MR. LEARMONTH: – not a good way to go or something to that effect?

MR. BOWN: I don't recall that.

MR. LEARMONTH: You don't recall that.

MR. BOWN: (Inaudible.)

MR. LEARMONTH: So everyone was in lockstep?

MR. BOWN: Well, the view that would have been coming from Nalcor at the time is that we can provide you with the DG3 numbers but we won't be able to have the risk assessment done by that time.

MR. LEARMONTH: Yeah. So government's response was: That's fine. We have to meet the June 15 deadline so if the risk analysis has to go out the window, so be it?

MR. BOWN: That was the decision that was made.

MR. LEARMONTH: That was the decision that was made.

Next exhibit I want you to look at is 01179. Tab 152, volume 4. Do you have it, Sir?

MR. BOWN: I have it.

MR. LEARMONTH: So this is from Brian Crawley to Gilbert Bennett and Paul Harrington.

"Gilbert... Ed asked us to hold off on the MHI scope of work while he worked it with the Province. Have you heard anything on this

since? Can we touch base with him today to see if there has been any progress? If we don't help progress the scope it will be done in isolation of us, which might result in the review reflecting MHI's original proposal as opposed to what is actually needed."

Now what kind of – are you aware that Ed was working with the province? Working on it with the province?

MR. BOWN: I don't recall specifically, but I do recall seeing another email as I went through the Commission materials – which I located once but couldn't locate after – which referred to that Ed was working at – with the hill. With the hill in comments – quotes. So that would have been my understanding. That would have meant working with the Confederation building or with the premier's office, but it wouldn't have been Natural Resources because we weren't on the hill.

MR. LEARMONTH: You're on Elizabeth Avenue.

MR. BOWN: Yes.

MR. LEARMONTH: That's my point, yeah.

MR. BOWN: Right, so if he was working it on the hill –

MR. LEARMONTH: Yeah. So that – based on this email, can you reasonably conclude that the – if Ed was working with someone, the province, it wasn't Minister Kennedy?

MR. BOWN: It may have been, but again, the other email that I saw made specific reference to working it on the hill.

MR. LEARMONTH: Do you know where that email is?

MR. BOWN: I've – I was loath almost to raise it because I couldn't find it after, but I did find it as I went through the initial review of the initial review of the Commission materials and I haven't been able to locate it since.

MR. LEARMONTH: Will you look again for it?

MR. BOWN: I will.

MR. LEARMONTH: And give it to your counsel –

MR. BOWN: I will.

MR. LEARMONTH: – when you find it?

MR. BOWN: And actually I raised it with my counsel quite some time ago, that I had located – asked him to try and find it –

MR. FITZGERALD: Yeah, and I've been trying to find it as well. And –

THE COMMISSIONER: I've read a lot of emails and I can't remember that one.

MR. FITZGERALD: No. But Mr. Bown did bring that to my attention about a week ago.

MR. LEARMONTH: But can you get that with a word search, or something like that?

MR. FITZGERALD: Barry, I can try.

MR. LEARMONTH: Okay.

Okay. The next – but you – okay –

MR. BOWN: But it goes to the intent, as you were trying to –

MR. LEARMONTH: No, but I'm trying to narrow it down, like, who – if Ed was working with someone on the hill, than I assume – it's unlikely that it was Mr. Kennedy?

MR. BOWN: No. It would have been in the premier's office

MR. LEARMONTH: The premier's office. And do you suspect that that's the case? Without knowing for sure?

MR. BOWN: I would suspect that's the case without knowing for sure.

MR. LEARMONTH: Okay. Very good.

Now, the next Exhibit P-00260.

THE COMMISSIONER: This might be the last one we refer to –

MR. LEARMONTH: Yeah.

THE COMMISSIONER: – if that works all right with you.

MR. LEARMONTH: We can, or we can go 15 minutes later?

THE COMMISSIONER: Um –

MR. LEARMONTH: (Inaudible) my decision.

THE COMMISSIONER: – how's everybody else feeling about this? I think we're going to have enough time for this witness, but – anybody have a view opposed?

We'll just go to quarter to 5 then.

MR. LEARMONTH: Okay? Thank you.

Okay well this Exhibit 00260, I think that we've already dealt with it – that's the draft from Paul Wilson. And this is the confirmation – actually this Exhibit, we will refer to it, 00260, tab 62, volume 4.

I think you referred earlier that you would have sent this scope on to Paul Scott and Walter Parsons?

MR. BOWN: Yes.

MR. LEARMONTH: And this is the confirmation?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

MR. BOWN: Just to give some context, Walter Parsons, electrical engineer, worked with Nalcor, and that's where I hired him from. Paul Scott, lawyer, and came to work with us from Department of Justice. Just to give some context, Commissioner.

MR. LEARMONTH: Thank you.

Now the next Exhibit is 00261, which is tab 163, volume 4, Mr. Bown.

MR. BOWN: Okay.

MR. LEARMONTH: This is an email from Mr. Wilson to you, April 15, at the bottom.

“Hello Charles, both Al Snyder and myself are traveling to St. John's tomorrow and will be available to meet with you Tuesday morning. Do you have a preferred location to meet?”

So obviously you've arranged a meeting with Mr. Wilson, and Allen Snyder, and then you send an email to Brian: “Brian;

“MHI will be in town tomorrow. Please advise on availability of Nalcor staff to meet. I would like to discuss of the meeting with you later.”

So you – at the subsequent meetings, which we have confirmed were held, you had – Nalcor representatives were invited and actually did attend?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. Now, once again, I'll ask you why would you involve Nalcor at this point?

MR. BOWN: The purpose of that was to ensure that – the work that we were preparing to do, they were able to meet.

MR. LEARMONTH: And so –

MR. BOWN: The objective was to ensure that we had a scope of work that Nalcor could complete by the timeline that was – we were being directed.

MR. LEARMONTH: Yeah. But doesn't that give Nalcor an absolute veto power? In other words, if you say, well, we want this done, and they say, well, okay, fine, if you want put that in, we can't meet the deadline. Isn't that the case?

MR. BOWN: I understand your point of view that not having seen the materials as they were –

MR. LEARMONTH: Yeah.

MR. BOWN: – occurring in the background, I had a full level of trust that we were getting the best information.

MR. LEARMONTH: Yeah.

MR. BOWN: That they were working with us to ensure they were gonna accomplish the goal that the premier had set out for us.

MR. LEARMONTH: Yeah.

MR. BOWN: So it was a good-faith exercise.

MR. LEARMONTH: Yes. No, I'm not saying that, but I'm saying that –

MR. BOWN: Yeah.

MR. LEARMONTH: – in terms of, like, negotiating the –

MR. BOWN: Yeah.

MR. LEARMONTH: – terms –

MR. BOWN: I get you.

MR. LEARMONTH: – they had the veto, because if they didn't like – you know, if they didn't want something to be done, they just said, well, we can't meet the deadline.

MR. BOWN: Right.

MR. LEARMONTH: And then – goes out the window.

MR. BOWN: In looking at this after the fact –

MR. LEARMONTH: Yeah.

MR. BOWN: – and looking at that, absolutely, I draw the same conclusion.

MR. LEARMONTH: That's correct, isn't it?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So then we have – the next Exhibit, P-00742. That's tab 78, volume 2. From Paul Wilson to you and copied to Allen Snyder and Mack Kast. So: "Hello Charles, it was a pleasure to meet with you and Walter over the last two days."

So this is after he got back to Winnipeg, I take it, and then –

MR. BOWN: Yes.

MR. LEARMONTH: – he's sending you – you know.

"As a result, we have gained a better understanding of the project constraints, goals," et cetera. So this was following – was it a two-day meeting with government representatives, Nalcor representatives and MHI representatives?

MR. BOWN: Yeah, and I don't think we had Nalcor for two days.

MR. LEARMONTH: Okay.

MR. BOWN: I think we met with them separately ourselves.

MR. LEARMONTH: Yeah. And then if we look at this revised draft. It says – this is a little different from the final version, but on page 3, second paragraph, first full paragraph: A high level review. Is that what you had in mind, a high-level review?

MR. BOWN: I – as I look at that, what I –

MR. LEARMONTH: I'm not saying that was in the final language, but I just –

MR. BOWN: Yeah.

MR. LEARMONTH: – wonder why, if you can tell me whether that term was discussed in your meetings in St. John's, because when Mr. Wilson got back to Winnipeg, he obviously felt it was –

MR. BOWN: Yeah.

MR. LEARMONTH: – appropriate to use that language.

MR. BOWN: Yeah, well, I don't know what he meant by high-level review there.

MR. LEARMONTH: Okay, but –

MR. BOWN: It would've been in the context of the work that he had done previously, and he

was probably differentiating between what he did for DG2 and what he felt was necessary for DG3.

MR. LEARMONTH: But a high-level review is not a detailed review, is it?

MR. BOWN: It's not a deep dive.

MR. LEARMONTH: No, it's the opposite?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

Okay, and if you look at this report, remember I referred you to Roman number xi –

MR. BOWN: Yes.

MR. LEARMONTH: – the risk analysis – and as you can see, it's gone.

MR. BOWN: Yes.

MR. LEARMONTH: And never to reappear, do you agree?

MR. BOWN: I agree.

MR. LEARMONTH: Yeah. Okay.

MR. BOWN: So, can I just take you back for a moment –

MR. LEARMONTH: Please.

MR. BOWN: – to the email –

MR. LEARMONTH: Mm-hmm.

MR. BOWN: – just, again, for additional context, Commissioner. From the fourth line down, well, I'll read – I'll read the beginning of the second sentence: "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."

MR. LEARMONTH: Yeah.

MR. BOWN: So clearly we had indicated to them that there was a time frame, and this is what could be done within that time frame.

MR. LEARMONTH: Yeah, so once again, at these meetings in St. John's, the deal that was presented to MHI was, look, this has to be done by this date –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – and we have to make sure you can get this stuff done because if you can't get it done by this date, then we're gonna have to change –

MR. BOWN: Change –?

MR. LEARMONTH: – change the scope.

MR. BOWN: Change the scope, yes.

MR. LEARMONTH: Yeah, okay.

And then if we have the next exhibit, which is 01181, tab 64, volume 4. Well, on page 2, that's just that email that you had – Mr. Wilson sent you that I referred to just earlier.

MR. BOWN: Yes.

MR. LEARMONTH: So I guess you sent that to him, right? To Nalcor – you sent it to Brian Crawley?

MR. BOWN: Yes.

MR. LEARMONTH: And then it works its way up the line, and then – or across the line, whatever it is – and Mr. Harrington, copying Brian Crawley, Gilbert Bennet, and Lance Clarke.

"My first reaction is they still do not understand.

"The critical issue for me is the MHI requirement for information to be provided to them. This is wrong, and is an IR in reality.

"MHI should meet with our team and review the data and" – communications – "not have it all sent to them.

"They are in audit mode and not review mode."

Now, I realize this wasn't sent to you, but I guess since you've sent the email, it must be that

both you and MHI don't understand what Nalcor needs. Is that the way you interpret it?

MR. BOWN: From his point of view, yes.

MR. LEARMONTH: Yes, from his point of view.

And then next, Exhibit 00813, tab 81, volume 2. I'm not gonna detail, this is just a very rough, you know, proposal from Mr. Crawley. He says on page 2, "Attached ny comments,

"I have limited computer availability" So I guess that's why the form of it is –

MR. BOWN: Yeah.

MR. LEARMONTH: – in the state it's in.

MR. BOWN: Yeah.

MR. LEARMONTH: But anyway, I'm not gonna go into that.

Tab – Exhibit 00743. That's tab 82, volume 2.

Now, this is the – this is where you, Mr. Bown, respond to the draft that had been sent to you by Paul Wilson on April 19. This is April 30.

MR. BOWN: Yes.

MR. LEARMONTH: Charles Bown, this is – and once again, paragraph Roman numeral xi is gone.

MR. BOWN: Correct.

MR. LEARMONTH: So, the decision to remove the risk analysis from the scope of work was made on April 6, is that right?

MR. BOWN: Correct.

MR. LEARMONTH: And it never – there was never any discussion of reintroducing it. Is that correct?

MR. BOWN: No.

MR. LEARMONTH: I'm correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. I'm correct. Okay.

Then we have Exhibit P-00814, tab 86, volume 2.

This is, again, Mr. Harrington writing to Gilbert Bennett, Brian Crawley and Ed Martin. So they're all having a hard – a look at this.

"Gilbert

"here are my comments.

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

"My reasoning being that we should not be preparing specific documentation just for MHI – the review should be performed across the table with us, using the project documents and data in the format they currently exist 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. I would like to avoid that and get back to a review similar to an IPR where the MHI," management, "team meet with our team and have a dialogue, not an audit."

I mean, is that what you had contemplated?

MR. BOWN: No.

MR. LEARMONTH: That – you had contemplated originally an audit, is that right?

MR. BOWN: I don't know if I would call it an audit. I don't know if I had that word in mind.

MR. LEARMONTH: Yeah.

MR. BOWN: But the edits that he was proposing here were meant to restrict MHI's access to any data.

MR. LEARMONTH: Yeah.

MR. BOWN: Any and all data.

MR. LEARMONTH: Yeah. It's just – like – sitting across the table and –

MR. BOWN: Yeah.

MR. LEARMONTH: – having a chat.

MR. BOWN: Having a chat, presentation decks, et cetera.

MR. LEARMONTH: Yeah, okay.

MR. BOWN: And subsequent in my – I rejected all these edits, by the way, in a subsequent –

MR. LEARMONTH: Yeah.

MR. BOWN: – draft.

MR. LEARMONTH: But it takes a lot of nerve for someone at Nalcor –

MR. BOWN: Yeah.

MR. LEARMONTH: – don't you think?

MR. BOWN: Absolutely. And I didn't accept that and I wouldn't accept that.

MR. LEARMONTH: Yeah.

MR. BOWN: (Inaudible).

MR. LEARMONTH: Now, next exhibit is P-00745, May 15, tab 88, volume 2.

And this is, again, Mr. Wilson sending yet another draft where, I guess, you're editing. But, anyway, this – there's different little changes in wording and the – but, once again, the risk analysis, as I said, it was gone forever, so –.

MR. BOWN: Yeah.

MR. LEARMONTH: – these are just less significant, I suggest.

MR. BOWN: Right, but that was me responding back and removing all the edits that Mr. Harrington had proposed.

MR. LEARMONTH: Yes.

MR. BOWN: Yeah.

MR. LEARMONTH: Yeah, so you rejected that.

MR. BOWN: I rejected it.

MR. LEARMONTH: Yeah, but so – because I noticed Mr. Harrington didn't say that we can't get this done within the time frame.

MR. BOWN: Absolutely.

MR. LEARMONTH: He just said: We don't want to do it.

MR. BOWN: Right.

MR. LEARMONTH: Or: We don't think we should have to do it? Yeah.

MR. BOWN: We don't want to do it.

MR. LEARMONTH: Yeah.

Then they have Exhibit P-00746, tab 89, volume 2.

This is an email from you to Paul Wilson, May 16. This is – the letter says: "I've attached a draft letter to define the understandings between Govt, Nalcor and MHI during the work covered under the contract. Please review and comment. Charles."

Well, this is – one item at the bottom of the page g) says: "MHI acknowledges that Nalcor staff are simultaneously engaged in their own process of developing new data required for Decision Gate 3 and that such data is required to complete the Services under the contract. The preparation of data by Nalcor will have precedent over the Contract and timelines in the Contract may be adjusted to reflect the availability of data."

So the priority here is obviously the completion of the DG3 numbers, not the completion of the report. Is that right?

MR. BOWN: Correct.

MR. LEARMONTH: Okay.

So what was the point of view of sending this letter to Paul Wilson?

MR. BOWN: I was – actually I sent a copy of this to Gilbert Bennett as well, just on a (inaudible).

MR. LEARMONTH: Was it signed? We didn't see – I didn't see an original.

MR. BOWN: And it didn't come out of my reading file at Natural Resources? Again, I don't have access to those documents, but I sent it to both of them to make sure there was a clear understanding of how this process was going to go. It was a separate email that I sent (inaudible) cover to Gilbert.

MR. LEARMONTH: All right.

The next document is Exhibit P-01522, tab 65, volume 4. This is a Decision Note, Department of Natural Resources. And it's signed on page 4 by – excuse me – page 10 – by Minister Kennedy or the document is signed. And there's terms of reference or schedule – Schedule A is the for the scope of work for the engagement and eventually it made it's way to – anyway – it got a – it was approved by a MC –

MR. BOWN: Yes.

MR. LEARMONTH: – and that's on page 28.

MR. BOWN: Yes.

MR. LEARMONTH: Maybe you can give us some clarification as to whether this went to Cabinet?

MR. BOWN: I can't be certain whether this went to Cabinet or not.

There are two ways that some things could get approved – the premier has prerogative on certain matters to make decisions and issue MCs or they go to Cabinet. But I can't say for certain – I don't recall for certain – whether this went to Cabinet.

MR. LEARMONTH: Yup. The removal of the risk requirement – risk analysis – from the scope of work – we know that you knew about it on the April 6 meeting but did everyone – was that known – to the best of your knowledge, was that known to everyone at that April 6 meeting?

MR. BOWN: It would be my understanding it was discussed at that meeting – everybody would have (inaudible) –

MR. LEARMONTH: So everyone who attended that meeting would have know that?

MR. BOWN: That would be my assumption. Yes.

MR. LEARMONTH: Well, you were there.

MR. BOWN: I was there.

MR. LEARMONTH: And that's your –

MR. BOWN: Yes.

MR. LEARMONTH: – belief.

MR. BOWN: Yes.

MR. LEARMONTH: Everyone would have known. So, this is not Charles Bown making this decision with – just with Mr. Kennedy. The knowledge of the removal of that clause XI – Roman numeral XI – was known throughout government to your knowledge. Is that a fair comment?

MR. BOWN: I can't say it 100 per cent certain.

MR. LEARMONTH: But at least the people –

MR. BOWN: At least the people (inaudible) –

MR. LEARMONTH: – at the meeting knew about it.

MR. BOWN: – would have known that risk could not be done.

MR. LEARMONTH: Yeah. And there was a representative of the premier's at that meeting. Is that correct?

MR. BOWN: Yes. Yes.

MR. LEARMONTH: And would that representative have a duty to report to – that to the premier – the removal of the risk analysis?

MR. BOWN: I can't say one way or the other whether that was their duty or not.

MR. LEARMONTH: Well what would you expect that would be the case?

MR. BOWN: If he –

MR. LEARMONTH: With your knowledge of how government works.

MR. BOWN: If he felt it was important to share with the premier he would have

MR. LEARMONTH: Well, are you suggesting that it's possible that someone could find it unimportant?

MR. BOWN: No, but it's the individual and the nature of the relationship that they have with the premier. Likely, would have. I would have.

MR. LEARMONTH: Yeah. All right and next document is tab – excuse me – Exhibit 00770, it's tab 92, volume 2.

This is the contract, which has the same word and in Schedule A of the – as the –

MR. BOWN: Yes.

MR. LEARMONTH: – the Schedule A that was attached or included in the Decision Note – Exhibit 01522.

So this is just the signing of the final contract. It's signed on page 7 if we have a look at that.

MR. BOWN: Yes.

MR. LEARMONTH: Okay. Well, it's quarter to if –

THE COMMISSIONER: Okay. We'll take our break here. We'll start tomorrow morning at 9:30. And, as I understand it, you're planning to finish tomorrow morning, Mr. Learmonth?

MR. LEARMONTH: It's my plan.

THE COMMISSIONER: Okay. Which will give us a day and a half then to finish up.

All right, so we're adjourned 'til tomorrow morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.