



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 1

Volume 53

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*Commissioner: Honourable Justice Richard LeBlanc*

Thursday

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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. Good morning.

Good morning, Mr. Bown. You remain under oath at this – or, I’m sorry, affirmed at this time.

And, Mr. Learmonth, when you’re ready to proceed.

**MR. LEARMONTH:** Yes.

First, I’d like to enter two exhibits: P-01578 and P-01579.

**THE COMMISSIONER:** Okay, those are entered then as marked.

**MR. LEARMONTH:** Thank you.

Mr. Bown, yesterday you gave evidence about the tight schedule for the completion of the MHI review. I think originally the deadline was June 5?

**MR. BOWN:** Yes. Well, June.

**MR. LEARMONTH:** June – sometime in June.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** And that that was – because of that tight schedule, the – that was the reason that the risk analysis and other items in the scope of work were not – were removed? In order to achieve compliance with that schedule?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Yeah. But I just – I’d like you to have a look at Exhibit 00742, which is tab 78, volume 2. Do you have it, Mr. –?

**MR. BOWN:** Tab 78?

**MR. LEARMONTH:** Yes, and if you turn to page 9 –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – “Scheduled Completion Date (tentative).”

So the – here, the dates are pushed well beyond June.

**MR. BOWN:** It’s July.

**MR. LEARMONTH:** So it’s July – so what happened to cause the government to extend the date from June to – well, July 31 for the submission of final report, July 6 for the first draft report. What caused the postponement of those deadlines?

**MR. BOWN:** Availability of data.

**MR. LEARMONTH:** Inability of –?

**MR. BOWN:** Availability of data from Nalcor.

**MR. LEARMONTH:** Okay. All right, and if we look at P-00743, page 6.

**MR. BOWN:** Tab?

**MR. LEARMONTH:** That would be tab 82, volume 2 – page 6.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Well, these are –

**MR. BOWN:** Still July.

**MR. LEARMONTH:** Yeah, these are July, and if we look at P-00770, which is tab 92, volume 2, that’s the final contract. The dates there are – just let me see if I can find them.

**MR. BOWN:** Page?

**MR. LEARMONTH:** Page 6 – completion date, September 30?

**MR. BOWN:** That’s completion of the entire report.

**MR. LEARMONTH:** Yeah, but you see what I mean, that the – I think you do –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – see that the date was pushed back –

**MR. BOWN:** To July for completion of the drafts.

**MR. LEARMONTH:** Okay.

So given the fact that these dates were extended in order to accommodate Nalcor, was any consideration given to revisiting the risk analysis situation? In other words, the risk analysis was not – based on your evidence – Nalcor couldn't do it by, say, June – a June date, but now that there's been an extension, did government say, okay, now, with this extension, maybe we can get the risk analysis done?

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** Was there any consideration given to that?

**MR. BOWN:** It was my understanding that the – excuse me, sorry, Commissioner – it was my understanding that the risk analysis wouldn't be completed until the fall.

**MR. LEARMONTH:** Until the fall?

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** Who told you that?

**MR. BOWN:** That would have come from Nalcor.

**MR. LEARMONTH:** Yeah. But did government not know that there had been risk analysis done by Nalcor prior to April 1, 2012?

**MR. BOWN:** For DG3?

**MR. LEARMONTH:** Well, for – no. But risk analyses generally.

**MR. BOWN:** I think we were aware, yes, for DG2, there was risk analysis done.

**MR. LEARMONTH:** Yeah. But we have evidence that in early June – I think it was June 3 – Paul Harrington and Jason Kean went to Houston –

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** – Texas and met for a day or two – I think it was two days – with representatives of Westney on the issue of strategic risk. So that was a live issue, and they were working towards completion of their assessment. Were you aware of that?

**MR. BOWN:** No, I was not.

**MR. LEARMONTH:** No. Did you inquire as to the status of the risk analysis for DG3?

**MR. BOWN:** Don't recall if I did that.

**MR. LEARMONTH:** Yeah.

And so following this June – early June meeting with Westney, the evidence is that, on or about August 23, 2012, Nalcor received the first draft of a strategic risk assessment report from Westney, which followed from the meetings they had in June. Were you aware of that –

**MR. BOWN:** No, I wasn't.

**MR. LEARMONTH:** – at any time?

**MR. BOWN:** No, I was not.

**MR. LEARMONTH:** Yeah. So – and then – so what I'm suggesting to you, or what I'm saying – I'm putting to you – is that if you had inquired of Nalcor, or if Nalcor had told you, it would have been readily apparent that their work on the strategic risk assessment, although not necessarily in final form, was well under way. And therefore, since the deadline for filing the report of MHI had been extended, the strategic risk assessment could easily have been carried out and incorporated into the report because all this information was available to Nalcor.

**MR. BOWN:** Well, they didn't bring that to our attention.

**MR. LEARMONTH:** Nalcor didn't?

**MR. BOWN:** No.

**MR. LEARMONTH:** Oh, you're sure of that, are you?

**MR. BOWN:** I'm sure of that.

**MR. LEARMONTH:** Yeah. Because the August 23 first draft on the strategic risk report was, in all material terms, similar to the final report which Nalcor received on September 19 –

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** – 2012. There was, you know, not much in the way of changes.

And even forgetting about the August 23 first – 2012 first draft, by the time MHI – or before MHI had completed their work, the final report had been received – the final Westney report had been received by Nalcor. So I'm saying –

**MR. BOWN:** (Inaudible.)

**MR. LEARMONTH:** – that there was no real reason why a risk assessment could not have been completed if it had been requested, because the information was in the possession of Nalcor.

**MR. BOWN:** They didn't bring that to our attention: that that work was completed.

**MR. LEARMONTH:** So as far as you knew, that by the time you received the MHI report in late October 2012, are you saying that your recollection or your – the best information you can recall is that the strategic risk assessment work had not been completed by Nalcor?

**MR. BOWN:** Of all the work that we had seen from Nalcor based on DG3 costs and other – that was never brought to our attention.

**MR. LEARMONTH:** Was never – so you weren't aware of it?

**MR. BOWN:** No.

May I also add?

**MR. LEARMONTH:** Sure.

**MR. BOWN:** Would it be correct to also say that – again from the Commission materials that I reviewed and the evidence that I've heard during the Inquiry – that MHI did testify that they did receive risk information, tactical risk –

**MR. LEARMONTH:** Yes.

**MR. BOWN:** – and that –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – that Mr. Harrington did also say that they provided tactical risk information, contingency information. So the absence of what we're really focusing, narrowing down on was the absence of the strategic risk.

**MR. LEARMONTH:** Yes.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** The tactical risk of roughly 7 per cent was included in the \$6.2 billion.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And MHI has acknowledged that they were – they had that report –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – but that they never saw the strategic risk report.

**MR. BOWN:** And we spoke of that in – during my testimony.

**MR. LEARMONTH:** Yeah.

But anyway, the point I'm making is that I suggest that if government had been really interested in getting a strategic risk assessment that they would've – you would've pressed Nalcor to provide a little more detail on their readiness to come up with this information rather than just letting it go.

**MR. BOWN:** I believe the reference in the scope of work – excuse me – that was removed was risk analysis, and –

**MR. LEARMONTH:** Including strategic risk.

**MR. BOWN:** And that – so when MHI undertook their work they would've received what they saw was risk work – risk analysis – and they didn't bring it to our attention that they had received risk analysis or risk studies, but did not receive the strategic risk.

**MR. LEARMONTH:** Yeah. But –

**MR. BOWN:** So I wouldn't have been aware.

**MR. LEARMONTH:** No, but in fairness to MHI, in their initial draft that we reviewed yesterday in Roman numeral XI –

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** – they specifically proposed that they would do an assessment of strategic risk and they made a specific reference to Westney.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And government, following that meeting on, I think, April 6, decided – based on information provided by Nalcor – that they wouldn't be ready; that that was removed. So, you know, to suggest that MHI – even with the removal of Roman numeral XI clause – that they were required to review strategic risk is a – perhaps, a little bit of a stretch. You agree?

**MR. BOWN:** Well, we had asked them to review all information.

**MR. LEARMONTH:** Yeah. But they had specifically identified strategic risk and you took that out –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – so don't you agree it'd be reasonable, perhaps, for MHI to say: Well, they don't want us to do that because we proposed it and they (inaudible) it.

**MR. BOWN:** I don't want to disagree but we had – what they had proposed was a risk assessment – a specific section in the report on a risk assessment. The rest of the report and right

upfront said, to do – review all materials based on –

**MR. LEARMONTH:** Mmm.

**MR. BOWN:** – good utility practice –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – make sure all the DG3 costs – so if they had received that information – had received the risk information, the tactical risk, the contingency information – then yes, they were doing their job.

**MR. LEARMONTH:** Yeah.

But my point is that having put in a specific clause in the initial proposal to review strategic risk and referring to Westney, and government coming back and saying – and taking that out. I'm suggesting that it would be reasonable for Westney to – for MHI to say that they don't want us to do a review of strategic risk; otherwise, they wouldn't have removed this clause.

**MR. BOWN:** We would've removed it because of time.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** They would've been aware of that, so I don't know if I can make that – I can agree with you – that specifically.

**MR. LEARMONTH:** Yeah.

Well, are you suggesting that MHI, even though the clause dealing with strategic risk had been removed, was nevertheless required to do a review of strategic risk?

**MR. BOWN:** No, I'm not saying that.

**MR. LEARMONTH:** You're not?

**MR. BOWN:** No.

**MR. LEARMONTH:** Okay. No.

**MR. BOWN:** No, I wouldn't say that.

**MR. LEARMONTH:** No. Because they had proposed it –

**MR. BOWN:** Absolutely.

**MR. LEARMONTH:** – and you had said no.

But I just wonder, since Mr. Kennedy was emphatic and repeatedly said in his testimony that – almost with a pounding of the fist: I wanna know what the total cost is going to be. And I think you acknowledge yesterday that, yes, he was very much focused on that issue.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah.

Well then, it's perplexing, perhaps, to understand – or difficult to understand why, when the time was extended for the work of MHI, why government would say: Okay, we have an opening here. We're gonna go back to Nalcor and, you know, deal again with the strategic risk and see whether they can be available. But I understand that you never did that – government never did that.

**MR. BOWN:** No, we did not.

**MR. LEARMONTH:** Okay.

Why not?

**MR. BOWN:** Well, I don't have an answer for you for that.

**MR. LEARMONTH:** Okay.

And while we're on that topic, I referred earlier to, you know, the fact that there had been a quantitative risk assessment dealing with strategic risk for DG2.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** You're aware of that, were you?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And in that report that was prepared by Westney there was a recommendation that an amount of 300 million

to 600 million be – you know, suggested for strategic risk at DG2.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And in an initial draft of a capital cost estimate there was – Nalcor added 300 million into a draft document, but then during the negotiations with Emera that was removed. And we're studying the reason for that removal. It hasn't really been finalized, although some people have given evidence on it.

But regardless, the \$300 million was not included in the \$5 billion amount that was reported to the public as being Newfoundland and Labrador's share – or Nalcor's share of the project. Do you know what I mean – the \$5 billion announcement? There was nothing for strategic risk in there.

At the time – the announcement of the terms – term sheet was made on November 18, 2010, were you aware that \$300 million for strategic risk was not included in the \$5 billion?

**MR. BOWN:** I was not aware.

**MR. LEARMONTH:** You had no knowledge of that whatsoever?

**MR. BOWN:** No knowledge.

**MR. LEARMONTH:** You believed that the \$5 billion figure captured all of the –

**MR. BOWN:** All of the costs.

**MR. LEARMONTH:** – all of the costs.

Okay. And when did you find out that that wasn't so – the \$300 million for strategic risk had not been included in the \$5 billion figure that was announced on November 18, 2010?

**MR. BOWN:** I recall it was in the Grant Thornton report.

**MR. LEARMONTH:** Okay.

And what was your reaction to the – finding –

**MR. BOWN:** (Inaudible.)

**MR. LEARMONTH:** – out that information?

**MR. BOWN:** I was surprised.

**MR. LEARMONTH:** Yeah. I think you said you were –

**MR. BOWN:** Shocked –

**MR. LEARMONTH:** – shocked.

**MR. BOWN:** – was my –

**MR. LEARMONTH:** So why would you be shocked?

**MR. BOWN:** Again, we had firmly believed that all the costs that were being presented to us were exactly all that – that there was nothing that was being excluded. It was a good-faith exercise; we trusted that fact – that all the costs that we received were those costs.

**MR. LEARMONTH:** Okay. Thank you.

Next document I want to bring up is Exhibit 00754, which is volume 3, tab 106.

Do you have that, Mr. Bown?

**MR. BOWN:** Tab again, sorry?

**MR. LEARMONTH:** Tab 106.

**MR. BOWN:** Six?

**THE COMMISSIONER:** (Inaudible) tab 6.

**MR. LEARMONTH:** So, it's tab 6, actually, volume 3 (inaudible) –

**MR. BOWN:** Yes. Thank you.

Okay. I have it.

**MR. LEARMONTH:** Okay, so this is an email from Paul Wilson of MHI to you dated August 2, copied to Allen Snyder and Mack Kast, who were working on the assignment –

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** – of behalf of MHI.

So, Mr. Wilson says to you: “Hello Charles, I am pleased to send you the first draft of the technical portion of the DG3 review ... for your review and comment. There are still a few sections ...”

Now, if you turn to this report, like you to – this is a draft – this is the first draft, as I understand it. I'd like you to turn to page 41.

**MR. BOWN:** I have it.

**MR. LEARMONTH:** Okay, if you look at the top – 2.4.2. It says: “Nalcor did not provide MHI with access to the detailed cost elements, nor costing reports defining the Decision Gate 3 estimate and variance from the Decision Gate 2 estimate for the transmission facilities. However, totals are provided and overall the Decision Gate 3 estimated increased significantly... ” – et cetera.

Now, you received and reviewed this report –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Didn't that first sentence in 2.4.2 not jump out at you “Nalcor did not provide MHI with access to the detailed cost” estimates? Did you have any concern at all about that?

**MR. BOWN:** Yes I would.

**MR. LEARMONTH:** Okay well what did you do about that?

**MR. BOWN:** My response there would have been to contact Nalcor and ensure that they provided MHI with all the information they needed.

**MR. LEARMONTH:** Well, do you have any record of that?

**MR. BOWN:** That would have been a phone call.

**MR. LEARMONTH:** But your – do you recall the phone call?

**MR. BOWN:** Not specifically but that's how I would have responded.

**MR. LEARMONTH:** That's how you think you would have responded.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** But there's no record of it.

**MR. BOWN:** No I didn't –

**MR. LEARMONTH:** And you don't –

**MR. BOWN:** – I didn't send an email on that.

**MR. LEARMONTH:** Yeah. Why not?

**MR. BOWN:** Sometimes a verbal communication –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – is the better form of communication. That you can accurately convey the importance of what it is you're saying.

**MR. LEARMONTH:** Yeah but if you're – I think you're saying, correct me if I'm wrong, that you think you would have done that; although, you have no recollection of doing it. Is that correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** But to indicate in the following draft of the report that was removed, at which would indicate that the information was provided.

**MR. LEARMONTH:** Well that's one interpretation of it.

But anyway, you don't remember making the call but you think as a matter of practice you would have?

**MR. BOWN:** As a matter of practice, I would.

**MR. LEARMONTH:** Okay.

But MHI never did receive detailed cost estimates. They got summaries only.

**MR. BOWN:** I'm not aware of the specific data that they received.

**MR. LEARMONTH:** You're not? So anyway, you think you might have made this phone call and the fact that this didn't appear in subsequent drafts was not a matter of concern for you?

**MR. BOWN:** Well, it would have meant that – MHI would not have removed it if the concern that they had raised had not been addressed.

**MR. LEARMONTH:** Well that would be your expectation.

**MR. BOWN:** Absolutely. I have –

**MR. LEARMONTH:** But your expectation only.

**MR. BOWN:** Well I have faith in the integrity of MHI.

**MR. LEARMONTH:** Yes.

Okay so that's the conclusion you draw based on the fact that you had faith in MHI, right?

**MR. BOWN:** Absolutely. And the people who were in – people who were working on this report.

**MR. LEARMONTH:** Yeah.

So you had faith in MHI and, likewise, you had faith in Nalcor.

**MR. BOWN:** That they would be honest and provide the information that was necessary.

**MR. LEARMONTH:** Yeah.

So you put a lot of reliance on – and faith in both Nalcor and MHI, correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** And based on that dual faith, you just assumed that everything was okay.



**MR. BOWN:** I didn't assume that everything was okay.

**MR. LEARMONTH:** You didn't assume?

**MR. BOWN:** I assumed that if there was a problem that MHI would bring it to our attention.

**MR. LEARMONTH:** Yeah, okay. Very good.

Did you share this draft report with anyone else in government?

**MR. BOWN:** I would have provided copies to my staff.

**MR. LEARMONTH:** Do you remember doing that or –

**MR. BOWN:** Each time that these came in, I would print them and provide copies. We would meet.

**MR. LEARMONTH:** Who – when you say your staff, who would – what would that constitute?

**MR. BOWN:** That would be principally Walter Parsons on this study.

**MR. LEARMONTH:** Yeah? And also – anyone else?

**MR. BOWN:** On occasion – if he was available – Paul Scott.

**MR. LEARMONTH:** Okay. But do you remember sharing this document with those persons?

**MR. BOWN:** It was a matter of course. That's how I did it.

**MR. LEARMONTH:** So it's just like you think you would have done that. That would have been your practice?

**MR. BOWN:** That would have been my practice.

**MR. LEARMONTH:** Yeah. But don't you send these things by email?

**MR. BOWN:** Not always.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** Sometimes we would get together for a meeting. We'd print them out and we'd go through them.

**MR. LEARMONTH:** 'Cause there's no emails to confirm what you're saying.

**MR. BOWN:** I understand.

**MR. LEARMONTH:** Mm-hmm. Now, would you have sent this to your minister or shared it with your minister?

**MR. BOWN:** I would have shared drafts with my minister.

**MR. LEARMONTH:** You would have?

**MR. BOWN:** Printed copies and laid them on his desk.

**MR. LEARMONTH:** So are you saying then that Minister Kennedy would have seen this draft report?

**MR. BOWN:** I can't say exclusively if he saw the first one, but I have to – I would – based on my practice and the way I normally did my business, when the first one of these come in, he would have seen the first one.

**MR. LEARMONTH:** Yeah. And once again, you wouldn't send emails?

**MR. BOWN:** No. Mr. Kennedy was just next door to me.

**MR. LEARMONTH:** So based on your practice, you believe that Minister Kennedy saw this draft report?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. And then following up on this, page 41, "Risk Assessment." "Nalcor has identified the key areas of project risk in its project management strategy. At the current stage of project progress, the majority of " the "major engineering decisions affecting transmission line design and

construction as to project scope have been made and costs estimated for Decision Gate 3. Nalcor has displayed appropriate controls and signing” – and then I’m just turning over to page 42 – “authority managing scope.”

Now, just going down to the third full paragraph on page 42. “At this stage, the major risks to be addressed for the transmission line complex remain with” the “contractor cost and labour availability. There are several other high-profile transmission line and generation projects in the design stage in Canada set for construction... These, along with other natural resource projects could attract skilled labour away from this project and create an escalation factor for contractual labour.”

“Nalcor has identified these issues as the major risks and has identified a strategy to attract skilled labour back into the province through a master labour agreement, training, and other self-development ... While these programs and compensation levels were not identified in detail, MHI is aware of the issue of contractor availability in a very competitive skilled labour market.”

Now, did you have any reaction to this? I mean this seems to be a, you know a –

**MR. BOWN:** I don’t recall on this particular item.

**MR. LEARMONTH:** Yeah. You don’t?

**MR. BOWN:** No.

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

Now, I suggest that, that’s a flashing light that should have commanded your attention, because it’s a –

**MR. BOWN:** It would have.

**MR. LEARMONTH:** Okay, well, what did you do about it?

**MR. BOWN:** It would have been no different than on the availability of cost information.

**MR. LEARMONTH:** Yeah. But this never appeared in the final – this was removed from the final report.

**MR. BOWN:** So ...

**MR. LEARMONTH:** Pardon?

**MR. BOWN:** Oh, I’m just going to start my response.

**MR. LEARMONTH:** Okay, sorry. Go ahead.

**MR. BOWN:** The practice here was that MHI were dealing directly with Nalcor one-on-one –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – providing information. This was the first draft. Nalcor would have been providing information –

**MR. LEARMONTH:** Mmm.

**MR. BOWN:** – continuing to provide information as this process went on.

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** And that MHI would not have changed anything or removed any comments unless they were satisfied that the information provided to them by Nalcor addressed their concern.

**MR. LEARMONTH:** Yeah. But how could these, the risks identified here, be properly addressed as you think they were have? I mean how – would it just be a phone call that MHI – Nalcor would say: Well, don’t worry about that, we’ve got that under control, let’s mitigate it.

**MR. BOWN:** Well –

**MR. LEARMONTH:** You know, how did you expect that MHI would come to the point where they would remove that paragraph?

**MR. BOWN:** The evidence, the information inside the Commission files, show that there was constant contact, back and forth between MHI and Nalcor; there were meetings that took place between the two. And, actually, there are information requests or issues lists that have been identified that were moved back and forth between the two and they actually share language.

**MR. LEARMONTH:** Yeah, but I suggest to you that you just left that – like, the resolution of this issue and other issues, you just assumed that there'd be an honest, transparent flow of communication from Nalcor to MHI. Is that correct?

**MR. BOWN:** That would be accurate.

**MR. LEARMONTH:** Yeah.

And last page, 57, this is the schedule. And we know now that the Westney report of September 19 indicated a P1 schedule completion. You're aware of that, are you?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** For July, P1?

**MR. BOWN:** We covered that in my interview.

**MR. LEARMONTH:** Yeah. So on page 57: "The high-level schedule that was reviewed reflected the project contracting strategy and depicted ...." Were you satisfied with a high-level schedule review by MHI? I mean, high level is a fairly –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – undetailed, if that's the proper word, analysis, isn't it? I mean it's not a detailed analysis.

**MR. BOWN:** I'm not aware what – in the context of MHI engineering or Nalcor, what high level would mean. But –

**MR. LEARMONTH:** Yeah.

But when you look at that –

**MR. BOWN:** That's characterization.

**MR. LEARMONTH:** Yeah, but would you not look at that and say, well, look, we don't want a high-level review, we want a detailed review. We want to know what the schedule – whether the schedule date of July 2017 for first power, whether that's achievable or not.

**MR. BOWN:** No, that didn't draw concern.

**MR. LEARMONTH:** Didn't draw any concern?

**MR. BOWN:** No.

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

Did that give you any concern? By the way, that 6.7 is the 368 million for contingency – for tactical risk, which is included in the 6.2 billion. But did this not jump out at you, this clause?

**MR. BOWN:** I don't recall that it did, but I do – and, again, just based on the review of the Commission materials that have been released, that I did note that there was an extensive conversation, if not meetings, between MHI and Nalcor on this particular issue, on the inclusion of escalation into the contingency amount as well.

**MR. LEARMONTH:** How do you know that?

**MR. BOWN:** I read that through the Commission materials.

**MR. LEARMONTH:** What, that there were – so you're saying that Nalcor would have discussed this issue? Your belief is Nalcor would have discussed this issue with MHI and satisfied them that this was not too low a number (inaudible)?

**MR. BOWN:** My understanding through the materials that I read.

**MR. LEARMONTH:** Yeah.

But just as an aside, if – right at this point I think we'll go back to Exhibit – we'll leave this exhibit and then –

**THE COMMISSIONER:** Just before we do, you say you called Nalcor. Who'd you call?

**MR. BOWN:** Brian Crawley. He would have been my point of contact.

**MR. LEARMONTH:** Well, when did you call him?

**MR. BOWN:** When we received this and reviewed it.

**MR. LEARMONTH:** Well, I thought you said you didn't remember?

**MR. BOWN:** Well, using the standard practice, when we receive this –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – when we reviewed it, I would have called him.

**MR. LEARMONTH:** But you didn't give the name, Brian Crawley. I mean, you think – are you saying that you think, in accordance with your practice, that you would've called someone. And if you had followed your practice and called someone, the contact person would have been Brian Crawley?

**MR. BOWN:** Absolutely.

**MR. LEARMONTH:** That's exactly what you're saying?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** So you don't remember any discussion with Brian Crawley?

**MR. BOWN:** Not specifically.

**MR. LEARMONTH:** Well, not, I think –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** You don't remember.

**MR. BOWN:** No, I don't.

**MR. LEARMONTH:** Okay.

And there's no record of any such telephone call?

**MR. BOWN:** No.

**MR. LEARMONTH:** You don't keep notes?

**MR. BOWN:** Not detailed notes like others, no.

**MR. LEARMONTH:** And you don't – well, if you don't remember the telephone conversation, you don't know what was said in the conversation, obviously. That's –

**MR. BOWN:** No.

**MR. LEARMONTH:** No.

Now, let's turn to – back to 00770, Exhibit 00770, which is tab 92 of volume 2, Mr. Bown.

**MR. BOWN:** Tab again, sorry?

**MR. LEARMONTH:** It's tab 92.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** Go to page 9. Now, this is the final contract that's between Manitoba Hydro and government, signed by Minister Kennedy.

So at the top of page 9, paragraph – this is included in the scope of work: "The review will focus on the reasonableness of existing engineering or financial documents used in the development of the CPW analysis including design documents, design studies, material and equipment specifications, cost estimates and schedules."

And this is what I want to draw your attention to: "MHI's final report will include a summary of which documents were reviewed, a summary of meeting notes with Nalcor, identification of salient points necessary for the CPW analysis, and if the various studies were reasonable, and where applicable, prepared in accordance with good practices. The technical assessment will

focus on the following areas that are generally used as inputs into the CPW analysis ....”

Now, under this contractual term, MHI’s final report was – required to include, well, just what it says: a summary of documents, a summary of meeting notes, identification of salient points, et cetera, but you never received this.

**MR. BOWN:** No.

**MR. LEARMONTH:** Well, it was never removed from the scope of work and it wasn’t included in the final report.

**MR. BOWN:** It was agreed with MHI that those items contained commercially sensitive information and it wasn’t provided.

**MR. LEARMONTH:** Are you saying – I acknowledge for the purpose of this question that some of the documents that were listed in the schedules would be commercially sensitive, but not simply identifying them. In other words, just referring to a document’s name, without providing any particulars, would not be of any concern from a commercially sensitive point of view. Do you agree?

**MR. BOWN:** That was the concern that was raised by Nalcor – that even raising the title would be commercially sensitive.

**MR. LEARMONTH:** And you –

**MR. BOWN:** Accepted that.

**MR. LEARMONTH:** Without any further consideration?

**MR. BOWN:** Discussed that with MHI, and accepted it.

**MR. LEARMONTH:** Okay. Do you have any record of those telephone conversations?

**MR. BOWN:** No, I don’t.

**MR. LEARMONTH:** So once again, are you just going by what you think you would have done?

**MR. BOWN:** No, I know that we had that conversation.

**MR. LEARMONTH:** Who did you discuss with?

**MR. BOWN:** Paul Wilson.

**MR. LEARMONTH:** When?

**MR. BOWN:** Oh, I don’t recall the date.

**MR. LEARMONTH:** You don’t recall the date. But what about summary of meeting notes with Nalcor. Would that be commercially sensitive?

**MR. BOWN:** No, that wasn’t provided.

**MR. LEARMONTH:** Why not?

**MR. BOWN:** I don’t recall. That may have been overlooked.

**MR. LEARMONTH:** Okay. ’Cause that’s – I suggest that was a reasonable condition to –

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** – put in the –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – and that would have shed a lot of light on the matters we’re discussing now.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** But did you release MHI from that obligation, or was it a situation where you just overlooked it and when it wasn’t included in the final report, you just missed the point?

**MR. BOWN:** I think we missed the point at the end – receiving the report.

**MR. LEARMONTH:** Okay. Do you acknowledge that that’s a serious omission on your part?

**MR. BOWN:** It’s an omission.

**MR. LEARMONTH:** A serious omission, I suggest; because that would have provided clarification of, you know, many of the communications between Nalcor and MHI.

**MR. BOWN:** I agree.

**MR. LEARMONTH:** Okay. Thank you.

Next, I want you to go to Exhibit 00773. That's tab – volume 3 – tab 120, Mr. Bown.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** So, this is September 19, 2012 – from Paul Wilson to you – DG report with redline on.

“Hi Charles, here is the MS Word version with redline on” – it – “I believe this captures all the changes.”

Do you know what Mr. Wilson is referring to when he says captures all the changes? Was that –

**MR. BOWN:** Change –

**MR. LEARMONTH:** – based on discussions – the changes you had made with him?

**MR. BOWN:** No. Changes that he made to the report.

**MR. LEARMONTH:** Okay. You don't know who – how those changes were – the basis for the changes – you don't –

**MR. BOWN:** No.

**MR. LEARMONTH:** – know that, do you?

**MR. BOWN:** No.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** I never asked Mr. Wilson to make changes to his report.

**MR. LEARMONTH:** Do you know why – I don't know how these things operate perfectly or anything like that but it's rare, I suggest, for a independent review to be forwarded to you in Word rather than as a PDF? In other words, in Word, you can make whatever changes you want to, isn't that true?

**MR. BOWN:** Yeah. I don't know why he provided it in Word.

**MR. LEARMONTH:** Have you ever seen that before?

**MR. BOWN:** Yes, actually, I have on occasion, I have seen –

**MR. LEARMONTH:** For expert reports?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah, okay.

**MR. BOWN:** It's not uncommon.

**MR. LEARMONTH:** Anyway.

**MR. BOWN:** For drafts.

**MR. LEARMONTH:** Yeah but this is a final report, isn't it?

**MR. BOWN:** No. This is not the final.

**MR. LEARMONTH:** Well as it turns out it wasn't the final, but –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – it says that, “I believe this captures all the changes.” That's a strong indication that Mr. – from Mr. Wilson's point of view that it's a final report.

**MR. BOWN:** No, I think that would be just reference to a point in time.

**MR. LEARMONTH:** You're – well on what basis do you say that?

**MR. BOWN:** Well – here's all the changes that I made for this draft.

**MR. LEARMONTH:** Okay.

Okay, now once again the – please turn to page 14 – excuse me – yeah, page 14.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay now here: “MHI also recommends that Nalcor be cautioned regarding the contingency levels in their estimated costs as there are opportunities for unexpected increases. Nalcor has current

contingency levels in their estimate for the Labrador Island HVdc converter stations that are below industry norms and therefore should be re-evaluated. Any additional contingency allocated for the HVdc converter stations at levels following industry norms would not alter the outcome of the Interconnected Island option in favour of the Isolated Island option.”

But in any event, in terms of contingencies, that’s our flashing light, isn’t it?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And did you remove that?

**MR. BOWN:** No, I did not.

**MR. LEARMONTH:** But how – you know, if it was sent to you in Word, I mean, who took it out.

**MR. BOWN:** But it was removed when I received it.

**MR. LEARMONTH:** Okay.

Did you inquire as to why it was removed?

**MR. BOWN:** I don’t recall.

**MR. LEARMONTH:** You have no recollection.

**MR. BOWN:** I would make an assumption.

**MR. LEARMONTH:** What assumption would you make?

**MR. BOWN:** That Nalcor had provided them with the information necessary to make that change.

**MR. LEARMONTH:** Yeah. But wouldn’t you pick up the phone and say to Paul Wilson: now, look; all these changes seem to make – be making the report progressively more favourable to Nalcor. Like, there’s a pattern here that all the statements that would give one concern are gradually disappearing.

And I suggest if you had been vigilant, you would have called up Mr. Wilson and said

what’s going on here. Every time you send me your report, there’s more and more items that are removed and I want to know why. Did you do that?

**MR. BOWN:** I don’t recall doing that.

**MR. LEARMONTH:** Okay.

Do you see the point?

**MR. BOWN:** Yes I do.

**MR. LEARMONTH:** I mean, this is getting better and better and better, and we know that the final report – all these cautionary paragraphs are removed.

Do you agree?

**MR. BOWN:** I agree.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** But as I look back through the Commission materials – I’m not – Mr. Learmonth, I’m not trying to make an excuse – I’m just adding information –

**MR. LEARMONTH:** Oh no, I know.

**MR. BOWN:** – as I look back through the Commission materials, I see the constant engagement that was ongoing between MHI and Nalcor. MHI was encouraging me to, say, provide copies of this to Nalcor, is it okay to have ongoing conversations with Nalcor? And the answer would clearly be yes, if it’s – if it helps you complete your work, that’s important to me.

**MR. LEARMONTH:** Yeah.

But looking back in retrospect – I know that’s not always the best way to evaluate things –

**MR. BOWN:** Right.

**MR. LEARMONTH:** But do you see the problem here that I’m identifying – like, the pattern of removal of cautionary paragraphs –

**MR. BOWN:** Sure, in the moment –

**MR. LEARMONTH:** Yes.

**MR. BOWN:** – in the time –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – you’re seeing a piece of work that’s evolving from the very first draft; it’s not complete. There are some statements in there that ultimately get addressed, and then as more work gets done at Nalcor –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – studies get done, then more gets added and other parts get removed.

So, in the moment –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – you – I probably wouldn’t have sensed that.

**MR. LEARMONTH:** Yeah.

Because you trusted Nalcor and you trusted MHI.

**MR. BOWN:** I had complete respect in MHI – still do.

**MR. LEARMONTH:** And Nalcor?

You said you have complete – had (inaudible) –

**MR. BOWN:** Had.

**MR. LEARMONTH:** Had – you had at the time.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Do you now?

**MR. BOWN:** We’ll see at the end of this Inquiry when all the information comes out.

**MR. LEARMONTH:** Well, what – based on what you’re seeing now, do you still have that high level of trust in Nalcor?

**MR. BOWN:** I have some questions that still require some answers.

**MR. LEARMONTH:** Okay, from who?

**MR. BOWN:** We’ll wait ’til Mr. Martin testifies.

**MR. LEARMONTH:** Right.

But you’re not quite as confident as you were at the time that you were reviewing this report that Nalcor could be trusted. Is that fair to say?

**MR. BOWN:** I’d just say that there’s – there have been some matters that have become known to me, reviewing the materials, and then some testimony that requires some additional question-and-answering.

**MR. LEARMONTH:** All right. We’ll leave it at that.

And just carrying on with the report, page 15 – this is the index – the table of contents. Was that – why was that removed?

**MR. BOWN:** No, I think the way that this works in Word is that when you make a change, it makes a change in page numbers. It crosses everything out, and then repeats it again later.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** I’m not an expert in Word, but that’s how I understand it – how it works.

**MR. LEARMONTH:** All right.

Next, let’s turn to 51.

**MR. BOWN:** Page 51?

**MR. LEARMONTH:** Yes.

Now, you – I just wanna get clarification about what your knowledge was at the time that you’re receiving these drafts of the P-factor, you know P50, P75, P90. What was the state of your knowledge on that subject?

**MR. BOWN:** I have to admit I didn’t have a strong knowledge in the P-factors.

**MR. LEARMONTH:** What – did you have a weak knowledge or did you have no knowledge?



**MR. BOWN:** Basically none.

**MR. LEARMONTH:** None. Okay.

Because if we turn to page 51, you see there's – excuse me, that's not the one I'm looking for. But anyway, we'll get to that later, I think I'm on the wrong page. But anyway, page 51, last paragraph.

“There is a possibility of additional costs, depending on what the suppliers assumed. For example ...” and then all this.

Do you know why this was edited?

**MR. BOWN:** No, this is technical information that I wouldn't have any understanding of.

**MR. LEARMONTH:** You wouldn't – so there would be no point in you?

**MR. BOWN:** No.

**MR. LEARMONTH:** So that wouldn't have raised your concern to the extent that you, in accordance with your practice, you would have made inquiries about it?

**MR. BOWN:** Well, again, I would have assumed that Nalcor had provided the information to MHI to address those concerns.

**MR. LEARMONTH:** And were – now we'll go to page 55.

The third – well, just before the heading “2.4.4 Assessment of Line Routes.”

**MR. BOWN:** Yup.

**MR. LEARMONTH:** “At this stage,” now remember this is September 19, this is late in the game. “At this stage, the major risks to be addressed for the transmission line complex remain with contractor cost and labour availability.... Nalcor has identified these issues as the major risks and has identified a strategy to mitigate them ....”

Well, that's a little bit of improvement from the last one but it still identifies risks. Were you satisfied with – by reading that paragraph that these risks had been, we'll say, mitigated?

**MR. BOWN:** Based on MHI's conclusion, yes.

**MR. LEARMONTH:** And once again, you don't know what information MHI received from Nalcor that justified the removal of this? Is that correct?

**MR. BOWN:** No, I would not.

**MR. LEARMONTH:** You just assumed that it had been addressed by conversations between Nalcor and – or supply of information by Nalcor to MHI.

**MR. BOWN:** Again, I – I (inaudible) to repeat again, I had MHI was highly recommended. They had gone through the process with the Public Utilities Board, did a very good piece of work there. And I had met with Paul Wilson and his staff and had a great appreciation for the integrity of not only the company but for the people.

So I would expect they would not make changes based on a conversation, they would have to have data or information.

**MR. LEARMONTH:** And once again, that's just your –

**MR. BOWN:** That's my assumption.

**MR. LEARMONTH:** – belief.

**MR. BOWN:** That's my belief.

**MR. LEARMONTH:** That's your belief.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** You trusted them that much –

**MR. BOWN:** Absolutely.

**MR. LEARMONTH:** – and you trusted Nalcor that much.

**MR. BOWN:** Correct.

**MR. BOWN:** Right.

**MR. LEARMONTH:** Right.

Now we turn to page 93, and this is what I was looking for in terms of the P-factor.

Bottom of page 93, “Capital Cost Projections for Muskrat Falls and Labrador Island Link. Scenarios numbered ... According to ... Estimate Accuracy Analysis Report,” and then for some reason, “prepared by the Westney Consulting Group ... on June 4, 2012”.

This, “engineering and detailed” – cost – “was approximately 40% complete ... to reach a P50 value ... a contingency of 368 ... was required.”

Now why – and that’s true, there was a tactical contingency of 368 in the 6.2, but when you saw that the reference to P50 value had been removed there, and then you carry on to the next page – page 94, right at the top – it said, “included a contingency allowance of 7% which equates to the required \$368 million.”

And it says, “The projected capital costs, including a contingency and escalation allowance, for the Lower Churchill facility are,” 6.2.

And then, “A P ... value implies there is an equal 50% probability the projected” – cost estimates – “will increase as well as decrease.” And then goes on to say.

Now, I suggest to you that, even if you had no knowledge of P, or even a limited – a P-value – or even a limited knowledge –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – that that would have jumped out at you. That they’re using a P50 value.

**MR. BOWN:** Well, I don’t recall that, but –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – yes.

**MR. LEARMONTH:** Is that – that’s, you know –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** But you didn’t inquire into that?

**MR. BOWN:** No. I don’t recall.

**MR. LEARMONTH:** ‘Cause that – there’s no reference to P-value – a P50 value in the final report.

**MR. BOWN:** As I understand.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** As we discussed.

**MR. LEARMONTH:** Yeah.

But didn’t that cause you concern, that these –

**MR. BOWN:** I don’t –

**MR. LEARMONTH:** – things were being removed –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – I know you don’t know what they –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – meant but didn’t – it’s not very difficult if you read that – top paragraph on page 94 and the preceding page to figure out what a P-value is.

**MR. BOWN:** Yes. Yeah.

I don’t recall that.

**MR. LEARMONTH:** And you’re – are you saying that you shared this report with Minister Kennedy?

**MR. BOWN:** I don’t know if he would have seen this exact one. It was, again, my practice to throw a draft in on his desk. Now whether I gave him this exact one, I can’t be 100 per cent certain.

**MR. LEARMONTH:** What do you mean, this exact one? I mean, I’m talking about you either gave this report –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – to him, never mind exact –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – you gave this report to him that you received, or you didn't?

**MR. BOWN:** I can't be certain. I don't know.

**MR. LEARMONTH:** You don't know.

**MR. BOWN:** No.

**MR. LEARMONTH:** What would be your practice?

**MR. BOWN:** Generally to let him know that I had a draft and throw it on his desk.

**MR. LEARMONTH:** But that's – you have no record of having done that.

**MR. BOWN:** No.

**MR. LEARMONTH:** Okay.

And then if we go to the bibliography of documents – this is on page 103. And you see that was a requirement in the scope of work, which we've already gone through that –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Yeah. And you're saying that this bibliography of documents in itself – just by identifying the documents – that that was a commercially sensitive matter?

**MR. BOWN:** That was identified by Nalcor. And I know I had a conversation with Paul Wilson about this, and he agreed.

**MR. LEARMONTH:** Well could – do you understand – how was the identification of these documents commercially sensitive? In what sense is it commercially sensitive?

**MR. BOWN:** Nalcor made that determination.

**MR. LEARMONTH:** Well they didn't want it in – how do you know that? How do you know Nalcor made that determination?

**MR. BOWN:** Because that's what was provided – the reason or rationale that was provided to me.

**MR. LEARMONTH:** Okay. But do you have a record of a conversation that you're just referring to?

**MR. BOWN:** No.

**MR. LEARMONTH:** Well how do you remember it then?

**MR. BOWN:** I remember it.

**MR. LEARMONTH:** I mean that's six years ago, right?

**MR. BOWN:** Yeah. Some things you do remember and some things you don't.

**MR. LEARMONTH:** Well you don't remember any other conversations about – that's the only one you remember.

**MR. BOWN:** I know that there was a conversation about this, that this was an issue.

**MR. LEARMONTH:** Okay. Anyway.

**MR. BOWN:** I can't recall a specific time.

**THE COMMISSIONER:** Who with?

**MR. BOWN:** This would have been with Gilbert Bennett.

**MR. LEARMONTH:** And on what date?

**MR. BOWN:** I don't recall that. It would have been near the – before the release of this report.

**MR. LEARMONTH:** Oh we know that because it didn't appear in the –

**MR. BOWN:** Right.

**MR. LEARMONTH:** – final report. So once again, no record of this conversation at all?

**MR. BOWN:** No.

**MR. LEARMONTH:** But do you know why you have a specific – a recollection of this conversation and you don't have any recollection of any of the earlier conversations we discussed?

**MR. BOWN:** No, I can't explain that.

**MR. LEARMONTH:** Can't explain it. It (inaudible) interest – before we leave this document, let's turn back to page 102. And this – that same clause that I referred to earlier –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – page 14 – that's gone.

Now, can you tell us what – I think you said you're not an expert in Word or –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – and neither am I by a long shot. But anyway.

So what's your explanation? Did you take these out or had they been taken out before you received this on September 19?

**MR. BOWN:** These would have been taken out before I received it.

**MR. LEARMONTH:** And I –

**MR. BOWN:** I think the record shows I made – I only requested three edits in that document.

**MR. LEARMONTH:** When were those edits requested?

**MR. BOWN:** Right at the very end. Right –

**MR. LEARMONTH:** And what –

**MR. BOWN:** Right. Sorry, probably late September. There is evidence, Commissioner, in the exhibits, of an email from me requesting a change in the executive summary, requesting

that a particular chart – a number be changed, and I added a sentence on the loan guarantee.

**MR. LEARMONTH:** Were those the only edits that you made throughout this process?

**MR. BOWN:** It's the only edits I made throughout this process. I found that in my own records.

**MR. LEARMONTH:** Okay. And then we go to Exhibit 00774, volume 3, tab 12, and this is a clean version of the report, and then, of course, on October 27, the final report came, I suggest, clean as a whistle. You read that final report and everything looks to be in order. Is that correct? Is that the way you interpreted it?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** The final report.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. All these negative or cautionary comments that we've referred to earlier are – have disappeared.

**MR. BOWN:** Or concerns have been addressed. Yes.

**MR. LEARMONTH:** Well, they've disappeared?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. And you assume it was because of –?

**MR. BOWN:** They were addressed.

**MR. LEARMONTH:** You assume it was because of a flow of information from Nalcor to MHI?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** But that's just an assumption.

**MR. BOWN:** Well, I can see it in the documentary evidence that there was a constant flow of email back and forth or reference to phone calls that had been made or meetings that

had occurred where these issues had been discussed.

**MR. LEARMONTH:** Where are those emails? You say a number of them?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Where? I don't –

**MR. BOWN:** I guess we'll have to provide you with the references for those.

**MR. LEARMONTH:** Will you do that?

**MR. BOWN:** Yes. Absolutely.

**MR. LEARMONTH:** Okay. And how many emails are there?

**MR. BOWN:** I don't recall the exact number.

**MR. LEARMONTH:** Okay. But you've seen them, have you?

**MR. BOWN:** I've seen them as I reviewed the –

**MR. LEARMONTH:** Okay.

**MR. BOWN:** – reviewed the files.

**MR. LEARMONTH:** Okay. Well, I'd be happy to look at them.

**MR. BOWN:** I'd be more than happy to provide and help.

**MR. LEARMONTH:** Okay. Thank you.

Were you copied on these emails, or –

**MR. BOWN:** No.

**MR. LEARMONTH:** – did you just get them in the disclosure?

**MR. BOWN:** I wasn't copied. I only found them through disclosure.

**MR. LEARMONTH:** Yeah. You just assumed that there had been communications?

**MR. BOWN:** During the process?

**MR. LEARMONTH:** Yes.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** It was only during the review of the materials, during the disclosure, that I could see the actual evidence of that.

**MR. LEARMONTH:** Okay. So then in – the next exhibit is 00761, tab 24, volume – 124, volume 3.

Do you see that email?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** This is September 25, and the early – the last draft we referred to was received by you on September 19. So this is another change.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** Mr. Wilson says: "Hello Charles, as requested here is a version marked draft with today's date. All markups have been removed and the copy is clean. The following" versions are – so then there's some changes.

Do you know what caused Mr. Wilson to make these changes? Was it based on any communication from you to Mr. Wilson?

**MR. BOWN:** No, the – it was him provided me with – I had asked him for a revised copy – or an updated copy, sorry – and he had sent it along and noted the revisions that he had made.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** Because we had assumed that this was final.

**MR. LEARMONTH:** Well, you assumed that these changes were made as a result of –?

**MR. BOWN:** Conversations with Nalcor.

**MR. LEARMONTH:** Yeah, but did it strike you that – in the last paragraph he says: "The LTA Decision Gate 3 estimate includes a 9.1%

contingency” – well, that’s specifically for the LTA, but –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – what was your understanding of the amount of contingency for the project overall that had been built into the – or included in the 6.2 estimate?

**MR. BOWN:** If I can recall, my knowledge is not perfect, but I always thought it was 9 per cent.

**MR. LEARMONTH:** Okay. Well, I think it was 6.7 or rounded to 7 per cent.

**MR. BOWN:** Yeah, and I think –

**MR. LEARMONTH:** You didn’t know, did you?

**MR. BOWN:** Well, I think it was always expressed to us as 9 per cent, but I think what I found out subsequently is they were using the escalation allowances inside the contingency, which is causing the number to be higher.

**MR. LEARMONTH:** But that’s – you can’t add escalation to tactical risk.

**MR. BOWN:** That was their practice, that’s what I found out subsequent.

**MR. LEARMONTH:** Whose practice?

**MR. BOWN:** Nalcor’s.

**MR. LEARMONTH:** Nalcor’s? And who told you that?

**MR. BOWN:** I read that in the materials, the documentary evidence.

**MR. LEARMONTH:** Yeah, what specifically did you read?

**MR. BOWN:** It was a reference to a conversation that I believe Paul Harrington was having internally with Brian Crawley and preparing for a conversation they were gonna have with MHI, noting that they wanted to express their particular process to MHI, whereby escalation formed part of the contingency and

that, while it was different from the process MHI was accustomed to, it was unique and appropriate for Nalcor.

**MR. LEARMONTH:** Yeah, and in that email I believe there was some dispute over that?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Now we wanna go to the Grant Thornton report, which is at tab 46 of volume 4 – Exhibit P-00014.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** Okay, page 9, please. This is line 4.

It says: “Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation. We have been informed by Nalcor’s Project Team, that strategic risk exposure was to be funded through contingent equity from GNL.”

Now, that – I think, you know, we’ve used the word twice, shock. You were shocked when you saw that?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Yeah. And –

**MR. BOWN:** Because we had had a number of – sorry if I interjected. We’ve had a number of conversations throughout the years on the amount of equity to be provided. Department of Finance had done quite extensive analysis of the project costs and how much equity – important to the government from a budgeting perspective – and was not aware that there was an amount that was held outside that.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** We didn’t know.

**MR. LEARMONTH:** You didn’t know that?

**MR. BOWN:** No.

**MR. LEARMONTH:** And assuming it's supposed to be funded, that would have had to have been on the books of the government –

**MR. BOWN:** We had to have known – yes.

**MR. LEARMONTH:** But you didn't know anything about it?

**MR. BOWN:** No.

**MR. LEARMONTH:** So that's a problem from – well, a problem generally, but a problem from the government budgeting, too, right?

**MR. BOWN:** Any contingent equity, we would book. We've done it in the past years.

**MR. LEARMONTH:** Yeah. And next paragraph: "Nalcor selected a P50" – once again, you didn't know anything about that, so –

**MR. BOWN:** No.

**MR. LEARMONTH:** – you were educated by reading that paragraph?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And once again, was that part of the shock you experienced?

**MR. BOWN:** The P1?

**MR. LEARMONTH:** Okay. The next page I'd like you to turn to is page 64.

Down at the bottom there's a chart or a graph or image. Do you see that image?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. And then turn to page 65.

**MR. BOWN:** I have it.

**MR. LEARMONTH:** The top: "The above image" – and that's the one at the bottom of page 64 we just looked at – "notes that July 15, 2017 schedule was a P1. This meant that there was a 99% chance that the schedule for first power would not be met. The LCP Project Team

noted that '*there was a low probability*'" et cetera.

Now that you know a little bit about P-factor, how did you react to learning that information?

**MR. BOWN:** I believe in my testimony I was a little bit more expressive than saying shocked.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** But again –

**MR. LEARMONTH:** More expressive? You mean it was more than simply shocked?

**MR. BOWN:** I said – no, I just expressed more language than just shocked and I guess, at that point, would have noted that – I guess, as Minister Kennedy had said, the importance of a politician speaking to the public means ensuring that you give the most correct information at all times.

From a public servant's perspective, advising ministers, it's always important to know that you're providing them with the best information. And to know that the schedule – which we had firmly believed was going to be first power in 2017 and that was driving all of our actions, everything that we were doing with respect to the loan guarantee and the PUB review and et cetera – to find out that it was P1 again, was – is a bit more than a shock.

But again, we'll wait to see – I haven't seen anything to the contrary but if there's other evidence that says that it wasn't.

**MR. LEARMONTH:** Well, the other evidence, generally, as I understand it – we'll have to wait 'til – anyway. That after receiving the September 19 report from Westney – that we referred to earlier – that Nalcor went back with some more information to Westney and Westney adjusted it from a P1 to a P3. Which according to Richard Westney, the principal owner of Westney, was immaterial.

**MR. BOWN:** We would've seen, on a couple of occasions, draft statements attributed to Westney or IPA or IPR indicating the robustness of both the cost and the schedule. So again, that's why this was such a surprise.

**MR. LEARMONTH:** Yeah.

But did you – you know, had – did you receive any information of a more general sense than using the P-factor – but general information from Nalcor that, look, this is an aggressive schedule or anything like that?

**MR. BOWN:** I didn't hear that it was an aggressive schedule.

**MR. LEARMONTH:** You never heard that term?

**MR. BOWN:** No.

**MR. LEARMONTH:** No. So you thought that it was a realistic target date?

**MR. BOWN:** Realistic target date with –

**MR. LEARMONTH:** Without qualification.

**MR. BOWN:** – with – that's right – without qualification with some pinch points in there, but with some – also with some slack in other areas.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** So – yeah.

**MR. LEARMONTH:** But you didn't think that there was any asterisk or qualification on the July 15, 2017, date. In other words, you didn't believe that: Well, that's the target date but that's going to be – we're going to have to have everything go perfectly, it's going to be very aggressive? You didn't hear any information from Nalcor in that sense, did you?

**MR. BOWN:** No, and that would've factored – if we were aware, that would've factored into whether we were going to book a contingent equity number for the equity requirement.

**MR. LEARMONTH:** Yeah. Well, it was just July 15, 2007, for first power and that was part of the, sort of, belief you had that Nalcor was giving you the straight goods on everything.

**MR. BOWN:** Well, it was more than a belief: it was our understanding.

**MR. LEARMONTH:** Yes, right.

Now, on the – just moving down a little further on this page.

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

Did you – were you ever aware that – John Hollmann of Validation Estimating had provided a risk report – assessment report in 2012, or at least a draft report?

**MR. BOWN:** No.

**MR. LEARMONTH:** Where there were cautionary words about not including risk?

**MR. BOWN:** No, we're not aware.

**MR. LEARMONTH:** Okay.

Did you ever request or receive any of the reports from that – you know, the risk assessment reports or any kind of reports from external consultants, did you ever request or were they – any given to you by Nalcor?

**MR. BOWN:** None were given. I don't recall requesting. As I noted a moment ago, we would've seen in presentations, where I would've been present with ministers or others, a summary slide of the – these particular reports.

**MR. LEARMONTH:** Yeah. But – I've asked this question of many witnesses – still a troubling –

**MR. BOWN:** Yes.



**MR. LEARMONTH:** – point, perhaps to some. Why wouldn't you ask for these reports, to have a look at them? You know, you're overseeing Nalcor, this is the biggest project ever taken in this province.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** If it didn't go well, it would put a strain on the budget and the fiscal position of the province. Why wouldn't you take the time or make the effort to say: Okay, you've referred me to these reports – I want them?

**MR. BOWN:** We never asked; we relied on Nalcor, that they were providing us with – if there was any bad news, they would've shared it with us.

**MR. LEARMONTH:** Yeah. But isn't that in itself a risky stance or position for a government to take? I mean, the government is – the duty of the government in this situation is to protect the public and –

**MR. BOWN:** In this particular case, Nalcor wasn't like an external oil company or a mining company or any other business. It was treated like it was inside of government and there was a great degree of trust in Nalcor.

**MR. LEARMONTH:** Yeah. In retrospect, do you see that that was an omission on the part of government?

**MR. BOWN:** That was the approach that, I guess, permeated throughout the government – that there was a full trust in how they were doing their work. And we went about our business acknowledging that the government had full trust in Nalcor.

**MR. LEARMONTH:** Yeah. But having full trust doesn't remove the obligation of verification. Do you see what I mean?

**MR. BOWN:** I understand.

**MR. LEARMONTH:** I mean, just because you ask someone to verify a position that they – that person has taken, it doesn't mean that you don't trust them. It just means that you wanna verify it. Do you agree with that?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah, so –

**MR. BOWN:** And clearly, as a result of this Inquiry, you know, there are going to be changes in the way that, clearly, government does its business.

**MR. LEARMONTH:** Okay, what changes – how will the changes be made?

**MR. BOWN:** Well, that will depend on the recommendations of the Commissioner.

**MR. LEARMONTH:** Yeah. But you – so you realize that that was a deficiency in the approach the government took to Nalcor, with respect to the MFI project?

**MR. BOWN:** MFI?

**MR. LEARMONTH:** Muskrat Falls Project.

**MR. BOWN:** Oh, sorry.

Looking here after the fact –

**MR. LEARMONTH:** Yes.

**MR. BOWN:** – it's easy to look back.

**MR. LEARMONTH:** Oh no, but that's what –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – that's what I'm asking you to do.

**MR. BOWN:** And I'm sure there are some improvements that could've been made.

**MR. LEARMONTH:** Yeah. But if – isn't – if the government is waiting to receive recommendations from the – this Commission, it's an expectation, I would take it, that the government would implement those recommendations?

**MR. BOWN:** I can't speak for the government.

**MR. FITZGERALD:** Commissioner –

**MR. BOWN:** I'm still an employee of the government.

**MR. FITZGERALD:** Yeah –

**THE COMMISSIONER:** (Inaudible.)

**MR. FITZGERALD:** – I just wanna make that point, that Mr. Bown is currently an employee and he works up in the Cabinet Secretariat, so obviously asking questions about where – what he believes could be changes, that puts him in a position with the current government.

And I think it's fair to ask him: Do you believe that there was mistakes? Or do you believe that there could be improvements? And fair enough, but the specifics of all that he will be dealing with – and he's the current chair of the Oversight Committee; he'll be dealing with that with government. And he is still there, so I just wanna make the point that we just need to be a bit careful on that issue.

**THE COMMISSIONER:** Okay, Mr. Learmonth.

**MR. LEARMONTH:** Yeah, I – that's fair enough. I think it's – there's some validity to Mr. Fitzgerald's position and I'll acknowledge that.

So then I'll just ask you: In retrospect, do you think that there were deficiencies in the government's discharge of its oversight of Nalcor with respect to the Muskrat Falls Project?

**MR. BOWN:** I can't say whether there were deficiencies; I don't know if I'd use that word. But I would say that there were probably some better practices or some improvements on how it was carried out.

**MR. LEARMONTH:** Okay. So you think that there was room for improvement in the government practices?

**MR. BOWN:** I believe in constant improvement; there's always room for improvement in any process.

**MR. LEARMONTH:** Okay.

And would the – do you agree that government was not justified, in retrospect, in just simply accepting everything that Nalcor told you?

**MR. BOWN:** I don't know if I can answer that.

**MR. LEARMONTH:** Why not?

**MR. BOWN:** Government, as a whole, had a great deal of faith and trust in Nalcor.

**MR. LEARMONTH:** Yeah, but I'm suggesting to you that subsequent events have shown that that trust was misplaced. That the government shouldn't have placed that trust on Nalcor, do you agree with that?

**MR. BOWN:** I would argue that there could have been some improvements in the processes on how that was handled.

**MR. LEARMONTH:** Okay, and what improvements could there have been – should there have been?

**MR. BOWN:** I can't highlight anything specific at the moment.

**MR. LEARMONTH:** You're not gonna give us anything more than that, are you?

**MR. BOWN:** Given my current position, I feel –

**MR. LEARMONTH:** Okay.

**MR. BOWN:** – uncomfortable answering that question.

**MR. LEARMONTH:** Okay, but that's the reason that you're not asking [sp answering] it –

**MR. BOWN:** Absolutely.

**MR. LEARMONTH:** – because you're – of your –

**MR. BOWN:** Yes –

**MR. LEARMONTH:** Yeah, okay. If you were no longer working for government, you would perhaps be able to – be a little more expansive, is that fair to say?

**MR. BOWN:** Perhaps.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Now, before – so we’ve dealt with the Grant Thornton report, but were you aware that on August 30, 2012, that Nalcor received an independent project review for Decision Gate 3?

**MR. BOWN:** No.

**MR. LEARMONTH:** You weren’t aware of that?

**MR. BOWN:** No.

**MR. LEARMONTH:** Oh, okay. If we could bring up the final report, which is not in your binder, but it is Exhibit 00083. Yeah, so that’s the first page. Do you see the date on that, August 31, 2012?

**MR. BOWN:** Yes, I do.

**MR. LEARMONTH:** Just before sanction. And then you turn to page 41, please? The bottom paragraph, “The IPR Team concurs with the expectations set by the LCP Project Execution and Risk Management Plans that adequate provisions for Management Reserve and Schedule Reserve be included in the Project Sanction costs and schedules.”

**MR. BOWN:** That’s clear.

**MR. LEARMONTH:** Yeah, when did you first see this document?

**MR. BOWN:** During my – I don’t know if it’s just his moment or during our interview.

**MR. LEARMONTH:** Yeah, but – so this –

**MR. BOWN:** I had seen it previously.

**MR. LEARMONTH:** This is the recommendation on August 31, 2012 –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – and it wasn’t carried out by Nalcor. Do you – does that give you any concern?

**MR. BOWN:** Yes, it does.

**MR. LEARMONTH:** Yeah. Why?

**MR. BOWN:** Well, it indicates that the project sanction costs that we – if indeed strategic reserve was not included as per this recommendation, then the project sanction cost and the recommendation that we brought to Cabinet was based on a cost that wasn’t accurate.

**MR. LEARMONTH:** And that’s worrying isn’t it?

**MR. BOWN:** That’s troubling for a public servant, yes.

**MR. LEARMONTH:** Yeah. Because you have – I mean – isn’t it a fundamental, highly-principled point, that civil servants are obliged to advise government – advise the minister – your minister – of all the information when they’re making – available, when they’re making a public announcement?

**MR. BOWN:** To the best of our ability –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – make them aware of pros and cons; everything they should be aware of.

**MR. LEARMONTH:** Yeah. And isn’t it true that politicians and – based on your lengthy experience in senior positions, politicians are loath to make a comment on a project cost to the public unless they believe, at the time they’re making the comment or statement, that’s it’s 100 per cent true.

**MR. BOWN:** Politicians are loath on making any statements that are not correct on any matter.

**MR. LEARMONTH:** Yes. Okay.

Okay, now, I want to turn to some of these documents. Okay, we’re in volume 1 now, Mr. Bown, tab 1, please. P-01358.

**MR. BOWN:** Tab 1?

**MR. LEARMONTH:** Yes, please.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** This is an email, April 24, 2007, from Charles Bown to Chris Kieley. Now, at this point, you're assistant deputy minister of Energy?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. And Chris Kieley is –?

**MR. BOWN:** Deputy minister.

**MR. LEARMONTH:** He's deputy minister.

Okay, now there's a reference here to the Lower Churchill Coordinating Committee; a meeting scheduled for Friday April 27. Were you a member of that committee?

**MR. BOWN:** At that time I was not, but I attended on Chris's behalf. Subsequently, I did become a member.

**MR. LEARMONTH:** Okay. What was the purpose or what were the objectives of this committee? Why was it constituted?

**MR. BOWN:** I believe that Mr. Thompson was the one who spoke to this and was the originator of this committee and it was to discuss issues in relation to the Lower Churchill. Again, back in 2007 the Lower Churchill was Gull Island and Muskrat Falls, and all the matters related to moving that project forward.

**MR. LEARMONTH:** All right.

Next tab 5, please. This is the Energy Plan. I know you've given some – you gave some evidence on this yesterday so I won't repeat that, of course. But I'd just like to know what was your assessment of the – was the energy policy – energy – Focusing our Energy a statement of government policy? Is that what it was?

**MR. BOWN:** We always –

**MR. LEARMONTH:** I mean, we know it wasn't legislation –

**MR. BOWN:** Right.

**MR. LEARMONTH:** – or anything like that. But how did you interpret that in terms of whether it was an obligation that government felt it had to discharge?

**MR. BOWN:** This was the policy intent of government and we viewed it as a work plan.

**MR. LEARMONTH:** A work plan.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. Meaning – what, exactly, does that mean in practical terms?

**MR. BOWN:** These are the objectives of government. Each one of the items that are in there, and we covered a few yesterday, they would be individually assessed and approved. So things like ECEP or vehicle policy or whichever – oil and gas royalties – they would be developed individually, they would go through their own Cabinet process and they'd be funded or approved as was necessary. No different than the Lower Churchill was one of those items; it was on its own track, it would have to go through its own approval process, et cetera.

**MR. LEARMONTH:** All right.

Tab 7, please, which is exhibit 01363. This is an exchange between you and Mark Bradbury at Newfoundland and Labrador Hydro.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So this is a – in the bottom email dated June 4, 2008. Mr. Bradbury says: "I understand these amendments" were "passed in the House". So that was the amendments to constitute the Energy Corporation of Newfoundland and Labrador.

**MR. BOWN:** Right.

**MR. LEARMONTH:** Okay and you say: "Thank-you Mark. Our success is collective and is a result of a formidable teamwork between

DNR and ECNL.” ECNL is the Energy Corporation –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – subsequently called Nalcor. “Also the personal relationships that have been formed over the past 2 years will ensure that the plan for ECNL will continue to unfold and success will be assured.”

So is this an early indication that Nalcor and government were working as an integrated team?

**MR. BOWN:** As we created the Energy Corporation, we were working as an integrated team.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** As we went through the legislation and all the planning and subsequent – as I note, the capital structure was the next set of policy that we did. Again, Nalcor was the technical, financial, we – government did the policy work.

**MR. LEARMONTH:** Yeah.

But Nalcor was treated as if it was just another department of government, is that correct, in all practical sense?

**MR. BOWN:** In all practical sense.

**MR. LEARMONTH:** Yeah.

So the – it’s not an outside group, it’s part of us, isn’t it?

**MR. BOWN:** Yeah, yeah.

**MR. LEARMONTH:** Right.

Page 12 – paragraph – excuse me, tab 12, Exhibit P-01368. Now, this is an email at the bottom from Kimberley Mullins who is – who is Kimberley Mullins?

**MR. BOWN:** She was minister – Ms. Dunderdale’s executive assistant.

**MR. LEARMONTH:** Ms. Dunderdale’s executive assistant. It’s to you and Robert Thompson, sanction date: “Is there an update to share with the Minister?”

And then you say, I think: “Kimberly

“The official sanction date remains as 2009.”

What is that all about?

**MR. BOWN:** I don’t recall the context for this email, this message. I’ve looked at this a number of times in the exhibit and I can’t recall the context for that.

**MR. LEARMONTH:** Is it possible it’s a typographical error? I mean I –

**MR. BOWN:** Quite possibly.

**MR. LEARMONTH:** Pardon?

**MR. BOWN:** Possibly because it doesn’t make sense.

**MR. LEARMONTH:** No, that’s what I thought.

**MR. BOWN:** Because it was in 2009.

**MR. LEARMONTH:** No.

**MR. BOWN:** And there never was a sanction date for 2009.

**MR. LEARMONTH:** There was never any talk of a sanction date in 2009.

**MR. BOWN:** Right.

**MR. LEARMONTH:** So this –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** Is this likely a typographical?

**MR. BOWN:** Yeah, I don’t understand –

**MR. LEARMONTH:** Okay.

**MR. BOWN:** Again, I’ve looked through that and I don’t have any context for it.

**MR. LEARMONTH:** Okay. And at tab 13, this is April 23, so this is just before the –

**THE COMMISSIONER:** 00206.

**MR. LEARMONTH:** Yeah, sorry about that, 00206. This is before the decision of the Régie in Quebec was received –

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** – April 23. Do you know – if we turn, say, to page 5, there's handwritten notes. Correct?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Whose handwriting is that, to the best of your knowledge?

**MR. BOWN:** I have no idea. It's not familiar to me. And I've looked at this a number of times, both when I received it and then during the hearings as exhibits come up. Again, I've looked at it and it's not familiar to me.

**MR. LEARMONTH:** Would it be a clerk, Mr. Norris? We've had some suggestion that was his handwriting.

**MR. BOWN:** I'm not –

**MR. LEARMONTH:** Would you be able to identify it as such?

**MR. BOWN:** I'm not familiar with Mr. Norris's handwriting.

**MR. LEARMONTH:** Okay, very well. Well, that's the end of that question.

Now, if we look at page 17 of this report, General Assumptions for all cases: P75 capital costs estimates. And then the handwritten note, whoever wrote it, was: More stress placed on the on the project cost – very conservative approach.

Now, so this is a reference to P75 and I think you said you didn't have any recollection of this P-factor business.

**MR. BOWN:** And –

**MR. LEARMONTH:** But it appeared here as early as April 2010.

**MR. BOWN:** And I don't recall if I was at this meeting.

**MR. LEARMONTH:** Oh, is that right?

**MR. BOWN:** No.

**MR. LEARMONTH:** Because at that point you didn't know what this P-factor –

**MR. BOWN:** No.

**MR. LEARMONTH:** – was about. Is that right?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Okay.

And then page 19 of that exhibit says – I may have the wrong page on that, just a sec. Page 19, yes. P-19 – excuse me, page 19 of Exhibit 00206.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** The heading is: "Shovels in the Ground – Spring 2011." At that time, that's April 2010, was that the expectation, that there'd be shovels in the ground for the Lower Churchill Project in the spring of 2011? Do you know anything about that?

**MR. BOWN:** Not in particular. I recall conversations post-2010, 2011 about early site works and the importance of pushing your road into Muskrat Falls, but I don't recall anything for early site works in 2011.

**MR. LEARMONTH:** All right, tab 14, exhibit P-01369.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yes, this is from you to Sharon Griffiths. Who's Sharon Griffiths?

**MR. BOWN:** Sharon was my executive assistant.

**MR. LEARMONTH:** Okay, it says: Presentation Finance Group, 30 April 2010. What is that a reference to?

**MR. BOWN:** This is a presentation that I gave to somebody called the Finance Group that I don't recall who that was.

**MR. LEARMONTH:** Was it a group in government?

**MR. BOWN:** I have no recollection. And, again, I've thumbed through this and trying to find a recollection of who this was and it does not come to mind.

**MR. LEARMONTH:** But who prepared this document?

**MR. BOWN:** My staff and myself.

**MR. LEARMONTH:** And you?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And what was your purpose in preparing it?

**MR. BOWN:** For whatever – whoever this group was to give perspective of the relationship between Nalcor and the government – or government and Nalcor.

**MR. LEARMONTH:** Yeah.

So would you have been directed by someone to prepare this on April 30, 2010?

**MR. BOWN:** I don't recall,

**MR. LEARMONTH:** You don't recall?

**MR. BOWN:** No. It's a long time ago.

**MR. LEARMONTH:** Okay, so there's a lot of questions – page 3: What is Nalcor, what is a Shareholder, et cetera.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** It's self-explanatory but I'll take you to page 5 of this exhibit then, where it says: "Crown corporations are instruments of government for which government is ultimately

accountable, but they have operational autonomy for the specific purpose of keeping their day-to-day activities at arm's length from" the government.

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** Was that a correct statement of how you felt at the time?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Is it a correct statement of how you feel today?

**MR. BOWN:** I think between that statement then and today, I think there would be – could be a different approach.

**MR. LEARMONTH:** Well –

**MR. BOWN:** Again, I'm uncomfortable talking about what the current government would want to do.

**MR. LEARMONTH:** Okay, I'm not going to press you on that, I respect –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – you're right to –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – not answer that.

**MR. BOWN:** And, again, the positions that I currently hold.

**MR. LEARMONTH:** No, that's fair enough.

But, you know, this statement seems to be, I suggest, self-evident that the government is responsible for its Crown corporations –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – in a general sense.

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** And that would impose a duty to properly service – supervise the Crown corporation, isn't that correct?

**MR. BOWN:** Correct. And just for a bit of context, the energy corporation came out of Newfoundland and Labrador Hydro. In Newfoundland and Labrador Hydro, there was a particular way of governance, the way the governments always managed the – its Crown corporation for energy, which was through the board of directors and through the legislation and then with a direct connection to the minister.

**MR. LEARMONTH:** Yeah.

But there is a – implicit in this statement there is a supervisory role that's implied for government over their Crown corporations, isn't that true?

**MR. BOWN:** Supervisory?

**MR. LEARMONTH:** Yes.

**MR. BOWN:** No.

**MR. LEARMONTH:** They have to supervise their activities. Not the day-to-day activities but you have (inaudible).

**MR. BOWN:** Right, I take supervisory to be day to day.

**MR. LEARMONTH:** No, no, not day to day, but –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – generally.

**MR. BOWN:** Generally.

**MR. LEARMONTH:** So if you're an integrated team, doesn't that dilute the supervisory role that government has? I mean, how can you supervise a teammate?

**MR. BOWN:** On the flipside of that, with the – with them being so close and the way that it unfolded over the years, is that there was daily contact at a – or daily, weekly, monthly contact with – between other ministers or premier and the executive. So there was constant, you would argue, oversight over their activities.

**MR. LEARMONTH:** Well, it'll be up to the Commissioner to decide the level –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – or whether that was appropriate.

Then we go to page 7.

I suggest this is important: “The ultimate shareholders of Nalcor are the taxpayers of the Province.

“The Legislature is the elected representative of the people. The Department of Natural Resources is the Shareholder's representative and is the link between the shareholder and the corporation.”

I mean, isn't that – like, the public, I suggest to you, is entitled to rely on government to protect them.

Do you agree?

**MR. BOWN:** I agree.

**MR. LEARMONTH:** And do you think that the government protected Nalcor with respect to the Muskrat Falls – protected the taxpayers with respect to the Muskrat Falls Project?

**MR. BOWN:** At the point in time we were going through this exercise – government was going through this exercise – there was – aside from the obvious points that you've made of vigilance in requesting reports, there was – there were a lot of meetings and conversations about the project and the activities and the schedule, and, at the time, there was a belief that there was fulsome oversight of the activities.

**MR. LEARMONTH:** Well, there was intended to be.

**MR. BOWN:** Intended. Yeah.

**MR. LEARMONTH:** I'm not suggesting that there was a conscious decision made to say, look, we don't care what happens. I'm not suggesting that at all. But –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – I'm suggesting that the level of trust that you placed in Nalcor was



inordinately high and it deprived – that level of trust deprived government of exercising an appropriate supervisory role over Nalcor. Do you agree with that?

**MR. BOWN:** I agree with the former, but I don't know if I can absolutely agree with the latter. I haven't assessed that cause and effect.

**MR. LEARMONTH:** All right. But you agree with the first part of what I said.

**MR. BOWN:** Absolutely.

**MR. LEARMONTH:** Which is what? What do you –

**MR. BOWN:** That there was a very close relationship between government and Nalcor.

**MR. LEARMONTH:** Now, page 9 of this document.

“The Shareholder's role is that of owner and investor.

“General responsibilities include: Establish the corporation's purpose and communicating that purpose to the corporation; Appoint the Board of Directors ...; Approve the strategic direction of the corporation; Approve financing; Approve the creation of subsidiaries; Approve fundamental changes to the corporation.”

So “Approve the strategic direction of the” – how do you interpret that comment?

**MR. BOWN:** Each year the company is required to file a business plan – a transparency and accountability plan. And each year, it files its annual reports, and it provides its directions to government that it's going to be taking in the coming year.

**MR. LEARMONTH:** All right, and page 11 at the bottom: “The Government is accountable to the people of the Province and is responsible for ensuring that public finances are properly managed.”

**MR. BOWN:** Yes.

**MR. LEARMONTH:** I take it you agree with that?

**MR. BOWN:** I agree.

**MR. LEARMONTH:** Then page 12: “The Shareholder is ultimately accountable for the actions of Nalcor.”

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah.

So that means that, you apply that, government is ultimately responsible for the actions of Nalcor with respect to Muskrat Falls – the Muskrat Falls Project.

**MR. BOWN:** The government created the corporation and approved the sanction.

**MR. LEARMONTH:** Yeah, but that's not my question. I'm asking whether you agree that the government is ultimately accountable for the actions of Nalcor with respect to the Muskrat Falls Project.

**MR. BOWN:** I don't know if I can answer that, and the reason being is I don't know what all the actions of Nalcor were respect to the project –

**MR. LEARMONTH:** Yeah, but I think it's a pretty simple question.

You've written this: “The Shareholder is ultimately accountable for the actions of Nalcor.” And I'm saying – I'm suggesting to you that applies to the Muskrat Falls Project, that statement applies to the Muskrat Falls Project.

Do you agree?

**MR. BOWN:** I'm not sure.

**MR. LEARMONTH:** Okay, well, what gives you uncertainty in formulating your answer? It's a pretty simple question.

**MR. BOWN:** Well, I think the purpose of this Inquiry is to understand what actually happened –

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** – with the Muskrat Falls Project –

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** – understanding whether there was –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – things that were done improperly, and if things were done improperly, is government still responsible for those actions?

**MR. LEARMONTH:** Mm-hmm.

But you either wrote this –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – phrase, or if someone else wrote it, you approved it.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And I’m asking you, and I believe it’s very simple question, and I don’t understand your difficulty in giving us a straight answer.

The question is – just read – just look at that thing.

**MR. BOWN:** I agree with the statement that’s there on the page, yes.

**MR. LEARMONTH:** Yeah, but do you agree that it applies to the actions of Nalcor with respect to the Muskrat Falls Project?

**MR. BOWN:** Using math, yes.

**MR. LEARMONTH:** What do you mean? I’m not talking about using math, I mean –

**MR. BOWN:** Well, if government is responsible for the actions of Nalcor, and Nalcor undertakes actions, then government intuitively, mathematically, is responsible for those actions, yes. I –

**MR. LEARMONTH:** (Inaudible) –

**MR. BOWN:** The answer to your question is yes.

**MR. LEARMONTH:** Yes, okay, that’s fair enough. Okay.

And the next paragraph: “The Shareholder must ensure that the taxpayers’ money is not being wasted and is being spent to benefit the taxpayers.” Do you –?

**MR. BOWN:** I agree.

**MR. LEARMONTH:** You agree with that. And do you think that the government ensured that the taxpayers’ money was not wasted, to some extent, on the Muskrat Falls Project?

**MR. BOWN:** When government made the decision to approve the sanction of the project, it believed that it was investing the taxpayers’ dollars appropriately.

**MR. LEARMONTH:** Yeah, well do you acknowledge that some – at least some taxpayers’ money was wasted?

**MR. BOWN:** I can’t make that determination.

**MR. LEARMONTH:** Why not?

**MR. BOWN:** I just can’t. I haven’t seen a full analysis of how those taxpayers’ dollars have been –

**MR. LEARMONTH:** Right.

**MR. BOWN:** – or will have been, in the future, wasted.

**MR. LEARMONTH:** Okay.

“Nalcor’s decision to” – next paragraph:  
“Nalcor’s decision to fund particular projects

therefore must be consistent with the Shareholder's strategic plan."

Now, was Nalcor's decision to fund the Muskrat Falls Project consistent with government's strategic plan?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah, okay.

Tab 16. This is an email May 12, 2010, from you to Robert Thompson, Leona Barrington at Nalcor and Ed Martin, Gilbert Bennett, Brian Crawley, Elizabeth Matthews and Tracy Barron.

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** Well, this was after the –

**THE COMMISSIONER:** P-01371.

**MR. LEARMONTH:** Yeah, 01371 – this is after the Régie decision, right?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Now, was it at this point that the negotiations with Emera, which had commenced before that – but was it at this point that the negotiations with Emera progressed in earnest?

**MR. BOWN:** I don't recall.

This is May of 2010, and I didn't become actively involved until – I believe it was September, October.

**MR. LEARMONTH:** Okay, so –

**MR. BOWN:** I don't know exactly when those discussions started.

**MR. LEARMONTH:** Okay. Were you involved in the initiation of the discussions with Emera?

**MR. BOWN:** No.

**MR. LEARMONTH:** Who was?

**MR. BOWN:** Nalcor.

**MR. LEARMONTH:** Nalcor. Okay.

So they wouldn't have had to have government approval for that?

**MR. BOWN:** I would expect the – so Nalcor would've received government approval before initiating the conversation with Emera.

**MR. LEARMONTH:** But not from you?

**MR. BOWN:** No, I wouldn't have that authority.

**MR. LEARMONTH:** Tab 17, which is Exhibit P-01069.

**MR. BOWN:** Mm-hmm

**MR. LEARMONTH:** This is from Paul to you.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Paul Parsons.

**MR. BOWN:** Paul Parsons.

**MR. LEARMONTH:** So what was the purpose of the preparation of this information?

**MR. BOWN:** From Mr. Thompson's testimony, this is an analysis that he requested as a verification analysis of the work that Nalcor had provided.

**MR. LEARMONTH:** Okay. Did you ever –

**MR. BOWN:** This type of work is similar to what the department and this division had done many, many times over the years, in relation to oil and gas projects, mining projects, et cetera.

**MR. LEARMONTH:** Yeah. And the – on page 2 it said – title, "Future Island Electricity Supply October 2010."

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So who prepared this document and what information was it based on?

**MR. BOWN:** Page 2?

**MR. LEARMONTH:** It's ahead – yeah.

**MR. BOWN:** Oh, sorry. Sorry. I lost your place.

So this would have been prepared by Paul Parsons, Gerard Collins, and it would have been overseen by Wayne Andrews as their director. And it – the initial request went to Vanessa Newhook who was the assistant deputy minister of Royalties and Benefits. She’s a chartered accountant.

**MR. LEARMONTH:** The – if you turn to page 6 of this document, 01069, second paragraph, it says the “NL offshore gas has not been considered – viewed as not yet a realistic option for current utility system planning.

“LNG with a regasification facility at Holyrood is being evaluated – no results available.”

Okay. So you’re saying here that NL or whoever – this document says, “NL offshore gas has not been considered.” Is that a correct statement?

**MR. BOWN:** I guess that was their view based on the information they were able to obtain from Nalcor.

**MR. LEARMONTH:** Okay. So it hadn’t even been considered. But this is October, 2010. And I think it was screened out at – before Decision Gate 2. That’s my understanding, natural gas.

**MR. BOWN:** Yeah, that’s the statement that they made here.

**MR. LEARMONTH:** Yeah. But do you agree that natural – Nalcor had screened out natural gas as an option prior to Decision Gate 2?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. So this suggests to me that offshore gas had been screened out but there had been no real study done on it. Do you read that the same way? It hasn’t been considered?

**MR. BOWN:** Yeah. I don’t understand the context in which they would have made that. But you can read it that way, yes. I guess they went looking for information on the analysis and didn’t receive any.

**MR. LEARMONTH:** Okay. And the next, “LNG with a regasification facility at Holyrood is being evaluated – no results available. At that point, October 2010, who was carrying out that evaluation?

**MR. BOWN:** That would have been Nalcor.

**MR. LEARMONTH:** Okay, and did you receive any documentation with respect to the evaluations that – the evaluation that is suggested in that statement?

**MR. BOWN:** I don’t recall.

**MR. LEARMONTH:** You don’t recall?

**MR. BOWN:** No.

**THE COMMISSIONER:** I just noticed it’s a quarter after 11. Is this a good spot to break Mr. Learmonth?

**MR. LEARMONTH:** It’s fine.

**THE COMMISSIONER:** Okay, so let’s take our morning break here for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Okay, Mr. Learmonth.

**MR. LEARMONTH:** Thank you.

The exhibit we were –

**THE COMMISSIONER:** P-01069.

**MR. LEARMONTH:** Yes.

Did government receive reports from PIRA or PYRA?

**MR. BOWN:** On oil price forecasts, yes.

**MR. LEARMONTH:** Just on forecasts?

**MR. BOWN:** We had a regular subscription service with PIRA. We received weekly and monthly reports.

**MR. LEARMONTH:** But in this document on page 21, right at the bottom, it says: “PIRA indicates ... the LNG supply option is expanding globally due to a combination of widely available gas, more flexible commercial ... and the loss of the U.S. as a significant LNG consumer.”

So I take it you would have had – government would have received a report from –

**MR. BOWN:** So –

**MR. LEARMONTH:** – PIRA?

**MR. BOWN:** Sorry for cutting you off. I apologize. What we received in our weekly and monthly reports were not only oil prices forecasts, but were market analysis as well. And that related to oil, gas, electricity and several other commodities. So this would have come out of one of their weekly or monthly market reports.

**MR. LEARMONTH:** Yeah.

But wouldn't that cause government to explore the possibility of LNG as an alternative to the fuel – the oil being burned at Holyrood?

**MR. BOWN:** Can you go back to your original point that you highlighted there? Sorry, I lost it.

**MR. LEARMONTH:** But wouldn't that cause government to take a hard look at LNG as an alternative to the source of fuel for Holyrood?

**MR. BOWN:** I believe the way we looked at Holyrood at that time was that it was an aged asset at that time and the refurbishment would be high cost and risky. And, again, that was part of the Interconnected – sorry, I'm getting feedback here from my microphone.

So that was part of the Interconnected Island and that was part of the cost as well. So the thought of a – at that particular time, using LNG at Holyrood, I don't think that was an option that was considered. LNG would have to be a new facility.

**MR. LEARMONTH:** Well, it would be an option.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah, but I'm saying was that pursued as an option?

**MR. BOWN:** No.

**MR. LEARMONTH:** Now – and turn to the next page, 22, second-to-last paragraph: “If the LNG delivered price is tied to Henry Hub gas price ... there may be a price incentive to” switch to fuel “although a full cost and rate impact analysis would be required to sufficiently determine whether such a fuel switch opportunity could exist and, if so, under what circumstances.”

Was any such impact analysis ever undertaken by government, to your knowledge?

**MR. BOWN:** I don't recall.

**MR. LEARMONTH:** Okay. Well, you were in the Department of Natural Resources, you should have a reason. If it wasn't pursued and this was a document that you prepared, why wouldn't you – why would you make that statement and then not pursue it?

**MR. BOWN:** I don't recall that, Mr. Learmonth. This document was prepared for a deputy minister. It was passed along to him and I don't recall what the actions that were taken following this.

**MR. LEARMONTH:** Well, do you know if there were any actions? And you're – at this point you're the associate deputy minister, you should be – know what's going on in your department.

**MR. BOWN:** Yeah and I don't recall specifically if there was any further done on gas.

**MR. LEARMONTH:** Well, you don't call specifically. Do you recall generally?

**MR. BOWN:** No.

**MR. LEARMONTH:** No, so you have no answer. You have no information to provide the Commission on that?

**MR. BOWN:** Sorry, I can't help you there.

**MR. LEARMONTH:** You have no information?

**MR. BOWN:** None.

**MR. LEARMONTH:** Okay.

Next, tab 18; this is P-01372, Lower Churchill Project – Muskrat Falls, Technical Briefing. There's no date on this that I can see. Are you familiar with this document?

**MR. BOWN:** I've reviewed it a number of times and – sorry, if – I'm just going to flip to the end here. I think this would have been the briefing that was provided to seek approval that to move forward with Muskrat Falls. Again, that's my assessment of reading the document.

**MR. LEARMONTH:** What –

**MR. BOWN:** I don't recall it specifically but just my assessment of it.

**MR. LEARMONTH:** Okay, you say I don't recall specifically. Is that different from saying you don't recall it?

**MR. BOWN:** I don't recall it.

**MR. LEARMONTH:** You don't recall it. Okay.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** And on this page 9 of this document, 01372 it says: Options Considered, Imports via Hydro-Québec.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** Now, what consideration was given by government to importing – the possibility of importing electricity from – supplied by Hydro-Québec?

**MR. BOWN:** There were no actions undertaken by government. The recommendation came from Nalcor.

**MR. LEARMONTH:** But why wouldn't government ensure that an initiative was taken, because as far as we know there were no discussions of a material nature.

**MR. BOWN:** The purchase, sale of electricity would be left with the utility. And the identification of options with – importing from Quebec or elsewhere would have been left with the utilities. So this presentation demonstrates that at least from Hydro's – or Newfoundland and Labrador – from Nalcor's perspective, that there was no opportunity.

**MR. LEARMONTH:** Yeah.

But you've said that – or referred to that, perhaps indirectly, that it was up to the utility, but the government owns the utility. The government can give direction to the utility. The government, I suggest to you, cannot simply sit back and say: Well, that's not our business; we have the utility to look after that. I mean, government can get involved if it wants, can't it?

**MR. BOWN:** In this case the government took it – the – I'm speaking on behalf of this presentation deck and the ultimate decision – the government took its advice from Nalcor.

**MR. LEARMONTH:** But did government, to your knowledge, independent or in conjunction with Nalcor, ever pursue the option of buying – the possible option of buying electricity from Hydro-Québec?

**MR. BOWN:** The government, I don't – I'm not aware of any engagement by the government to do that.

**MR. LEARMONTH:** Okay. Are you aware of any engagement by Nalcor to do that?

**MR. BOWN:** I believe – again, this is a light memory, but I recall conversations where Mr. Martin would have spoken of conversations he would have had with Hydro-Québec, and that there would be no opportunity, based on those conversations, to have any kind of arrangement with Hydro-Québec for the purchase of power.

**MR. LEARMONTH:** Okay, when were these conversations you're referring to?

**MR. BOWN:** Those were 2010 or prior to.

**MR. LEARMONTH:** Do you have notes of them?

**MR. BOWN:** No, I do not. Like I said, it's a very light memory.

**MR. LEARMONTH:** But do you remember discussing that directly with Mr. Martin?

**MR. BOWN:** No (inaudible) part of meetings or presentations where that was discussed.

**MR. LEARMONTH:** In what month in 2010?

**MR. BOWN:** I don't recall.

**MR. LEARMONTH:** So you're going on a memory that – eight years.

**MR. BOWN:** Yes and not being specific.

**MR. LEARMONTH:** Well, I think that's obvious.

**MR. BOWN:** Yes

**MR. LEARMONTH:** But –

**MR. BOWN:** It's my attempt to help.

**MR. LEARMONTH:** Yeah. But you – so you don't really remember where this meeting took place or who was present or anything like that?

**MR. BOWN:** No.

**MR. LEARMONTH:** But you think Emera – you think that Nalcor had some discussions with Hydro-Québec on the possibility of obtaining electricity from –

**MR. BOWN:** It would have been either in the premier's office or in the minister's office, part of a briefing.

**MR. LEARMONTH:** You think.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Not sure.

**MR. BOWN:** Not absolute.

**MR. LEARMONTH:** And what did you call it – a light memory?

**MR. BOWN:** Yes. Vague.

**MR. LEARMONTH:** Vague.

**MR. BOWN:** Probably is a better term.

**MR. LEARMONTH:** Tab 19, there's a – an email at the bottom. It's Exhibit 01373. From you to Robert Thompson, Monday, November 8.

And you're saying, "Cost risk is an issue again; Emera does not want to bite. Ed is working on a counter proposal involving the graduated steps we saw in" – the – "previous version of ... Term Sheet but" – have – "a higher percentage allocated to Emera in the early steps."

What is this about?

**MR. BOWN:** This is in reference to the cost risk sharing for the Maritime Link.

**MR. LEARMONTH:** Okay. But I thought you said earlier that you didn't have much in the way of negotiations for the Maritime Link?

**MR. BOWN:** I didn't, but I was part of – I sat in on briefings that occurred. And I was passing along to Robert, the deputy minister, an issue that I became aware of.

**MR. LEARMONTH:** Okay. Who was informing you?

**MR. BOWN:** This would have come from the negotiating team that I highlighted for you yesterday – Mr. Martin and others.

**MR. LEARMONTH:** So this is just Mr. Martin coming out of the room and giving you information?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Yeah. And I know I touched on this yesterday, but I'm puzzled by

why you wouldn't insist on being in the room rather than just sitting out in the hallway.

**MR. BOWN:** The instruction that I was given was to go over and support as necessary.

**MR. LEARMONTH:** Who gave you those instructions?

**MR. BOWN:** Those would have come from the deputy, who would be Mr. Thompson.

**MR. LEARMONTH:** Mr. Thompson.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So did Mr. Thompson specifically tell you not to request attendance at the negotiating meetings?

**MR. BOWN:** No. These meetings were well underway and I guess they had a process, where they had the appropriate people at the table – that they wanted to do that and the objective of bringing me there was not to add me to the table but to provide support when necessary, likewise with Mr. Stanley.

**MR. LEARMONTH:** Why didn't you insist on going into the room – say: Look, I'm representing the government; we're ultimately responsible for Nalcor; we're ultimately responsible for commitments made by Nalcor. We have to approve this deal in the final analysis anyway. I want to be there. I want to hear it right from the horse's mouth.

**MR. BOWN:** I wasn't in a position to do that.

**MR. LEARMONTH:** But do you think that would have been wise?

**MR. BOWN:** I wasn't in the position to do that. If I was going to be added to the table I would have been instructed to do so.

**MR. LEARMONTH:** Okay, so you were just following orders or instructions, is that right?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Okay.

Did you ever express your own point of view on these matters or did you just go along with whatever you were told?

**MR. BOWN:** I expressed my point of view where necessary.

**MR. LEARMONTH:** Tab 20, this is a email, November 11, 2010, from you to Leona Barrington at Nalcor and Paul Harrington.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So why are you communicating with –

**THE COMMISSIONER:** 01374.

**MR. LEARMONTH:** – 01374 – why are you communicating with them?

**MR. BOWN:** I was provided with a document to review.

**MR. LEARMONTH:** You were provided with a document. So why would you send it to – was this a document that came from Nalcor?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Now on page 20 – of this document – 22, sorry – there's a statement: "A contingent equity commitment of \$300-600M from the Province is also considered prudent and necessary. This would be in addition to the \$xx million in base equity from NL as noted in Table 1."

Now there's no numbers in table 1, but do you recall seeing this reference to an equity commitment of 300 to 600 million?

**MR. BOWN:** I don't recall specifically, no.

**MR. LEARMONTH:** Well, do you recall –

**MR. BOWN:** I don't recall.

**MR. LEARMONTH:** So you don't recall it – period?

**MR. BOWN:** Yes.



**MR. LEARMONTH:** Okay.

Well looking at it now, do you have anything to say about how – about your interpretation of it?

**MR. BOWN:** That in their discussions with Finance there was an understanding that there may be some contingent equity required and it was being identified.

**MR. LEARMONTH:** But –

**MR. BOWN:** But it wasn't identified for what purpose and, therefore, wasn't part of the base equity.

**MR. LEARMONTH:** But you're the lead department, I mean, you're saying this was something that was done at the Department of Finance, I mean, you should have been aware of that shouldn't you? If there was a need for –

**MR. BOWN:** Equity was the responsibility of the Department of Finance.

**MR. LEARMONTH:** That wasn't your responsibility?

**MR. BOWN:** No.

**MR. LEARMONTH:** On what basis do you say it wasn't your responsibility –

**MR. BOWN:** Well –

**MR. LEARMONTH:** – if you were the lead department?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Well, why would you say that that responsibility would or ought to have been assigned to Finance?

**MR. BOWN:** For environmental matters it was the responsibility of Environment, for equity matters it was the responsibility of Finance and that was the process that we followed all the way through to sanction and financial close.

**MR. LEARMONTH:** Okay, well who – did you discuss this with anyone in Finance?

**MR. BOWN:** Hmm – I don't recall.

**MR. LEARMONTH:** You don't know?

**MR. BOWN:** No. I don't recall.

**MR. LEARMONTH:** You don't – so you may have done nothing about this?

**MR. BOWN:** I don't recall.

**MR. LEARMONTH:** But what were you doing? I don't understand really what your job was. It seems that you were very passive in all these matters.

**MR. BOWN:** (Inaudible.)

**MR. LEARMONTH:** I mean you get a document referring to 300 to \$600 million and you're basically saying I don't now anything about it. It's not my responsibility.

**MR. BOWN:** Because there's a reference further in the document that Department of Finance considers it reasonable to expect that there be an equity contribution. Satisfied with that comment.

**MR. LEARMONTH:** So you wouldn't have inquired as to why it was necessary in terms of costs and cost estimates or anything like that?

**MR. BOWN:** I didn't inquire at that time.

**MR. LEARMONTH:** Did you ever inquire?

**MR. BOWN:** I don't believe I did.

**MR. LEARMONTH:** Okay. So you never inquired. You just –

**MR. BOWN:** No.

**MR. LEARMONTH:** Just read it. Mmm.

But wasn't Minister Kennedy – I know he – well maybe he wasn't there at the time – but wasn't there a strong focus on the ultimate cost, the cost estimates for this project?

**MR. BOWN:** The (inaudible) table wasn't complete.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** There was insufficient information here. But Minister Kennedy was not the minister at the time.

**MR. LEARMONTH:** No. But who was the minister at the time?

**MR. BOWN:** 2010 – that would have been Minister Skinner.

**MR. LEARMONTH:** Yeah. But wasn't he interested in cost estimates and the need for quality cost estimates?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** In the same way as Mr. Kennedy?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Well then why wouldn't have you, when you saw this document, say look, there's this amount of 300 to 600 million, I wonder what that is all about?

**MR. BOWN:** I recall that – I do recall that this was when I was in Nova Scotia and I had sent this document along to Robert back in the office. And there was a – I think there's an email somewhere in the records to the effect that I passed this along to him. So I was in Nova Scotia; he was in St. John's and I sent this along to him.

**MR. LEARMONTH:** Yeah. On page 23 of that document – this is what you're referring to, I think, when you talked about Department of Finance. "The Provincial Department of Finance considers it reasonable to expect that the equity contribution (including contingent equity) as outlined ... can be appropriately funded, although they indicated that variability in future resource revenues is a critical consideration."

(Inaudible.) You – when you made a reference to the provincial Department of Finance, that's what you're – the reference you're referring to?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Well didn't you follow up on that? As to whether it was funded or whatever?

**MR. BOWN:** No, I did not.

**MR. LEARMONTH:** You did nothing about that? Is that correct?

**MR. BOWN:** Yes. This is a draft document that Nalcor is preparing. I had no idea what the intent was. And that's why I made the comment. You can't make a statement like that until government approves project financing.

**MR. LEARMONTH:** So no action on your part or no concern on your part. Is that correct?

**MR. BOWN:** No action on my part.

**MR. LEARMONTH:** And the commentary in that paragraph was: "We cannot say this until Govt approves project financing."

**MS. O'BRIEN:** (Inaudible) was changed (inaudible) – see that – it's in the (inaudible).

**MR. LEARMONTH:** Yeah. But – see that?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** "... cannot say this until Govt project ...." So did –

**MR. BOWN:** I was concerned that this – I had no idea what the purpose of this document was. Didn't know if it was gonna go public. And I made a previous comment earlier that – earlier in the document that indicated that they were looking for approval on Decision Gate 2 of the Lower Churchill Project, which was not correct either; it was Muskrat Falls.

And not knowing what the purpose of this document was, I said you can't – if this is gonna go public, you can't say that there's going to be an approval of an equity contribution until the government actually approves that.

**MR. LEARMONTH:** Well, but surely you discussed that with either someone in Department of Finance or somewhere else. I mean, this is a –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – contingent equity amount and you're saying that you can't include

that, you can't – you have to take that paragraph out?

**MR. BOWN:** No. I'm not saying that.

**MR. LEARMONTH:** Well, you did take it out, did you?

**MR. BOWN:** No.

**MR. LEARMONTH:** Well, what did you do about it? I –

**MR. BOWN:** I just commented on it –

**MR. LEARMONTH:** Yeah –

**MR. BOWN:** – back to Nalcor.

**MR. LEARMONTH:** Back to Nalcor?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Did you make a note of it in your mind or in writing as to the possible consequences of this \$300 million to \$600 million amount?

**MR. BOWN:** I don't recall.

**MS. O'BRIEN:** (Inaudible) –

**MR. LEARMONTH:** (Inaudible.)

**MS. O'BRIEN:** – and taking out the (inaudible).

**MR. LEARMONTH:** Well, did you make these edits in paragraph 8.1.1?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** That's –

**MR. LEARMONTH:** You made them –

**MR. BOWN:** – just meant to be grammatical; nothing more.

**MR. LEARMONTH:** Well, you took out the word – it says: "The Provincial Department of

Finance considers it reasonable to expect that ...."

**MR. BOWN:** "... an equity contribution ...."

**MR. LEARMONTH:** And the equity – you took out "requirement" and put "contribution"?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Why?

**MR. BOWN:** Just grammar.

**MR. LEARMONTH:** Grammar.

**MR. BOWN:** Nothing more.

**MR. LEARMONTH:** And no discussions with Finance on this?

**MR. BOWN:** I can't say that I did. I can't say that I didn't. I don't recall.

**MR. LEARMONTH:** Don't you keep notes of matters?

**MR. BOWN:** Of all the notes that I had while I was at the Department of Natural Resources, those were retained there when I left.

**MR. LEARMONTH:** They (inaudible) –

**MR. BOWN:** When I left Natural Resources in December 2012, I took nothing with me 'cause I was required to leave everything there, even my email.

**MR. LEARMONTH:** But you weren't a big note taker, were you?

**MR. BOWN:** No. I had books on occasion, but not a big note taker.

**MR. LEARMONTH:** Tab 26. This is a February 3, 2011, email from you to Richard Wardle, who was what?

**MR. BOWN:** Mr. Wardle was the acting deputy minister at that time.

**MR. LEARMONTH:** This is a draft shareholder letter of expectations.

**THE COMMISSIONER:** 01168.

**MR. LEARMONTH:** So you're writing to Mr. Wardle:

"Dick;

"I'd appreciate your review of this document. As noted in the title, it is a letter of expectations from the Shareholder to Nalcor and is a new element in our corporate governance activities. This document is particularly important at this time as Nalcor is engaged in ... planning activities and is also preparing its Annual Report for Transparency and Accountability. We have also prepared a Shareholder Handbook that is in final draft."

And then, "My objective would be to have Robert" – that's Robert Thompson, right –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – "review the letter after you have approved to ensure alignment with previous direction he provided to me. We would then" – be able to – "discuss with the Minister ...." Et cetera.

So what was the – what's origins of this draft letter – shareholders letter of expectation? Why did you prepare it or have it prepared?

**MR. BOWN:** I had it prepared and helped prepare it because we wanted to ensure that there was a clear understanding of responsibilities between ourselves and Nalcor. This was part of an exercise that Robert started when he was in the department.

**MR. LEARMONTH:** So this was done on Robert Thompson's initiative?

**MR. BOWN:** Yes, it was.

**MR. LEARMONTH:** Okay. Well, with the shareholders letter of expectations, six page – well, pages 2 to 6 in Exhibit 01168 – was it ever signed?

**MR. BOWN:** I don't recall what happened to this document. I passed it along for review, and I don't recall what happened to it afterward.

**MR. LEARMONTH:** Well, you prepared it?

**MR. BOWN:** We had it prepared inside the department.

**MR. LEARMONTH:** And you were directed to do so by Robert Thompson?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. Well, you must have some recollection as to what happened to it?

**MR. BOWN:** Honestly, I don't. One thing I did recall after the fact, was that Ms. Pennell was contracted by us and I prepared her employment contract and gave her a terms of reference. And she prepared the draft work and subsequently, she was reassigned to another activity, and this work was passed off to another employee and another executive –

**MR. LEARMONTH:** Who?

**MR. BOWN:** I can't recall, but I believe it was Tracy English. I'm not certain. It could've been Paul Scott. And I lost track of it after that.

**MR. LEARMONTH:** So you have no memory of what happened to it?

**MR. BOWN:** I had lost track of it.

**MR. LEARMONTH:** Well, it must've been vetoed by someone, if it wasn't signed?

**MR. BOWN:** It was a lot of work that went into it, so I don't recall it being vetoed. I think that we just lost track of it.

**MR. LEARMONTH:** Well, I agree that a lot of work would've had to go into it –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – and by people in your department, and you approved it.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And you're telling me that you have no idea what happened to it?

**MR. BOWN:** I have no memory.

**MR. LEARMONTH:** None?

**MR. BOWN:** None. And I've – honestly, I've gone back through my own records trying to find the path of this. And the only thing I could gather was that Ms. Pennell moved off to other work and this was reassigned to other folks.

**MR. LEARMONTH:** Well, if you took the time to do it, I suggest that you would've –

**MR. BOWN:** (Inaudible.)

**MR. LEARMONTH:** – and you were serious about it, I suggest you would be able to tell us what happened to it.

**MR. BOWN:** Yeah, and I can't. And yes, we were serious about it, and I can't recall what happened to it.

**MR. LEARMONTH:** Yeah, your memory seems to be very weak in certain areas and strong in other areas.

**MR. BOWN:** I agree.

**MR. LEARMONTH:** Okay, yeah. Well, if your memory isn't good, why don't you keep notes?

Do you have an answer for that?

**MR. BOWN:** No, I don't.

**MR. LEARMONTH:** Tab 27. This is the environment assessment panel. That's the JRP is it?

**MR. BOWN:** Yes.

**THE COMMISSIONER:** 01380.

**MR. LEARMONTH:** Well, that is – yeah, sorry again – 01380, so this is the Joint Review Panel matter?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And you're – you gave us some indication yesterday of your involvement in it.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And you prepared a paper for presentation?

**MR. BOWN:** I was directed to give a presentation and my staff and I prepared this, and it was approved by the deputy and the minister before I delivered it.

**MR. LEARMONTH:** And you told us that you went – you sent this to the Joint Review Panel, is that right?

**MR. BOWN:** Actually, I appeared before the panel in Happy Valley-Goose Bay.

**MR. LEARMONTH:** Okay.

Now, page 18 of this document, Exhibit P-01380, it says, "Natural gas resources are distant offshore: Economic and environmental barriers to development; Technology barriers for Labrador offshore gas."

What information did you have or data did you have to make that statement?

**MR. BOWN:** Those were statements of general fact: one, that it's distant offshore. This being 2010, 2011 –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – we had had numerous representations over the years, ever since I went to the department in 2006. I'd say starting in probably 2008 we met with quite a number of companies. Developing gas was a focus in the department. And we had met with a number of companies who were interested, and yet we could never get beyond the economic barriers to produce gas; to have somebody bring the gas ashore. And we had met with a number of companies. We were encouraging. And others would come and investigate, but they could not get past that.

The environmental barrier would've been in reference to icebergs and pipelines.

**MR. LEARMONTH:** Okay.

These meetings with oil companies, do you have any record of these meetings?

**MR. BOWN:** If I searched my records, yes.

**MR. LEARMONTH:** You do?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** We haven't seen them. What's your memory tell you about these meetings with oil companies to discuss natural gas as an option?

**MR. BOWN:** We would have been –

**MR. LEARMONTH:** (Inaudible.)

**MR. BOWN:** – we would have been prodding them to develop.

**MR. LEARMONTH:** (Inaudible.)

**MR. BOWN:** And we had select companies who would actually come to visit us –

**MR. LEARMONTH:** Okay. Give me details.

**MR. BOWN:** Sometime in – I don't recall if it was 2011 or 2010. The last company I recall was Union Fenosa out of Spain who came looking for an opportunity to bring pipeline gas in from Husky.

**MR. LEARMONTH:** And were you –

**MR. BOWN:** That would be my last memory.

**MR. LEARMONTH:** That was an initiative of Nalcor was it?

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** Separate from –

**MR. BOWN:** (Inaudible) and what I'm speaking of now are efforts by the department independent of Nalcor and meetings with oil companies independent of Nalcor to discuss natural gas.

So this statement was made based on the work that we had done inside the department to date.

**MR. LEARMONTH:** Where are those records? I haven't seen them.

**MR. BOWN:** They would be in my –

**MR. LEARMONTH:** These meetings with different –

**MR. BOWN:** They would be in my calendar.

**MR. LEARMONTH:** Okay will you show that to us?

**MR. BOWN:** I will absolutely find that for you.

**MR. LEARMONTH:** And you attended these meetings?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And did you retain – or did you retain anyone to evaluate these proposals?

**MR. BOWN:** These would go to the ADM of petroleum development, Wes Foote. Normally, at these meetings there would be presentations provided.

**MR. LEARMONTH:** And do you know that Mr. Foote – met with these representatives?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And did you?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

And you're going to tell us –

**MR. BOWN:** And sometimes the minister would as well.

**MR. LEARMONTH:** And you're going to tell us when, are you?

**MR. BOWN:** I'll find that in my – I – Commissioner, I only recently got access to my email records. Probably a week ago, a week and a half ago, and I noticed that I now have now full access to my calendar and I'll find those.

**MR. LEARMONTH:** Well you have to tell us more about that. You're saying that you didn't have access to your emails until a week ago?

**MR. FITZGERALD:** Commissioner.

**THE COMMISSIONER:** Sorry.

**MR. FITZGERALD:** To provide clarification, Mr. Learmonth. In order for Mr. Bown to get access to his email, even though he's still a government employee, there is a process he had to go through. He was provided, similar to Mr. Thompson, with a separate laptop with emails put on it. It was only a week ago he had – before a week ago he had access to his incoming email. It was only a week ago that we actually had access to his sent emails. There was some technical glitches throughout that process as well but we are acting under a tight timeline here and we're doing the best we can to inform the Commission.

**THE COMMISSIONER:** Thank you.

Mr. Learmonth?

**MR. LEARMONTH:** Well, you know, I don't dispute what Mr. Fitzgerald – but that's troubling to me that, at this stage, we find out that there are email communications that may be relevant to the terms of reference that we haven't seen.

**THE COMMISSIONER:** That is troubling to me, as well, because I had an assurance from government that we would have everything that we needed, well, prior to hearings starting.

So, we need to figure out –

**MR. LEARMONTH:** (Inaudible) –

**THE COMMISSIONER:** – whether we actually have these, and perhaps they're not located in our database –

**UNIDENTIFIED MALE SPEAKER:** No.

**THE COMMISSIONER:** – 'cause we've got quite a bit there, but I think we've had some searches done.

**MR. LEAMON:** Hi, Commissioner, if I can just speak to that.

I believe that the emails that Mr. Fitzgerald was speaking of were from the time period of 2006 to 2007. So, I believe they have been sent to the Commission. I may be – it was only recently, but I believe they have been sent to the Commission – I think maybe last week, or two weeks ago?

**THE COMMISSIONER:** But this is not 2006, 2007; this is 2010 that he's referring to.

**MR. LEAMON:** Well, then there should be no reason that the Commission doesn't have these.

**MR. LEARMONTH:** There's some conflict, I think, between what Mr. Fitzgerald is saying and what Mr. Leamon is saying. I understood Mr. Fitzgerald to be saying that there were outgoing emails that were not produced.

**MR. FITZGERALD:** I obviously don't know what the Attorney General – or, sorry, the government – has produced to this Commission. I represent Mr. Bown, and we've been working with government to try to make sure my client, out of fairness, could have all of his emails. He had his incoming emails and he was reviewing those, and around a week ago we finally got access to the sent items. And my client has been going through the sent items while getting ready to testify in this Inquiry, and it's all been done on a good-faith basis.

If there's an issue here about disclosure of documentation to the Commission, that falls in the hands of the government and the Commission, and not my client.

**MR. LEARMONTH:** I'd like to –

**THE COMMISSIONER:** Just – Mr. Leamon?

**MR. LEARMONTH:** Yeah.

**MR. LEAMON:** Just to clarify.

With Mr. Fitzgerald's point, I was saying that the Commission would have received. I believe – I'm under the same understanding as Mr. Fitzgerald. – Mr. Bown would have only received those emails in – was it last week, or –

**MR. FITZGERALD:** That's about right.

**MR. LEAMON:** Yeah.

**THE COMMISSIONER:** But did we get them?

**MR. BOWN:** It's likely that you –

**THE COMMISSIONER:** Excuse me, just for a second.

**MR. BOWN:** Oh, sorry.

**THE COMMISSIONER:** So, did we get those, Mr. Leamon?

**MR. LEAMON:** I would – (inaudible) my understanding is – and I can confirm, but my understanding is that the Commission would have received these emails.

**THE COMMISSIONER:** I want you to check and let Mr. Learmonth know this afternoon.

**MR. LEAMON:** Will do.

**THE COMMISSIONER:** Thank you.

**MR. LEAMON:** Thank you.

**MR. FITZGERALD:** I will make a point, Commissioner, that there does not appear to be a lot of sent items in the exhibit list for Mr. Bown, so if the Commission has these, the timing is obviously a concern for me with Mr. Bown being questioned on these issues, and – out of fairness, you know?

**MR. LEAMON:** We'll check into these issues right away and get a –

**THE COMMISSIONER:** All right, so you can –

**MR. LEAMON:** – response back to Mr. Learmonth.

**THE COMMISSIONER:** – fill in Mr. Fitzgerald, and I expect you to fill in Mr. Learmonth, as well? And if there's an issue with this, we can discuss it this afternoon?

**MR. LEAMON:** Thank you.

**MR. LEARMONTH:** I'd just like to add one further point – that when Mr. Bown was interviewed on September 8, it became apparent that there were, perhaps, some emails –

**UNIDENTIFIED MALE SPEAKER:** Mm-hmm.

**MR. LEARMONTH:** – communications that were missing. And – which gave me some concern, and as result, I contacted the Department of Justice and said: Mr. Bown is still an employee of the department – of government – we will approve him going in to whatever computers he needs to go in to in the Department of Natural Resources and find whatever documents he feels are relevant that we don't have, on the condition that he would give those documents to the Department of Justice for forwarding to us in the usual course.

So, here it is December, this agreement was – that gave Mr. Bown access to his – all of his records – was made back in September. So it's of concern to me that this – the result of this is that perhaps last week was the time that Mr. Bown found these documents. I don't understand that.

**THE COMMISSIONER:** Again, let's look into it and see what it actually mean to me and let's discuss it this afternoon if we need to.

**MR. LEARMONTH:** But it's a greater concern too, because I know we have a lot of documents, but these emails are missing, we'll say, you know, is this the only example? So that's the basis for my concern, but I just say that for the record.

Anyway, we'll get clarification, hopefully, at noon today. Is that possible?

**THE COMMISSIONER:** Before we start (inaudible) by this afternoon, sometime before we start, so let's not make it 2 o'clock –

**MR. LEAMON:** Yes –

**THE COMMISSIONER:** – Mr. Leamon, let's make it a lot earlier than that.

**MR. LEARMONTH:** Okay.



**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Now, the next document I want to refer to is P-01380, LCP presentation, Lower Churchill Project Environmental Assessment Panel, notes – with notes. It's March 6, 2011.

Can you identify this document?

**MR. BOWN:** What tab is that?

**THE COMMISSIONER:** Tab 27.

**MR. LEARMONTH:** Tab 27.

**MR. BOWN:** Yes, yes.

**MR. LEARMONTH:** What is that?

**MR. BOWN:** This is my presentation to the joint assessment panel on Lower Churchill.

**MR. LEARMONTH:** Okay. That's the one you referred to yesterday, is it?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Tab 31 is an email, it's from Terry Paddon to Robert Constantine and Paul Myrden, I think it originates –

**THE COMMISSIONER:** 00981.

**MR. LEARMONTH:** That's Exhibit 00981.

Are you familiar with this document, a Briefing Note?

**MR. BOWN:** Yes, I am.

**MR. LEARMONTH:** Okay. Tell us about it, please.

**MR. BOWN:** In the months – early months of 2012 – well, actually, I'm going to make sure that I –

**MR. LEARMONTH:** This is from Derrick Sturge, is it?

**MR. BOWN:** Right.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** And I think I was just going to refer you to the incorrect briefing note so ...

**MR. LEARMONTH:** Okay.

**MR. BOWN:** This was a note that was provided by Derrick Sturge proposing an independent review of Muskrat Falls.

**MR. LEARMONTH:** Instead of a PUB review, right?

**MR. BOWN:** Instead of a PUB review.

**MR. LEARMONTH:** Though, do you agree that Nalcor opposed government's decision to refer the matter to the PUB?

**MR. BOWN:** They didn't support – as was evidenced by trying to find an alternate process.

**MR. LEARMONTH:** Well, they didn't want to go to the PUB, is that right?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Do you know why?

**MR. BOWN:** I can't speak why to that. That would be best to ask –

**MR. LEARMONTH:** Well –

**MR. BOWN:** – Nalcor.

**MR. LEARMONTH:** Any – I mean you must have known something about it. You got this letter and – from Mr. Sturge of Nalcor.

**MR. BOWN:** If I could give you my understanding it would be that this could unnecessarily delay the project.

**MR. LEARMONTH:** Yeah. So that was the reason?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** On page 8 of this document, 00981, it's a reference to these independent reviews.

**MR. BOWN:** Correct.

**MR. LEARMONTH:** And, once again, you read this document and you never asked to see these reviews?

**MR. BOWN:** No, I did not.

**MR. LEARMONTH:** No.

I suggest to you that's a serious omission on your part, Mr. Bown.

**MR. BOWN:** We relied on Nalcor for the information.

**MR. LEARMONTH:** I know but –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – I'm suggesting to you that –

**MR. BOWN:** I didn't –

**MR. LEARMONTH:** – you've said that consistently.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** There is everything, we relied on Nalcor and I'm suggesting to you that that's a very weak reason to put forward for not seeking reviews, that you knew that Nalcor had. I suggest it's a very weak position.

**MR. BOWN:** In all the discussions that we had internally, myself as either the assistant deputy minister or the associate, or engagement with others inside the government, particularly Finance, as I had a conversation with Mr. Paddon about this, it was never raised. It wouldn't – it wasn't raised by myself, it wasn't raised by others to seek out these reports.

**MR. LEARMONTH:** Oh you could have – you know, you have to – you're obligated as a senior civil servant to make recommendations to government.

**MR. BOWN:** I understand that.

**MR. LEARMONTH:** Well, why wouldn't you have insisted on receiving these reports that you

knew were relevant to costing and due diligence? Why wouldn't you have demanded to see them to see them?

**MR. BOWN:** I don't have an answer for you on that.

**MR. LEARMONTH:** I suggest it goes back to that you were indifferent in the sense that whatever Nalcor does, is fine with us. Do –

**MR. BOWN:** I don't know –

**MR. LEARMONTH:** – you agree with that?

**MR. BOWN:** I don't – I wouldn't use the word indifferent.

**MR. LEARMONTH:** Well, you were passive.

**MR. BOWN:** No, I was trusting.

**MR. LEARMONTH:** You were trusting? And were you told by your superiors to simply trust everything that Nalcor told you and did, or was that a decision that you made yourself?

**MR. BOWN:** It was a general sense throughout – the folks – general sense throughout government – that, you know, Nalcor being in the position that it was, and in the position that government created it to be, that we could trust the work that they did. It wasn't a view that I took on myself. That was a view of others as well.

**MR. LEARMONTH:** Well, did you argue against it?

**MR. BOWN:** I don't – I did not argue against it. I don't recall.

**MR. LEARMONTH:** You just accepted that and acted accordingly?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. And you said that that was throughout. So that was throughout the civil service?

**MR. BOWN:** Not completely.

**MR. LEARMONTH:** Okay, not completely.

**MR. BOWN:** No.

**MR. LEARMONTH:** Give us some details of that.

**MR. BOWN:** No. There were – I guess on occasion you'd find folks in other departments who didn't have the exposure to Nalcor the same that the Department of Natural Resources had or Finance or Executive Council had.

**MR. LEARMONTH:** Okay. Give me examples. Who?

**MR. BOWN:** Well, I'm speaking generally.

**MR. LEARMONTH:** Well, I'm asking you specifically.

**MR. BOWN:** I can't give you a specific.

**MR. LEARMONTH:** You can't?

**MR. BOWN:** No.

**MR. LEARMONTH:** So you can't give me any names?

**MR. BOWN:** I can't give you a name, no.

**MR. LEARMONTH:** Well, what recollection do you have of what you just said?

**MR. BOWN:** When we went –

**MR. LEARMONTH:** (Inaudible) people.

**MR. BOWN:** – through the environmental assessment process, you know, there were conversations that were held there, and not everybody accepted that the recommendations that Nalcor were – or the proposals that Nalcor were making were ones that they would support, so that would –

**MR. LEARMONTH:** Okay. Who were those people? Who were they?

**MR. BOWN:** That would be – I don't recall, sorry.

**MR. LEARMONTH:** You know, you refer – you brought that up yourself.

**MR. BOWN:** Yes, I did.

**MR. LEARMONTH:** And I ask you particulars, and you can't give me any particulars.

**MR. BOWN:** Well, I was trying to answer a general question with a general response that was this general throughout government – full acceptance of Nalcor. Generally, no, not throughout government.

**MR. LEARMONTH:** Okay. Well, then you must have some basis for making that statement?

**MR. BOWN:** Just what I would've seen in particular occasions, but I can't highlight particular people and events.

**MR. LEARMONTH:** Well, what are the particular occasions?

**MR. BOWN:** When we were doing the environmental assessment, not everybody was in full support of certain elements.

**MR. LEARMONTH:** Okay. Who were the people that weren't in support?

**MR. BOWN:** I can't identify people.

**MR. LEARMONTH:** Why not?

**MR. BOWN:** I don't recall.

**MR. LEARMONTH:** Don't recall.

**MR. BOWN:** No.

**MR. LEARMONTH:** I ask this seriously, not sarcastically. Do you have a poor memory, Sir?

**MR. BOWN:** Some things I remember really well, and some things, in the past, I don't.

**MR. LEARMONTH:** But do you believe you have a good memory or an average memory?

**MR. BOWN:** Average memory.

**MR. LEARMONTH:** Yeah, but a lot of the questions – many of the questions I'm putting to you, you say: I don't recollect, or I have no

recollection – and that’s not just here and there, that’s consistent throughout your evidence.

**MR. BOWN:** I’m trying to be honest, and I don’t want to be saying that I remember something that I don’t.

**MR. LEARMONTH:** But you agree your memory is variable – that you remember some things but not other things?

**MR. BOWN:** I think that would be average in the population.

**MR. LEARMONTH:** Okay, tab 32 – Exhibit 01384. Oh I just went through that, sorry.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Sorry about that, tab 33 – Exhibit 01385.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay, can you identify this as an email – April 27, 2011 – from you to Derrick Sturge?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** What (inaudible)

**MR. BOWN:** I’m asking specific questions on the briefing note that he provided. I clearly identify that there were deficiencies, and there were additional questions that needed to be asked. At the same time – you know– looking at the review of the materials at the time, there was an effort ongoing inside the Department of Natural Resources to look at these same kinds of questions.

**MR. LEARMONTH:** Did you have a lot of communications with Mr. Sturge of Nalcor?

**MR. BOWN:** Not particularly – more so in the loan guarantee, but not necessarily prior to this – it had been on financial matters.

**MR. LEARMONTH:** Okay.

Back to tab – this is around volume 2 – Exhibit 01388.

You were copied on this email, can you tell us what –

**MR. BOWN:** What tab again?

**MR. LEARMONTH:** Tab 36.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** What does this deal with?

**MR. BOWN:** It’s comments by Paul Scott to Todd Stanley on the draft PUB letter.

**MR. LEARMONTH:** So at this point, there was consideration given to making a reference to the PUB?

**MR. BOWN:** Yes, this is May the 10th.

**MR. LEARMONTH:** Okay, who decided to refer the matter to the PUB, ultimately?

**MR. BOWN:** That was a political decision.

**MR. LEARMONTH:** By what politician?

**MR. BOWN:** Oops, sorry. That would’ve been the –

**MR. LEARMONTH:** Was it the premier?

**MR. BOWN:** – premier’s office.

**MR. LEARMONTH:** Was it the minister of Natural Resources –

**MR. BOWN:** No –

**MR. LEARMONTH:** – Shawn Skinner at the time, or Cabinet?

**MR. BOWN:** That decision would’ve been made in the premier’s office, clearly in consultation with other ministers.

**MR. LEARMONTH:** Okay.

Did you ever attend Cabinet meetings?

**MR. BOWN:** I did when I presented Cabinet papers.

**MR. LEARMONTH:** So every time you prepared a Cabinet paper, you appeared before Cabinet?

**MR. BOWN:** No, it's not necessary to – every paper that I prepared. Sometimes a minister would take a paper themselves.

**MR. LEARMONTH:** All right.

Tab 37, P-00807.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Now, this is a document that was prepared by Paul Myrden; it was approved by Terry Paddon and you, and it was signed off on by two senior ministers: Tom Marshall and Shawn Skinner.

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Now, why was this document prepared?

**MR. BOWN:** Myself and Mr. Paddon had had a number of conversations over the months about the process going forward for Muskrat Falls, and we both felt that an independent review was necessary before government made the sanction decision. And we prepared this note; staff in my department worked with staff in the Department of Finance in preparing this note. And we shared this with both Minister Marshall and Minister Skinner, seeking their approval. They signed this, and this was forwarded to Cabinet Secretariat, as is the normal process.

**MR. LEARMONTH:** So what happened when it went to Cabinet Secretariat?

**MR. BOWN:** I heard minister – heard, sorry (inaudible). I listened to Mr. Paddon's response, and he had no recollection, nor do I, of why this didn't proceed or what happened to it afterward. I recall that Mr. Marshall said that it was following this that the decision was made to do the PUB review.

**MR. LEARMONTH:** Okay.

But you thought that it was necessary to have this detailed, independent review done, is that correct?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And it took some time to have this document prepared?

**MR. BOWN:** We worked for quite some time to do this.

**MR. LEARMONTH:** Yeah. And this would've been an independent review. It speaks for itself, but it would've been a detailed review of many matters, including the cost and schedule, is that correct?

**MR. BOWN:** Correct. And this was done over and above the note that we previously looked at from Mr. Sturge; we looked at this independently.

**MR. LEARMONTH:** Yeah. But why wasn't this followed? I mean, this seems to be – you had a concern that there wasn't proper oversight of Nalcor and therefore such an independent study was warranted. Is that a fair comment?

**MR. BOWN:** That's a fair comment.

**MR. LEARMONTH:** Yeah. So you were concerned about oversight?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. Well then, why did you allow this to simply drop or vanish?

**MR. BOWN:** I didn't allow it to simply drop or vanish. It went forward for approval and no decision came back.

**MR. LEARMONTH:** Well, you must – did you follow up on it?

**MR. BOWN:** I don't recall following up on it, but the normal course is that these things go through the approval process, and if they don't get approved, then the answer is no.

**MR. LEARMONTH:** Yeah. But once again I question what you're saying.

You took the time to prepare this document. It would have taken some time to prepare. And it seems to me that your answer is you don't really – you don't know what happened to it. Now –

**MR. BOWN:** I can't tell you what happened to it.

**MR. LEARMONTH:** Pardon?

**MR. BOWN:** I can't tell you what happened to it.

**MR. LEARMONTH:** You can't.

But why didn't you pursue it? I mean, if someone prepares a document like this, and it's approved by two senior Cabinet ministers, I suggest that you would want to know exactly what happened to it. You wouldn't allow it just to be submitted and then just assume that, well, I never heard anything back so it was turned down. Why –

**MR. BOWN:** No, it wouldn't be that –

**MR. LEARMONTH:** – wouldn't you pursue it?

**MR. BOWN:** It wouldn't be that I didn't hear anything back. It would be that the answer was we're not doing this.

**MR. LEARMONTH:** Do you remember receiving that information?

**MR. BOWN:** I would have had that conversation with Mr. Paddon.

**MR. LEARMONTH:** You did?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** When?

**MR. BOWN:** I don't recall the date of that.

**MR. LEARMONTH:** And what did Mr. Terry Paddon say to you?

**MR. BOWN:** As I recall, this wasn't the process that we were gonna take. There was gonna be a review; this wouldn't be the process.

**MR. LEARMONTH:** So you didn't go any further with it?

**MR. BOWN:** That was the decision that was made.

**MR. LEARMONTH:** Yeah.

But did you, you know – I suggest that you have a duty as a senior minister to – senior official – to advise government, not simply submit documents and wait for a response, positive or negative. I suggest that you have an obligation to sit down with your minister at the appropriate time and plead your case that, look, we need an independent review. I'm advising you – based on someone who has a lot of involvement with Nalcor – that we have to pursue this and have a meeting and advise the government.

Did you ever have such a meeting?

**MR. BOWN:** Which I did.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** When preparing this document –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – we would have sat with the – I would have sat with my minister and explained why this was important. Mr. Paddon would have done the same. And then it would have been submitted. Generally, the process in government, you don't challenge the decisions that are made; that's the responsibilities of the ministers.

**MR. LEARMONTH:** So you make the recommendation, and –

**MR. BOWN:** I make the recommendations.

**MR. LEARMONTH:** – if it isn't accepted, that's it.

**MR. BOWN:** No, but that's as far as my authority goes.

**MR. LEARMONTH:** On page 2 of this document, 00807, at the bottom it says, "In addition to the above, Nalcor is also planning to undertake additional due diligence as follows:

"Completion of a project cost analysis by Independent Project Analysis Inc., an international organization that specializes in the review of large scale projects."

Who gave you that information?

**MR. BOWN:** That would've come out of the briefing note that Derrick Sturge would've provided.

**MR. LEARMONTH:** Okay.

But you know that Nalcor, despite saying that it was going to have this review done, never did?

**MR. BOWN:** I'm not aware of that, no.

**MR. LEARMONTH:** So I'm telling you this for the first time?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** But didn't you make a note of that, like, I got to follow up on that? You knew about it because you signed off on this report, so wouldn't you have made a note that, look, I got to follow up and get a copy of that report?

**MR. BOWN:** No, I did not do that.

**MR. LEARMONTH:** Why not?

**MR. BOWN:** I don't have an answer for that.

**MR. LEARMONTH:** No answer.

Would it be just that, once again, we trusted Nalcor? If they said they were going to do something, then we assumed it was going to be done?

**MR. BOWN:** That would be a response, yes.

**MR. LEARMONTH:** (Inaudible.)

**MR. BOWN:** I accept that.

**MR. LEARMONTH:** Yeah.

And you're saying that you discharged your duty of oversight on Nalcor? Are you saying that, seriously?

**MR. BOWN:** In what respect?

**MR. LEARMONTH:** Generally, supervising them, their oversight. It seems to me you just sat there and if Nalcor said something, that's fine.

**MR. BOWN:** No, I wouldn't characterize it that way.

**MR. LEARMONTH:** Well, tell me how you would characterize it.

**MR. BOWN:** My conversations would be with the minister where I would provide him with advice. Materials would show up, question – policy direction would be sought, and I would advise the minister on the policy direction.

**MR. LEARMONTH:** Well, tab 39 is an email from you to Robert Thompson: "Will we be limited to 2 supply options or 5? If we want to meet the schedule we should limit" –

**MR. COFFEY:** Commissioner, perhaps we could have the exhibit number?

**MR. LEARMONTH:** 01094.

**THE COMMISSIONER:** Sorry.

**MR. LEARMONTH:** Do you see that?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** You say: Will be limited to 2 supply options. "If we want to meet the schedule we should limit to isolated island and MF. The others can reasonable scopes out on cost."

So that was your opinion before the reference to the PUB?

**MR. BOWN:** That was my question to the deputy, and based on the information that was provided by Nalcor at the time.

**MR. LEARMONTH:** So you didn't – did – you didn't want the PUB to have a wide range of options?

**MR. BOWN:** Well, I didn't say that. I said: "Will we be limited to 2 supply options or 5?"

**MR. LEARMONTH:** Okay.

**MR. BOWN:** So the question was being posed to him.

**MR. LEARMONTH:** If we want to meet the schedule we should limit to two.

**MR. BOWN:** So that – that was a piece of advice.

**MR. LEARMONTH:** The others can reasonably, like, scoped out on cost.

**MR. BOWN:** Well, I was just giving him context.

**MR. LEARMONTH:** Well, that's what you said.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** You're saying the others can – I guess reasonably be scoped out on cost?

**MR. BOWN:** Based on the information that we had from Nalcor at the time.

**MR. LEARMONTH:** Well, why didn't you put it in there with that qualification: it was based on the information we had?

**MR. BOWN:** It's just a short email.

**MR. LEARMONTH:** But it would have been relevant, wouldn't it?

**MR. BOWN:** Sure.

**MR. LEARMONTH:** So at that point, May 18, the other – all other – all options except the two had been excluded, is that right?

**MR. BOWN:** Yes, based on the information and the scoping that was done in 2010, that assessment had been completed and the decision had been made to go forward with Muskrat Falls.

**MR. LEARMONTH:** Say that again?

**MR. BOWN:** So based on the work that was done in 2010, the assessment – the options had been assessed, and I think we went through that technical deck that had that in it.

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** And there was an MC from Cabinet in 2010, that said Muskrat Falls is the next supply option.

**MR. LEARMONTH:** That decision was made back in 2010?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And there was never any –

**MR. BOWN:** That's part of the record.

**MR. LEARMONTH:** Never changed?

**MR. BOWN:** No.

**MR. LEARMONTH:** No. So why were there studies done in October – the fall of 2012 on wind and natural gas if a decision had already been made?

**MR. BOWN:** When Minister Kennedy came to the department in October of 2011, he wanted to make sure that all the questions had been duly asked and answered so that he could respond to any questions in the public or in the House of Assembly. He wanted to make sure that all the information that had been prepared, to make that decision, was accurate and correct.

**MR. LEARMONTH:** Okay.

Did you agree with the decision that was made on that early date – that would be – well, it was effective, at least, as of May 18, 2011, when you wrote this email. Did you agree with the decision that all options other than the two had been properly excluded?

**MR. BOWN:** Based on the information that I had available to me, yes.

**MR. LEARMONTH:** You agreed on it – agreed with it?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. Well, it would have to be based on the information –



**MR. BOWN:** Yes.

**MR. LEARMONTH:** – you had. So the answer's yes?

**MR. BOWN:** The answer's yes.

**MR. LEARMONTH:** Yeah. Okay.

Okay. Tab 40, Exhibit 01389.

So is this the first draft of the PUB reference?

**MR. BOWN:** I can't say for certain, but likely.

**MR. LEARMONTH:** Okay. Who directed you to prepare this draft?

**MR. BOWN:** That I'm not certain of. But again, the direction would have come, ultimately, would have come from the deputy, and how the direction came to him, I can't say. It was passed on to me, and I would have had – what happened here was that Mr. Paul Scott worked with the Department of Justice in preparing this draft.

**MR. LEARMONTH:** Okay. So your deputy directed that this be prepared?

**MR. BOWN:** Direction from the deputy to me, and I would have been reporting back to the deputy.

**MR. LEARMONTH:** All right.

And then tab 41 is a May – Exhibit 01095 – is a May 19, 2011, email from you to various persons within government. Is that correct? Or –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – and also someone at Nalcor?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So this was about the PUB reference. The – Nalcor did not favour this approach of referring the matter to the PUB, is that correct?

**MR. BOWN:** Generally speaking, yes.

**MR. LEARMONTH:** Well, what do you mean generally? I mean, they either supported it or they didn't.

**MR. BOWN:** Once the decision was made by the premier to – or the minister to do this, then they had to support it.

**MR. LEARMONTH:** Well, they implemented the –

**MR. BOWN:** They implemented it.

**MR. LEARMONTH:** – decision. But I'm asking you do – will you confirm that Nalcor did not want a reference to the PUB?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Correct. Okay.

That being the case, why are you sending a draft terms of reference to Nalcor? I mean, they're saying: we don't think this is a good idea. Generally, we don't wanna do it.

So you're saying: well, we're doing it anyway. And then you're sending them a draft terms of reference for their comments.

**MR. BOWN:** So the direction is – was to implement.

**MR. LEARMONTH:** Whose direction?

**MR. BOWN:** When the direction was to – given to refer a question to the PUB, it was given to both government and to Nalcor.

**MR. LEARMONTH:** Yeah. So you're asking Nalcor for comments on the reference?

**MR. BOWN:** The important element –

**MR. LEARMONTH:** Is that right?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yes.

**MR. BOWN:** And the important element is to ensure that the question that was asked is one that could get done in the time frame.

**MR. LEARMONTH:** Well, that didn't work out very well, did it?

**MR. BOWN:** No, it did not.

**MR. LEARMONTH:** And the reason it didn't work out is that Nalcor was very late in delivering documents to the PUB. Do you agree with that?

**MR. BOWN:** I agree.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** However, we had an understanding going into this that the documents would be readily available.

**MR. LEARMONTH:** Nalcor told you?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And that was false, right?

**MR. BOWN:** It wasn't accurate.

**MR. LEARMONTH:** Well, it wasn't correct; it wasn't true?

**MR. BOWN:** Right.

**MR. LEARMONTH:** Did that give you concern?

**MR. BOWN:** As we went through the process, yes, because we weren't gonna make our timeline.

**MR. LEARMONTH:** So who at Nalcor were you communicating on with respect to the drafting of the terms of the reference to the PUB? Who?

**MR. BOWN:** I think it was the list that was – that's here before us.

**MR. LEARMONTH:** Well, was it Mr. Martin?

**MR. BOWN:** He was on the list.

**MR. LEARMONTH:** He was.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So he opposed the reference as well, did he? I mean, everyone at Nalcor did?

**MR. BOWN:** But he would've accepted the government's decision.

**MR. LEARMONTH:** That's not what I asked you. I didn't ask if he accepted the decision. I asked you whether he opposed the matter being referred to the PUB.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** He did oppose it? That's Mr. Martin. And did Mr. Bennett also?

**MR. BOWN:** I think you would find universal disagreement with a PUB referral throughout the organization there.

**MR. LEARMONTH:** All right.

And we look at tab 43, which is Exhibit 01390, these are comments prepared – it's an email dated May 25, 2011 from DHarris@energy to Paul Scott. It says: attached – "Paul, Attached are most of our comments. I am still tracking down Ed's comments and will get them to you as soon as I am successful.

"David."

I guess that's David Harris.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And that's a reference to Ed Martin?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah.

So once again I'm going to ask you: Why, if Nalcor was opposed to referring the matter, would you get their input on what the terms of reference should be?

**MR. BOWN:** The context was we were tasked with ensuring that we put in place a process that could be completed on time successfully.

**MR. LEARMONTH:** Who at Nalcor told you that the documents for the PUB reference would be readily available?

**MR. BOWN:** I said that was an understanding. When we would've started this process in meetings, it was clear to us that, if we're going to do this, here's the timeline under which we're going to do it. Can you provide the materials? Yes. So it would've been – Ed Martin would've been available or Gilbert Bennett.

**MR. LEARMONTH:** So either Ed Martin or Gilbert Bennett told you that the documents for the PUB reference would be – quote – readily available?

**MR. BOWN:** Would be available.

**MR. LEARMONTH:** Okay, not readily? I think you said –

**MR. BOWN:** Yeah, I said readily but would be available to meet the timeline.

**MR. LEARMONTH:** Okay. So –

**MR. BOWN:** I'll change my word from readily. It would be available to meet the timeline that we had in place.

**MR. LEARMONTH:** And you've subsequently found out that was a false commitment?

**MR. BOWN:** Well, they didn't meet the target.

**MR. LEARMONTH:** Yeah.

Now, tab 44 is the – at page 14 – is the Orders in Council –

**THE COMMISSIONER:** 00846.

**MR. BOWN:** Yeah, 00846, yeah, is – starting at page 11 and 14 are a series of MCs. So this Direction/Decision Note was prepared by Natural Resources. Is that right? Minister – it was approved by Minister Skinner and approved – prepared by you and Paul Scott.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay and this is the – after a decision had been made – final decision had been made and it had to get Cabinet approval. Is that right?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Yeah.

And on the question of referring just the two questions was there ever – the two options to the Public Utilities Board – was there ever any debate in government that you're aware of on the appropriateness of limiting the options to two as opposed to giving the entire question on the least-cost option to the PUB?

**MR. BOWN:** I don't recall ever having had that debate.

**MR. LEARMONTH:** Or hearing of that debate?

**MR. BOWN:** No.

**MR. LEARMONTH:** On tab 45 – exhibit 00913 – the bottom of this email – Terry Paddon to you – June 9, 2011. That's just before the PUB reference.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** "Minister Marshall is continually asking questions regarding the MF arrangement. It would be extremely useful if someone could come in for an hour or two" – to – "run through the guts of the arrangement and answer his questions" – et cetera.

So, was such a meeting arranged?

**MR. BOWN:** Yes and it occurred.

**MR. LEARMONTH:** And did you attend it?

**MR. BOWN:** Yes I did.

**MR. LEARMONTH:** Who else was there at the meeting?

**MR. BOWN:** Paul Scott would have been there with me. And Derrick Sturge presented and I don't believe Derrick brought anybody with him and there would have been some Finance staff –

Terry Paddon, Paul Myrden – I think that's all I recall.

**MR. LEARMONTH:** How long was the meeting?

**MR. BOWN:** This was – more than an hour.

**MR. LEARMONTH:** And what concerns were expressed by Mr. Martin that he wanted clarification on?

**MR. BOWN:** Mr. Marshall.

**MR. LEARMONTH:** Mr. Marshall. Yeah.

**MR. BOWN:** He just wanted a greater understanding – just generally.

**MR. LEARMONTH:** Just a general understanding?

**MR. BOWN:** Yes. He was asking questions about many elements and so it was a comprehensive briefing.

**MR. LEARMONTH:** Okay. Was there anything in writing?

**MR. BOWN:** There would have been a presentation deck for that.

**MR. LEARMONTH:** Okay. Did you tell Mr. Marshall, at this meeting, that the information you had on the Muskrat Falls Project was information that was supplied to you by Nalcor.

**MR. BOWN:** Sorry. Nalcor would have given the presentation at this meeting.

**MR. LEARMONTH:** So you were just – I suppose it would have been a slide deck, would it?

**MR. BOWN:** Yes. I was there as a meeting attendant.

**MR. LEARMONTH:** Okay.

So tab 47 – exhibit 01392. This is a communication between you and Serge Dupont.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Who's Serge Dupont?

**MR. BOWN:** He was deputy of Natural Resources Canada at the time.

**MR. LEARMONTH:** Why were you communicating with him?

**MR. BOWN:** We were coordinating the communications on the Joint Review Panel.

**MR. LEARMONTH:** Okay.

Tab 48, which is Exhibit 01393.

Can you tell us what this document is? It's: key messages, environmental assessment report, August 2011.

**MR. BOWN:** (Inaudible.)

**MR. LEARMONTH:** You seem to be sending this to Natural Resource Canada?

**MR. BOWN:** Yes. So this was prepared by our communications person, Heather MacLean, and we had agreed to pass this along to Natural Resources Canada. They, in turn, shared theirs with us.

**MR. LEARMONTH:** Okay. So this was in an effort to coordinate responses to the Joint Review Panel report?

**MR. BOWN:** No, it was to coordinate the actual announcement after decision had been made.

**MR. LEARMONTH:** Okay.

Now, tab 49, Exhibit P-00043, is a document titled "Commitment Letter to Assist Financing of Phase One of the Lower Churchill Project."

You're familiar with this document?

**MR. BOWN:** Yes, I am.

**MR. LEARMONTH:** And did you prepare this submission? It was signed by Minister Kennedy – excuse me, Shawn Skinner – on August 31, 2011.

**MR. BOWN:** My staff –

**MR. LEARMONTH:** Did you prepare this?

**MR. BOWN:** My staff would've prepared this, and I would've approved. And this would've gone through Departments of Justice and Finance before it was given to Minister Skinner.

**MR. LEARMONTH:** Okay. And this had to with – among other things, with a commitment letter to Ed Martin of Nalcor on financial matters?

**MR. BOWN:** Right.

**MR. LEARMONTH:** Okay. Now, by this letter, and I'm gonna refer to page 3. The government decided to commit to a completion guarantee, in other words, to provide "additional Government investment needed to address any contingences required to ensure Project completion."

So a completion agreement?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Now, at the time – and this letter was issued by Premier Dunderdale on behalf of government to Edmund Martin on October 18, 2011.

Was there any discussion or consideration be given to what exactly the extent of this commitment was to be? In other words, you're saying we're gonna guarantee the completion of the project. I would – I suggest that it would be reasonable to say: Well, look, what are we – what is the extent of this commitment? Like, how much of a handle we have on the cost estimates? What is our potential exposure here?

Do you recall any conversations or discussion on that point?

**MR. BOWN:** Well, it's noted here in the paper that the exposure was \$1.5 to \$2 billion.

**MR. LEARMONTH:** Yeah. But that's the – the equity?

**MR. BOWN:** That's equity based on – sure, and the equity would be determined by the project cost.

**MR. LEARMONTH:** Yeah. But the – so the project cost was a critical component of this point?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah.

But what I'm saying is, before this commitment letter was issued, did government address the question of, what is our exposure here?

We know about the equity that had to go in, but I'm talking about for cost overruns, because although it doesn't come out and say it, if you're guaranteeing completion of the project, then you're guaranteeing that you're gonna cover the cost of – any cost overruns.

**MR. BOWN:** As others have said here, there was always an understanding that there could likely be cost overruns. But, to the extent of what they would be, I don't think there was – I wouldn't say there wasn't a discussion on it, but there wasn't an assessment done to determine what the outside framework, or outside riverbank, of that would be.

**MR. LEARMONTH:** Why not?

I mean, you're committing the government to the completion of a project, and you don't even know what the exposure is?

**MR. BOWN:** There would have been a number of meetings with the – presentations prior to this, and they would have been in the record of – cost presentations from Nalcor. And they would have given the assurance – trust, again, that, based on the work that they had done, based on the amount of engineering they had done – that they had certainty in the costs that they had, and that we were okay to go ahead and issue this commitment letter.

And the Department of Finance, who wrote the financial section of this paper, was satisfied. So, the finance section in this paper was not prepared by Natural Resources or – was prepared by Finance – was satisfied that the government should sign – provide this commitment.

**MR. LEARMONTH:** Yeah, but there was never any review undertaken by the Department of Finance.

**MR. BOWN:** No, there wasn't.

**MR. LEARMONTH:** Or –

**MR. BOWN:** Not as I know now.

**MR. LEARMONTH:** – anyone.

**MR. BOWN:** Yes. As I know now.

**MR. LEARMONTH:** Do you think that was a bit reckless for government to go ahead and issue this letter of commitment without, you know, dealing with the issue of what the exposure to government, and ultimately the taxpayers, would be?

**MR. BOWN:** I can't say whether government was reckless. Based on the information that it had at the time, it was comfortable in making the decision that it had.

**MR. LEARMONTH:** And once again –

**MR. BOWN:** We provided all the information that we had available to us.

**MR. LEARMONTH:** – and once again, this was trusting Nalcor, correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Tab 51 – excuse me – yeah, tab 51.

Now, this is a document – 01395 – this is –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – seems to be a draft of a response to the 80 or more recommendations of the Joint Review Panel.

Is that correct?

**MR. BOWN:** This would be the – those responses that were the responsibility of the Department of Natural Resources.

**MR. LEARMONTH:** Yeah.

So, you mentioned that yesterday, I think, it was divided up; a lot of them were environment.

**MR. BOWN:** Absolutely.

**MR. LEARMONTH:** This was the part of the picture that was responsible – it was the responsibility of Natural Resources. And you were in charge of this work, were you?

**MR. BOWN:** In the Department of Natural Resources?

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** No, the deputy minister had the responsibility.

**MR. LEARMONTH:** But you prepared these – you prepared draft responses, did you not?

**MR. BOWN:** We – as I explained yesterday, we had an internal team of staff who reviewed all the documentation when it was submitted initially, reviewed the documentation as it was submitted to the panel, reviewed the panel report and prepared these draft responses. They would have went to me, then to the deputy minister and then on to the minister.

**MR. LEARMONTH:** Okay, well, let's just turn to tab 65 which is Exhibit P-00051.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Are you there?

**MR. BOWN:** I'm there.

**MR. LEARMONTH:** Okay.

So this is the Government of Newfoundland and Labrador's Response to the Report of the Joint Review Panel. Recommendation 1: Was that something that Natural Resources –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – prepared?

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** And the response to this recommendation: "Government confirmation of

projected long-term returns,” government refused to accept this recommendation. Is that correct?

**MR. BOWN:** Say that again, sorry.

**MR. LEARMONTH:** Well, this response wasn’t a yes.

It said that: “Based on information that Nalcor has already provided, the Government is satisfied that the development of each component ... will result in significant financial benefits to the” people over and above the revenues. So this was a rejection of that recommendation, was it not?

**MR. BOWN:** Yes, it was a rejection of –

**MR. LEARMONTH:** Well –

**MR. BOWN:** – the statement that the information provided was inadequate.

**MR. LEARMONTH:** Okay.

It was an indication that government was not prepared to follow that recommendation. Is that true?

**MR. BOWN:** No, it just said accepted in principle that a review –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – of the project’s viability is required prior to sanction.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** But didn’t accept the statement that the information provided for – to the panel was inadequate.

**MR. LEARMONTH:** Yeah.

So, in other words, we’ve already done that –

**MR. BOWN:** It’s an in-between.

**MR. LEARMONTH:** Oh.

**MR. BOWN:** It’s neither yes nor no.

**MR. LEARMONTH:** Whose decision was it to provide that response?

**MR. BOWN:** This would have been prepared internally in the department.

**MR. LEARMONTH:** Well, who? Did you – were you consulted on it?

**MR. BOWN:** Yes, I was consulted on this. This particular recommendation and also recommendation 4.2 was also discussed at the Lower Churchill deputy minister’s committee as well.

**MR. LEARMONTH:** Well, you agreed with this response?

**MR. BOWN:** Yes, based on the information provided by my staff, the analysis that they did. I didn’t review all the materials; I relied on them to do the analysis.

**MR. LEARMONTH:** And was a lot of that information provided by Nalcor?

**MR. BOWN:** No, the information would have been provided by Nalcor, but there are also submissions that were made by other parties as well.

**MR. LEARMONTH:** Okay. Now, on page 1 of P-00051, Recommendation 4.2: “Independent analysis of alternatives to meet domestic demand.”

And your response on page 2 of this Exhibit P-00051 was: “The Government of Newfoundland ... does not accept this recommendation ... information provided by Nalcor to the JRP on the need, purpose and rationale for the Project provides an adequate basis to conclude that the interconnected Island alternative is the long – term, least cost option to meet domestic demand.”

So this was turned down outright? Is that right?

**MR. BOWN:** Yes. Correct.

**MR. LEARMONTH:** Why?

**MR. BOWN:** This based on the information that was provided through the hearing and the

special session that was held on need, purpose and rationale, that there was a determination made that Muskrat Falls was – or sorry, that the decision to go forward with the Lower Churchill Project was the best decision.

**MR. LEARMONTH:** So this was rejected outright, is that correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** And did you agree with that recommendation?

**MR. BOWN:** I did, based on the information and the analysis of our staff.

**MR. LEARMONTH:** Which included information provided by Nalcor.

**MR. BOWN:** Yes and by others as well.

**MR. LEARMONTH:** Okay.

Recommendation 3 at the bottom of page 2 – we dealt with this yesterday: “Integrated Resource Planning.”

**MR. BOWN:** Right, right.

**MR. LEARMONTH:** And it says: “The Government of Newfoundland ... accepts this recommendation.” But do you agree that it was never really done?

**MR. BOWN:** I can’t say whether Newfoundland and Labrador Hydro undertook that particular recommendation.

**MR. LEARMONTH:** But it wasn’t – the response was not to Hydro, it was to the government. It says: “The Government of Newfoundland and Labrador accepts this recommendation.”

**MR. BOWN:** Yes.

**MR. LEARMONTH:** But why wasn’t – if the government said it accepted this recommendation, why didn’t it implement it?

**MR. BOWN:** It’s – the government doesn’t undertake that type of assessment, that’s the work that’s undertaken by a utility.

**MR. LEARMONTH:** But why don’t you put that in the response then?

**MR. BOWN:** I can’t recall why that wasn’t stated that way.

**MR. LEARMONTH:** But you said yesterday, you confirmed yesterday, that government can direct the utility.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And it didn’t.

**MR. BOWN:** I don’t recall that we did, no.

**MR. LEARMONTH:** No, so if that’s the case, then government said they were going to accept this recommendation, but didn’t. Do you agree?

**MR. BOWN:** I don’t have the information to say that we didn’t or did. But in the absence of information, I’ll say, no, we didn’t.

**MR. LEARMONTH:** In the absence of information – what?

**MR. BOWN:** I’ll say, no, we didn’t.

**MR. LEARMONTH:** No, you didn’t. Okay.

Recommendation number 5 – or 5 – and that’s, excuse me, 4.5: “Full clearing of the Muskrat Falls reservoir” on page 3 of P-00051.

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** Now this is – continues to be an issue. Do you agree?

**MR. BOWN:** Yes, this was – while this was directed to the Department of Natural Resources, at that time Department of Natural Resources also included Forestry and Agrifoods. And it was the Forestry and Agrifoods branch that responded to this recommendation, but Minister Skinner would’ve had to sign off on it.

**MR. LEARMONTH:** On what, on the recommendation?

**MR. BOWN:** Yes.



**MR. LEARMONTH:** In retrospect, that wasn't a very safe thing to do. Do you agree?

**MR. BOWN:** Well, this was – this is in the area of forestry and I'm not familiar with why they would've made that recommendation.

**MR. LEARMONTH:** Tab 55, which is Exhibit 00810.

**THE COMMISSIONER:** I'm just looking at the time here, Mr. Learmonth.

**MR. LEARMONTH:** Can I go for five minutes?

**THE COMMISSIONER:** Five more minutes? Okay.

**MR. LEARMONTH:** Now, this is an email from Derrick Sturge to you, copied to Paul Harrington; it's a response to an email. And this is 00810, on page 2: "Derrick

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

So, at this point, on October 31, 2011, that's obviously something that's on your mind, right?

**MR. BOWN:** Actually, would coincide with Minister Kennedy coming to the department.

**MR. LEARMONTH:** Okay.

So you'd never thought about that before Mr. Kennedy arrived?

**MR. BOWN:** Yes, we did. We'd asked that question before, but we had done some research internally before. But this was – I was given a specific question by Minister Kennedy and I posed it just for an update at that time.

**MR. LEARMONTH:** And on Exhibit 00810, page 1: "Hi Charles, I have not, but have copied Paul Harrington on this email – perhaps he or SNC/Westney might have something."

So he sends that off to Mr. Harrington and then Harrington comes back: "We do not have any analysis on hydro project overruns," right?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So did you let it go at that?

**MR. BOWN:** I had provided that response to the minister.

**MR. LEARMONTH:** Yeah, but you could have done your own research.

**MR. BOWN:** Yeah, and I think – and I don't recall specifically, but I think at that same time we had an internal assessment as well.

**MR. LEARMONTH:** Internal – do you have that?

**MR. BOWN:** I don't have that but –

**MR. LEARMONTH:** Okay, well tell us about this internal assessment. I'm not aware of it.

**MR. BOWN:** No, that just we had done a kind of a Google search or an Internet search on cost overruns on projects.

**MR. LEARMONTH:** And that was enough to satisfy your concerns?

**MR. BOWN:** It was enough to satisfy Minister Kennedy at the time.

**MR. LEARMONTH:** Okay, what were the results of your research?

**MR. BOWN:** I don't recall that.

**MR. LEARMONTH:** I haven't seen any record of that research.

**MR. BOWN:** No, because it would've been something that would've been prepared and hand delivered and given to Minister Kennedy.

**MR. LEARMONTH:** Well, what's the point of making the request of Nalcor and then they come back and say we don't have anything, and not going back to Nalcor and say, well, you better get something because we want to delve into this deeply, we're concerned about cost overruns.

**MR. BOWN:** We went ahead and did it ourself. First, you'd go to your expert. They came back with nothing.

**MR. LEARMONTH:** Who's the expert?

**MR. BOWN:** Nalcor or Hydro.

**MR. LEARMONTH:** They're the experts, are they?

**MR. BOWN:** Well, they would have –

**MR. LEARMONTH:** On cost overruns.

Well, maybe now, but at the time they weren't, right?

**MR. BOWN:** Right.

**MR. LEARMONTH:** Yeah. So why would you rely on them?

**MR. BOWN:** We would rely on them and their expertise, reach inside the organization.

**MR. LEARMONTH:** And their response that they have no information was satisfactory –

**MR. BOWN:** No.

**MR. LEARMONTH:** – to government? No?

**MR. BOWN:** No.

**MR. LEARMONTH:** Well, I'd like to see you tell me about what this research revealed.

**MR. BOWN:** We would have done – I would have asked staff just to do a – an Internet review, research whatever they could find, bring those materials together and give them to Minister Kennedy.

**MR. LEARMONTH:** Well, who did the research?

**MR. BOWN:** That would have been Paul Scott's group.

**MR. LEARMONTH:** Paul Scott?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Well, why isn't there a record? Don't you have to keep records of matters such as this?

**MR. BOWN:** No, you don't have to keep records like this. If I ask for something, they can bring it forward by hand and sit with the minister and go through it with them.

**MR. LEARMONTH:** What were the results of the research?

**MR. BOWN:** Don't recall that.

**MR. LEARMONTH:** Well, I think if you'd done research, you would have seen that there's a significant –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – issue of cost overruns on megaprojects and, particularly, for hydro projects. Was that the result of your research?

**MR. BOWN:** I don't recall that.

**MR. LEARMONTH:** You don't have any idea?

**MR. BOWN:** No.

**MR. LEARMONTH:** So you do research, if you – I'm suggesting to you that if you had done research, that would have been the result of your research, if you'd done an objective – carried out objective research.

**MR. BOWN:** And it may not have been a very deep piece of research.

**MR. LEARMONTH:** But, anyway, it satisfied Minister Kennedy's concerns?

**MR. BOWN:** At that time, yes.

**MR. LEARMONTH:** Well, at that time, what –

**MR. BOWN:** Yes. Sorry, I apologize for qualifying.

**MR. LEARMONTH:** Yeah.

Okay, tab 75 – this is the last document we'll consider before lunch. Now, this is – starts off

with an email from Mr. Vic Young. You know Vic Young, do you?

**MR. BOWN:** Yes – no, I don’t know of Vic Young.

**MR. LEARMONTH:** The number is 00924.

**MR. BOWN:** I know who he is.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** I don’t know him.

**MR. LEARMONTH:** You know of him, anyway.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** He has extensive experience; he was, I think, the chair of Hydro and he was a senior civil servant and has a long and distinguished career in business. You’re aware of that, are you?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah.

Now, Mr. – there’s a series of emails, the first one we have is from Mr. Young to Ed Martin: “Source of Debt/Equity.” That’s on page 2 of 00924. Then there’s a response from Ed Martin to Nalcor – to – from Ed Martin to Victor Young, on Saturday, March 24.

And then at the top of page 2, Mr. Young writes: “Hi Ed. This is very helpful in wrapping my mind around the all important risks to the Province of proceeding. The attached is my rather simple summary, recognizing that all numbers are subject to change. Mentally, I add a 30% cost overrun (\$1.65 billion) and take off \$500 million for the anticipated federal” funding guarantee to “come up with \$6.65 billion to be financed by the Province/Nalcor in the bond market” et cetera.

Now, a man – so Mr. Young has considerable experience and business acumen. He’s advising that – well, he thinks that a 30 per cent cost overrun was – did government pay any attention to this point raised by Mr. Young?

**MR. BOWN:** I passed this email off to Minister Kennedy. I didn’t pass it off to anybody else.

**MR. LEARMONTH:** Was any action taken on it?

**MR. BOWN:** I don’t – no, I don’t think so.

**MR. LEARMONTH:** Because Mr. Kennedy was very concerned about costs. Is that right?

**MR. BOWN:** Yeah, and I gave this to Minister Kennedy.

**MR. LEARMONTH:** Did he comment on it to you?

**MR. BOWN:** Not that I recall.

**MR. LEARMONTH:** Well, just nothing happened about it.

**MR. BOWN:** Yeah, but I – I probably – I do remember printing this out and giving it to him.

**MR. LEARMONTH:** You do remember that, do you?

**MR. BOWN:** Absolutely, I do.

**MR. LEARMONTH:** Okay.

And then on the bottom of page 1 of Exhibit 00924, Mr. Young writes Ed Martin on April 10, 2012: “Hi Ed. Resending, in case you did not receive. I understand if you do not wish to reply but wanted to make sure you received. My expressed view regarding the need for an independent financial review is reinforced by the recent decision ... of the PUB and the decision of Government to hold a special debate in the House ...”

Was that information or comment given any consideration by Minister Kennedy or anyone else in your department?

**MR. BOWN:** I gave it to Minister Kennedy.

**MR. LEARMONTH:** Did you hear anything about it after that?

**MR. BOWN:** No, I did not.

**MR. LEARMONTH:** Well, wasn't Mr. Kennedy determined to get to the best cost estimate possible? I mean, that's what he told us consistently.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** He wanted the best estimate.

**MR. BOWN:** Yeah, I gave him this information. Clearly, I received this; I felt that he should see this.

**MR. LEARMONTH:** And did you follow up on it? I mean he –

**MR. BOWN:** He gave me no direction from it.

**MR. LEARMONTH:** So it was a dead issue. After you gave him the email, that's the last you heard of it.

**MR. BOWN:** He didn't provide me with any direction.

**MR. LEARMONTH:** Okay.

Do you know if he discussed it with anyone?

**MR. BOWN:** I can't tell you that. I don't know.

**MR. LEARMONTH:** You don't know.

Okay, well, I guess we can take the break now.

**THE COMMISSIONER:** All right, let's take our break then until 2 o'clock and come back at that stage. In the meantime, I think what we're going to need to do is have a little bit of a discussion about who is going to need what time this afternoon and tomorrow, because I'm going to – I have a funny feeling now I'm going to have to start to put my mind to who – how much time every one of you are going to get.

But, anyway, let's take a break and see where we are.

**CLERK:** All rise.

### Recess

**CLERK:** Please be seated.

**THE COMMISSIONER:** All right, Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Okay, Sir.

I think Mr. Ralph would like to speak to the disclosure issue that we raised this morning.

**THE COMMISSIONER:** Oh, okay. Thank you, Mr. Ralph.

**MR. RALPH:** Yes, Commissioner. This morning there was some confusion about the emails that Mr. Bown was looking at, and perhaps the Commission didn't have them. But, in fact, the Commission has the documents from those emails that were responsive to the searches that have been done.

So what had – do you understand –

**THE COMMISSIONER:** No, I don't.

**MR. RALPH:** – my point?

Okay, so we searched thousands and thousands – millions of documents and we had a bunch of search terms and so we would have searched his emails, and any email that had one of those terms, we would have forwarded it to the Commission.

**THE COMMISSIONER:** Mm-hmm.

**MR. RALPH:** So what happened subsequently, Mr. Bown perhaps believed that there was some emails there that were relevant that hadn't been produced. Probably, and I'd say definitely, because one of the search terms wasn't in the email. So in order to do that, we have to take those emails out of the system and put it on a laptop for security reasons. So that's what happened.

So there's nothing – those emails that he was looking at have already been searched, all the

relevant documents have been provided to the Commission.

**THE COMMISSIONER:** Okay, so we have copies of all of those emails?

**MR. RALPH:** No, we wouldn't give you all the emails. We would search those emails and we'd give you the documents that matched the terms that we were searching.

**THE COMMISSIONER:** Right.

So – but Mr. Bown is suggesting that there are other emails that have relevant information for the Inquiry. So do we have those?

**MR. RALPH:** I don't think he's suggesting that. That's not my understanding.

**THE COMMISSIONER:** Okay.

**MR. RALPH:** I mean, there may be some documents that he found, and I don't know, there may be emails that he found that our search didn't uncover because there wasn't one of the search terms in the email. That's a possibility.

**THE COMMISSIONER:** Okay.

So, I'm still not sure I'm any further ahead in my knowledge that we have all the relevant documents related to Mr. Bown.

**MR. RALPH:** Well, Commissioner, we can't go through every document, there's too many of them. So, I don't know, we have probably 200 – over 200 search terms and – you know, so we would've taken those search terms and we would've had input from everywhere, including Commission counsel. And so we would've taken those search terms and searched his emails and it would've come back with however many thousands of emails, which we then would have given to the Commission.

I mean, there may be emails that weren't captured by the search terms and they may very well be relevant, but it's just – it's impossible to go through every single email.

**THE COMMISSIONER:** Right.

So I guess my question is, is that the ones that Mr. Bown is relying on here, do we have those emails? Or have you spoken to Mr. Fitzgerald to figure out –

**MR. RALPH:** Yeah, so what happens – the process is, if he identifies or his counsel identifies emails, those emails come to us, we then forward them to the Commission.

**THE COMMISSIONER:** Okay, so in other words, you're telling me we have the ones –

**MR. RALPH:** That's right.

**THE COMMISSIONER:** – Mr. Bown is –

**MR. RALPH:** If he is – and especially if they're an exhibit, I mean, that's the process. He identifies them; same thing with Mr. Thompson, if they identify emails that they want to come to the Commission then we will forward them to the Commission and the process goes from there.

**THE COMMISSIONER:** Okay.

Ms. O'Brien?

**MS. O'BRIEN:** What I understood this morning, Mr. Bown referred to some specific meetings that he had had with external companies looking at developing the natural gas resource. And he gave the name of Union Fenosa, which I understand is a Spanish company. We – this is not something that's come to our attention yet. I have asked our team to start doing a search on those terms to see if we pull them up. They may not be emails that came over because they might not have been captured in the initial search, so we can do that directed search.

Mr. Bown, obviously, has access to his own emails. If he believes there is anything relevant there, he can do that search and bring them to our attention. And if he gives us any other keywords, we will certainly do a search on that and if we don't have them we'll seek them from government. But I think that's the best that we can do to facilitate this process.

**MR. RALPH:** I'll write an email right now and asked that Union Fenosa be searched through the system.

**THE COMMISSIONER:** Right.

Well, I know we already had one document actually that's in – that's before us with the reference to Union Fenosa –

**MR. RALPH:** Yes.

**THE COMMISSIONER:** – that came through Mr. Keating. So I recall that document. But I don't recall –

**MR. RALPH:** Was it a government document?

**THE COMMISSIONER:** No.

**MR. RALPH:** No, okay.

**THE COMMISSIONER:** It wasn't, it was a Nalcor document. So that's what concerns me.

**MR. RALPH:** Yes.

**THE COMMISSIONER:** But, in any event, I – okay, so just so I've got this figured out in my own mind. So, where we're going from here is that if Mr. – with regards to the request that was made by Mr. Learmonth, Mr. Bown is going to be looking for the emails, he's going to be identifying them, advising Mr. Fitzgerald. Mr. Fitzgerald is going to be advising you and you're going to make sure we got them.

**MR. RALPH:** I believe that's all ready done, I mean ...

**MR. FITZGERALD:** And not to put too fine a point on it, but I believe the testimony also referenced Mr. Bown's calendar and what meetings he would have.

**THE COMMISSIONER:** Correct. That's another issue.

**MR. FITZGERALD:** Yeah. He will check that as well and if there's anything else we'll provide it. I believe he has access to his calendar.

**MR. BOWN:** Now I do.

**THE COMMISSIONER:** So when that information is known – once we figure out, Mr. Fitzgerald – Mr. Fitzgerald, once we figure out exactly what it is Mr. Bown is going to produce, you'll, basically, I guess, be advising us and as well as Mr. Ralph, so that we'll make sure those documents are filed.

**MR. FITZGERALD:** Oh, absolutely.

**MR. RALPH:** Because I understood that Mr. Bown's review of his emails is finished. Is that right? So anything that he would've discovered, that he would've, I guess, gone through that process.

**THE COMMISSIONER:** Right.

**MR. RALPH:** Advised his counsel and so on, so forth.

**THE COMMISSIONER:** Anything else, Mr. Fitzgerald?

**MR. FITZGERALD:** Well, this goes back to Mr. Ralph's point. Yes, you go through your email but what one person thinks is relevant and what another person thinks is relevant are two different things. And often times, you know, we're a lot further ahead now then we were with Commission interviews back in the summer. So there's a lot of questions coming from counsel that were not there in the summer time. And what was relevant then may – things have changes. The water may change on the beans. So, you know, that's just the world we're living in here.

**MR. RALPH:** Commissioner, I mean, if someone wants us to search something in the documents – that's no problem. We can do that and that can be done pretty quickly.

**THE COMMISSIONER:** All right.

All right, well let's hope that this is working the way I expect it's supposed to be working.

Anyway, Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Mr. Bown, please turn to tab 91.

**MR. BOWN:** Binder –?

**MR. LEARMONTH:** Excuse me – 91 – that's – we're still in binder 2.

**UNIDENTIFIED FEMALE SPEAKER:**  
Exhibit?

**MR. LEARMONTH:** Exhibit number 01412.  
Do you have it?

**MR. BOWN:** Yes I do.

**MR. LEARMONTH:** Okay. Now this is a May 17, 2012 meeting with respect to the federal loan guarantee.

**MR. BOWN:** You're correct.

**MR. LEARMONTH:** You are deeply involved in the federal loan guarantee negotiations. Is that right?

**MR. BOWN:** Yes. I was the government's representative.

**MR. LEARMONTH:** You were the lead for the Government of Newfoundland and Labrador?

**MR. BOWN:** For the Government of Newfoundland and Labrador, yeah.

**MR. LEARMONTH:** So you attended all the discussions and so on.

**MR. BOWN:** Yes. I did.

**MR. LEARMONTH:** And who assisted you?

**MR. BOWN:** Todd Stanley. It would have been Paul Myrden or someone else at Finance depending on whatever issue we were working on.

**MR. LEARMONTH:** So you negotiated the terms with Canada, did you?

**MR. BOWN:** I didn't negotiate the terms – specific terms – this was a – financing for the project so it was project financing – Derrick Sturge was there, as were quite a number of other representatives from Nalcor and their legal counsel as well as Emera was at the table and the Government of Nova Scotia.

**MR. LEARMONTH:** All right.

**MR. BOWN:** But it was a project financing arrangement. The terms were business financing.

**MR. LEARMONTH:** Right. So, Mr. Sturge was a –

**MR. BOWN:** Mr. Sturge –

**MR. LEARMONTH:** – an important player in that process.

**MR. BOWN:** He was key in that process.

**MR. LEARMONTH:** Yeah. All right. Tab 94 which is document 01414. That's tab 94. Yeah.

Now this is a – at the bottom of page 1 of this exhibit – June 19, 2012 – LCP Executive Committee. Mr. Crawley, of Nalcor, says: "Hi Charles. As we get closer to a sanctioning decision we feel there may be merit in having you sit in on some of our LCP Executive Committee meetings. Would you be interested and available? We try to meet every two weeks usually on Wednesday ..." et cetera.

So is it at – LCP Executive Committee, that's Nalcor's?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And you say: "we're due to have one next Wednesday ... We'll provide a good overview ..."

So did you go to those meetings?

**MR. BOWN:** I likely attended one. I didn't attend any after.

**MR. LEARMONTH:** Any reason?

**MR. BOWN:** My schedule was completely full with activities related to the loan guarantee and other things at that time, and I wasn't able to attend those.

**MR. LEARMONTH:** Right. Tab 97, Exhibit 01417.

Now, this is an email from you to you – I guess in different – is this like a preparation of a draft letter?

**MR. BOWN:** You're correct.

**MR. LEARMONTH:** Okay. Now, this is about the UARB, and this is a draft letter to someone at Emera, is it? Is that right? Do you see it?

**MS. O'BRIEN:** Sorry to interrupt. Mr. Bown is having – we're having trouble hearing Mr. Bown.

**MR. BOWN:** I apologize. Sorry.

**THE COMMISSIONER:** Okay. So go ahead, Mr. Learmonth.

**MR. LEARMONTH:** Yeah. So do you see that exhibit, Mr. Bown?

**MR. BOWN:** Yes, I do.

**MR. LEARMONTH:** All right. So this is a draft letter to Emera, is it? Or someone in Nova Scotia government?

**MR. BOWN:** This would have been a draft letter to the Nova Scotia government.

**MR. LEARMONTH:** Okay. And you're unhappy about the reference they're making to the UARB?

**MR. BOWN:** The direction I was given was to prepare a draft letter. I was given the draft – messages to draft, to prepare, and this is what I pulled together. This would have been a first draft. I don't know if this letter ever went.

**MR. LEARMONTH:** Well, who asked you to draft this based on information provided?

**MR. BOWN:** I don't recall if that was the minister or it came from the premier's office. But it was a political direction to do this letter.

**MR. LEARMONTH:** So it was either Minister Kennedy or Premier Dunderdale?

**MR. BOWN:** Or the chief of staff.

**MR. LEARMONTH:** Or a chief of staff. Well that would have been –

**MR. BOWN:** When I say premier's office it includes chief of staff.

**MR. LEARMONTH:** Yeah. Okay.

So you're saying, "I understand that you are considering a much broader scope for the UARB review of the Maritime Link ... and a longer timeline. You'll recall that, at our meeting in St. John's, you agreed to provide the UARB with a narrow scope. This would see the UARB review only the Maritime Link and no other alternatives. You also agreed to ensure that the review would be completed by the end of December.

"I have been advised that you are now considering allowing the UARB to follow its normal regulatory process which gives it scope to review any alternative it wishes within the parameters of your Renewable Energy act and the pending federal coal regulations."

"One of the reasons we held the meeting in St. Johns was to ensure that we are aligned on our respective approach to developing both Muskrat Falls and the Maritime Link. Your letters to Premier Charest caused me great concern as it gave the appearance that you don't fully support our project.

"I'm lead to believe that the expanded scope for the UARB opens the door again to the import of power from Quebec. Not only is this unacceptable, the expanded process is inconsistent with the approach my government took in restricting the PUB regulatory review. This inconsistently will create a big headache for my government."

So I'll stop there. I mean, what – how does someone in the government of Newfoundland have the nerve to complain to another province as to how they're going to have a project such as the Maritime Link reviewed. I mean what's the basis for that?

**MR. BOWN:** The context I can provide is that there was a meeting held in St. John's – which I did not attend – so again, I was given the context for this letter and how to prepare it. The understanding was made at that – as I understand it, I was advised after the fact – there was an understanding at that meeting that the Government of Nova Scotia would follow suit and they would have a shorter UARB process so



that it would line up with the project sanction in December.

**MR. LEARMONTH:** Did it ever occur to you that maybe they – on reflection – decided that they'd apply – proceed with a more reasonable, open process?

**MR. BOWN:** That's what occurred.

**MR. LEARMONTH:** Yeah. And didn't that give you cause – your government cause to concern – cause to, you know, reflect on your decision to have a very limited review?

**MR. BOWN:** I'm only – in this case I'm the deputy minister, I'm not the government; and I'm responding – preparing a draft letter as I was instructed.

**MR. LEARMONTH:** Okay.

And this was from the premier's office or from your minister, Kennedy?

**MR. BOWN:** Yes. Yup, it would have been one of the persons who was at that meeting that they refer to in this letter.

**MR. LEARMONTH:** Were you at that meeting?

**MR. BOWN:** No, I was not.

**MR. LEARMONTH:** When was the meeting held?

**MR. BOWN:** Best guess, it was in May or June because I couldn't attend because my son was graduating from high school. So whatever that particular time frame is, that's when that meeting was held.

**MR. LEARMONTH:** Well, you must know who attended it on behalf of the Government of Newfoundland and Emera.

**MR. BOWN:** I know that –

**MR. LEARMONTH:** (Inaudible.)

**MR. BOWN:** – Minister Kennedy, the premier and the chief of staff were there.

**MR. LEARMONTH:** So the premier was there for sure?

**MR. BOWN:** Yes. It was a meeting with Premier Dexter.

**MR. LEARMONTH:** Yeah. And you weren't there so you can't tell us what was said, but you were instructed to write this note because your government was unhappy with the fact the UARB was gonna be given a wide power of review.

**MR. BOWN:** The government, not my government. But yes.

**MR. LEARMONTH:** Well, I mean –

**MR. BOWN:** When you say my government, you're referring to a politician; when – a politician would say my government. I work for 'the government'. I'm sorry to be –

**MR. LEARMONTH:** Well okay, I stand corrected by that –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – technical distinction. I think you know –

**MR. BOWN:** It's important –

**MR. LEARMONTH:** – what I'm talking about.

**MR. BOWN:** – but it's an important distinction for me.

**MR. LEARMONTH:** Why?

**MR. BOWN:** Well, because I'm not political.

**MR. LEARMONTH:** All right. Now volume 3, tab 102. Exhibit 01261.

You see it?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** This is a Department of Natural Resources paper dated July 2012.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Why was the consideration given to small hydro developments limited to three projects?

**MR. BOWN:** I don't recall.

**MR. LEARMONTH:** Well, you know, this is something –

**MR. BOWN:** I do know that – again, from my history in government and going back as far as the mid-90s – there was a detailed review of small hydro sites in the province. Again, there was an RFP that was issued by Newfoundland and Labrador Hydro at that time for small hydro.

There were two projects that were selected: Rattle Brook and I believe Star Lake. A number of others that were brought forward were turned down in environmental assessment. And it was clear at that time that the only viable opportunities for small hydro to be in that range was Island Pond, Portland Creek and Round Pond.

**MR. LEARMONTH:** What other projects were subject to environmental reviews?

**MR. BOWN:** There was – I don't remember the exact name. There was one in Terra Nova Park.

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** And the – again, that's so long ago now I don't recall, but they were – they didn't make it through environmental assessment. They were on scheduled salmon rivers and there was significant public opposition to small hydro in the province at the time. In fact, the government imposed a small hydro moratorium.

**MR. LEARMONTH:** Yeah, but are you saying – when you say they were – didn't make it through environmental assessment, are you telling us that there were actually environmental assessments done? Because if so, I don't think we've seen them.

**MR. BOWN:** This is back in the late '90s.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** Yeah, there were.

**MR. LEARMONTH:** So there were four more environmental assessments done?

**MR. BOWN:** On a number – on at least two projects that didn't make it through.

**MR. LEARMONTH:** Well, yeah, but there were many, many more than that. I mean, Mr. Humphries was questioned on this point, there were many more than a handful.

**MR. BOWN:** Yes and then –

**MR. LEARMONTH:** So why were the other ones turned down where there were no environmental assessments done?

**MR. BOWN:** They were either on scheduled salmon rivers or there was significant public opposition to them.

**MR. LEARMONTH:** Yeah, but –

**MR. BOWN:** And, again, drawing on my memory from a long time ago.

**MR. LEARMONTH:** But you don't know, then. But, I mean, this environmental issue, I mean the – you know, one could argue that there wasn't much concern given to the environmental issues in Labrador for the Muskrat Falls Project.

**MR. BOWN:** It went through environmental assessment.

**MR. LEARMONTH:** Yeah, but the recommendations weren't followed, some of them. So why would that be so important on the Island as opposed to Labrador.

**MR. BOWN:** I'm not making that distinction.

**MR. LEARMONTH:** Well, I'm saying that do you agree with me that the – some of the recommendations – many recommendations from the Joint Review Panel for the Muskrat Falls Project were not followed. I'll give you an example.

**MR. BOWN:** Thank you, because I don't know.

**MR. LEARMONTH:** Methylmercury; they said clear out the reservoir before impounding.

Now, that has not been done; nothing has been done on that. That was disregarded.

**MR. BOWN:** It hasn't been done.

**MR. LEARMONTH:** It's been disregarded. The recommendation has been disregarded to date.

**MR. BOWN:** To date.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So I'm asking why the environmental concerns in Labrador weren't given the same weight that they were in screening out a number of small hydroelectric development projects on the Island.

**MR. BOWN:** I'm just speaking to what was done at that time and the state of play at that time. I wasn't making – drawing a comparison to Labrador.

**MR. LEARMONTH:** No.

Tab 105, Exhibit 01421.

**MR. BOWN:** I have it.

**MR. LEARMONTH:** Do you have that?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So, once again, you're being asked to attend a conference or participate in a conference call tomorrow for the Muskrat Falls steering committee weekly agenda?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

That's different from the Nalcor meeting that you were asked to attend, is it?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

What is the composition of the Muskrat Falls steering committee?

**MR. BOWN:** The names are there in the to, from list: Brian Crawley, Brian Taylor, Ed Martin, Gilbert Bennett, Robert Thompson, myself, Dawn Dalley.

**MR. LEARMONTH:** Okay. So what's the purpose of this meeting?

**MR. BOWN:** The purpose of this is that there was a list, a checklist, that was keeping – we were keeping a watch on, or our committee was keeping a watch on as we got nearer to going into the House and then, ultimately, toward sanction.

**MR. LEARMONTH:** And point one is key outcomes from the last meeting: Ed Martin advised he is prepared – this is page 2 of 01421.

“Ed Martin advised ... he is prepared to sanction the project without all the necessary legislation in place, provided the legislation is fully within the Province's control. This is consistent with what has been” discussed, I guess, “with the Premier in the past.”

So why – this indicates a rush. Like, why would a project be sanctioned and Nalcor can't sanction it without the government approval. Is that true?

**MR. BOWN:** True and that didn't occur. While that statement may have been put there in the meeting minutes, that did not occur and the legislation was passed.

I don't – it would – you could not sanction the project without passing the legislation. That was our position.

**MR. LEARMONTH:** So Mr. Martin wanted to do that. He was that anxious, was he? Were you at the meeting where he said he wanted to do that?

**MR. BOWN:** These weren't – these were phone calls; they weren't face-to-face meetings. And attendance was irregular depending on your schedule.

**MR. LEARMONTH:** Yeah.

So were you there when Mr. Martin made that pitch?

**MR. BOWN:** I don't recall that.

**MR. LEARMONTH:** You don't recall. You don't have any record –

**MR. BOWN:** No.

**MR. LEARMONTH:** – of how many meetings you attended?

**MR. BOWN:** No.

**MR. LEARMONTH:** Or didn't attend?

**MR. BOWN:** (Inaudible) myself or Mr. Thompson would have spoken to that. That legislation was on the agenda.

**MR. LEARMONTH:** But, you know, usual practice is that when you attend a meeting you make a note of it or a record of it. Was that not your practice?

**MR. BOWN:** No, not always. Sometimes yes, sometimes no. Not always.

**MR. LEARMONTH:** Well, you know –

**MR. BOWN:** If there was a meeting agenda, I probably wrote my notes on the meeting agenda and that would have been left in my files at Natural Resources.

**MR. LEARMONTH:** Well, you know, in fairness, based on your answers today, we haven't found too many records that you kept of meetings or telephone calls.

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** Do you agree?

**MR. BOWN:** I haven't seen what you've recovered. Oh yes, I had seen what you've recovered so, yes, it's not there.

**MR. LEARMONTH:** So you agree?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. Thank you.

Now, at tab 107, which is Exhibit 00926.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** We've dealt with this with a number of witnesses. You're familiar with document, is it – are you?

**MR. BOWN:** Yes, yes.

**MR. LEARMONTH:** Yeah. So you've reviewed it?

**MR. BOWN:** A number of times, but ...

**MR. LEARMONTH:** A number of times?

**MR. BOWN:** Yes. Well, I've reviewed it, yes, in the binders.

**MR. LEARMONTH:** Yeah. When did you first see this? It's dated August 3, 2012, just before sanction.

**MR. BOWN:** I believe I was at this meeting.

**MR. LEARMONTH:** You were?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** What was your reaction to this presentation by Nalcor in general? We'll deal with it specifically later, but in general.

**MR. BOWN:** I don't recall my reaction at that time.

**MR. LEARMONTH:** You don't?

**MR. BOWN:** I know I was at the meeting.

**MR. LEARMONTH:** Who was at the meeting – who else was at the meeting?

**MR. BOWN:** I'm thinking that this was an off-site meeting that we had at the Johnson GEO CENTRE. And that would have been – and, again, I'm drawing from memory, I don't have my calendar in front of me. And that would have been Ed and Derrick and Gilbert, and it would have been the premier and the minister and myself and chief of staff.

**MR. LEARMONTH:** But where is your calendar?

**MR. BOWN:** It's in my email. My electronic calendar.

**MR. LEARMONTH:** But has it been provided to the Commission?

**MR. BOWN:** Yes, it would have.

**MR. LEARMONTH:** It has?

**MR. BOWN:** It would have been part of my electronic documents, yes.

**MR. LEARMONTH:** Is this a detailed calendar?

**MR. BOWN:** No.

**MR. LEARMONTH:** No.

**MR. BOWN:** It's an Outlook calendar.

**MR. LEARMONTH:** Okay, but does it have a record of all your meetings and so on?

**MR. BOWN:** It would.

**MR. LEARMONTH:** Your Outlook calendar. For what years?

**MR. BOWN:** All my calendar entries from 2006.

**MR. LEARMONTH:** Until when?

**MR. BOWN:** December 2017.

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** Would that assist you in refreshing your memory?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So why didn't you ask? I mean –

**MR. BOWN:** I just received – as I had said a moment ago, the calendar was part of my sent items. We were having technical difficulties getting access to my email and I only recently got access to that.

**MR. LEARMONTH:** When's recently?

**MR. BOWN:** Last week.

**MR. LEARMONTH:** Last week.

But did you remember – I advised the Commission that after your interview that I said that I would give the consent to the Commission to you going into your –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – the offices and getting whatever documents you felt were relative –

**MR. BOWN:** (Inaudible.)

**MR. LEARMONTH:** – were relative and helpful to you. And now, that was on September 6, your interview was.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So arrangements were in place for that –

**MR. BOWN:** And I requested –

**MR. LEARMONTH:** Yeah and you took advantage of that –

**MR. BOWN:** Hmm.

**MR. LEARMONTH:** – and you're saying that the – as a result of the initiative taken by you that only last week you received your calendar?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Well, why did it take so long?

**MR. BOWN:** There were technical difficulties of loading up my email.

**MR. LEARMONTH:** Okay. And what did you do when you found that document?

**MR. BOWN:** This document?

**MR. LEARMONTH:** Well, the calendar.

**MR. BOWN:** Oh, I reviewed as many as I could, but I didn't get through them all.

**MR. LEARMONTH:** Did you give it to Mr. Ralph?

**MR. BOWN:** No. I haven't reviewed it in full to find things to disclose.

**MR. RALPH:** Most of those documents are (inaudible) provided to the Commission. The (inaudible) calendar of many officials and I think (inaudible) provided probably last spring. And they are (inaudible).

**MR. LEARMONTH:** Well, Mr. Bown, I think, is saying that he only got this last week or only retrieved it last week.

**MS. O'BRIEN:** Adjust your mic, Peter, so they can hear you.

**MR. RALPH:** The issue, Commissioner, is that if an official wants to look at his emails on the government's system, he's not allowed just to go on the system. They have to take those emails and put them on a separate laptop. And so that was the difficulty they were having. There was so many emails and calendar items that the laptop kept crashing. But those – these items have been in the possession of the Commission probably since last spring.

**THE COMMISSIONER:** Okay, so we – you're saying we have the calendars?

**MR. RALPH:** Yes.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** (Inaudible.)

**MR. RALPH:** I can show you where they are if that helps.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Anyway, you were at this meeting, now what –

**CLERK:** (Inaudible.)

**THE COMMISSIONER:** Turn on your mic.

**MR. LEARMONTH:** Did you have any problem with the general tenor of this slide show in terms of the advice that Nalcor was giving to government?

**MR. BOWN:** I don't recall that I did. I don't recall that I had any concerns.

**MR. LEARMONTH:** Oh, on "Issues and Messaging" they're talking about –

**MR. BOWN:** Oh, that.

**MR. LEARMONTH:** Yeah. Well, that's included in the –

**MR. BOWN:** Yes.

So in terms of that – in review of that, the use of the term "hit squad" is not one that I found – find pleasurable at all. I don't know – I don't remember or understand the context, why that was characterized or who that was pointed at.

What I would note is that there was communications there from – at this meeting from Nalcor and there were communications there from the government as well. And this was a collaborative effort that they brought forward at this meeting. So while it says Nalcor Energy on the cover – the communications portion of this was a collaborative effort of government and Nalcor.

**MR. LEARMONTH:** And what individuals were involved in that collaborative effort?

**MR. BOWN:** That would've been Dawn Dalley – at this time, I can't remember if it was Glenda Power or Lynn Hammond and Heather MacLean.

**MR. LEARMONTH:** Well, if you didn't appreciate the use of the term "hit squad," did you make your concerns known at the meeting?

**MR. BOWN:** No, I didn't say anything at that time. The discussion was going on between the communication staff and the politicians.

**MR. LEARMONTH:** But did you speak up about it?

**MR. BOWN:** No, I did not.

**MR. LEARMONTH:** Why not?

**MR. BOWN:** I was following the conversation that was taking place.

**MR. LEARMONTH:** So you're just sitting there and it struck you that the use of this term "hit squad" was wrong but you didn't open your mouth.

**MR. BOWN:** I said I'd look at that "hit squad" term now and I find it objectionable. I can't recall if I was – I objected to it at the time. I don't know.

**MR. LEARMONTH:** Oh, it might've been acceptable to you at the time?

**MR. BOWN:** It may not have been.

**MR. LEARMONTH:** Okay. Well, if it wasn't acceptable at the time wouldn't you have spoken up – out about it as a senior civil servant – deputy minister?

**MR. BOWN:** I may have. I don't recall that I did. And I don't recall if anybody else in the room had any concern with that term either.

**MR. LEARMONTH:** Yeah. But in this document – that's on Nalcor's letterhead – there's no reference to a coordinated committee or collaborative effort directing or suggesting how to do the House of Assembly debate. Look at page 27.

**MR. BOWN:** Yes, but I do recall that there was a collaborative effort by government and Nalcor to prepare the communications elements of this presentation.

**MR. LEARMONTH:** Okay. Who on behalf – who – I'd like to know the individuals representing government who formed part of this collaborative group?

**MR. BOWN:** I just indicated it would've been Heather MacLean from Natural Resources and I don't recall who exactly was the – there was a

changeover between Glenda Power and Lynn Hammond as the communications director in the premier's office.

**MR. LEARMONTH:** So those persons you're saying would've –

**MR. BOWN:** And Dawn Dalley would've participated with them.

**MR. LEARMONTH:** So those persons from government would've been agreeable to using the term "hit squad"?

**MR. BOWN:** They would've been – they would've put this – assisted in putting this document together.

**MR. LEARMONTH:** What – look at page 34, "Sample messaging for hit squad: The Liberals have no credibility when it comes to the Lower Churchill ...."

Do you find everything all right with this?

**MR. BOWN:** This was all strictly political messaging and the conversation was politically focused and centred.

**MR. LEARMONTH:** Yeah. But what is a hit squad?

**MR. BOWN:** I have no idea.

**MR. LEARMONTH:** But you're the deputy minister sitting at this meeting, you're reading a document, probably here having an oral presentation where the word "hit squad" is used, and you just sit there passively, not knowing what it means, and just say nothing?

**MR. BOWN:** I don't recall that I said anything at the time. And there were others in the room there, as well.

**MR. LEARMONTH:** Well, I'm not talking about others.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** We've asked questions of others –

**MR. BOWN:** I listened –

**MR. LEARMONTH:** – I’m asking you, Charles Bown.

**MR. BOWN:** I listened to the conversation.

**MR. LEARMONTH:** Yeah. And so you didn’t speak up against the use of the term “hit squad” in the way that it’s contained in this document?

**MR. BOWN:** I didn’t speak up at that time.

**MR. LEARMONTH:** You never did. You said that’s –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – that time – you never did. Correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** Even though you thought it was a bad term?

**MR. BOWN:** Today – looking at it today, yeah, it’s an objectionable term.

**MR. LEARMONTH:** Well, I suggest that’s a very passive attitude for a man in your position to take.

**MR. T. WILLIAMS:** Mr. Commissioner, I have some objections.

**MR. BOWN:** Yeah.

**MR. T. WILLIAMS:** Where we’re gonna be likely limited in time for cross-examination of a very important witness and we’re spending 10 minutes on the word “hit squad” from a witness who said he didn’t draft it, he sat at the meeting (inaudible).

I don’t know what this is trying to accomplish, but if counsel are gonna be limited in cross-examination and then Commission counsel are allowed to prolong discussions on issues that I fail to see the extent of relevance. So if – I can see touching on it – it just seems unfair.

**THE COMMISSIONER:** Right. Anything you want to say Mr. Learmonth?

**MR. LEARMONTH:** Well, you know, I’ve covered enough. I don’t think I’ve got answers to any questions, but Mr. Williams makes a good point that if I am wasting time that does take away from the cross-examination of the witness and I don’t want to that.

So I’ll just accept Mr. Williams’s objection and move forward.

**THE COMMISSIONER:** Let me just add one thing here, and I can’t help but saying this – I have no idea how this evidence is all going to ultimately play out, but I see this witness as a very significant witness.

He is – whether he knew it or not, he was the point person for the Government of Newfoundland, in other words, the person who was there to protect the interests of the public. I’m not saying he was doing it on his own, but he was the one who was day to day involved in this project. So I see his role as fairly significant here in assessing not only what he did, but what the government did or did not do with regard to this particular project.

So, you know, I – and I’m not saying this specifically with regards to this particular slide deck or whatever, because we’ve seen this before and there hasn’t been anyone who said it isn’t objectionable and I don’t think there will be anybody who will try to say that – in public anyway.

So from my perspective, you know, I don’t want questions – I don’t want this witness to be dealt with in a peripheral way or time-limited way. I mean, if we have to go to Saturday to finish this witness, we’ll go on Saturday. It’s as simple as that.

My – what I’ve been told, when I came back from lunch, was that if Mr. Learmonth spent another hour or so, we would still have sufficient time based upon – I think Ms. O’Brien was talking to counsel – based upon the estimates that were given. So I’m assuming that we’re still in that timeframe, but if we’re not, then have no fear. For this witness, there may not be a time constraint and we’ll deal with it as we need to deal with it.

Go ahead, Mr. Learmonth.



**MR. LEARMONTH:** Okay, well I think I've covered that enough. We got some responses – maybe not answers, but responses.

Next exhibit is tab 114, Exhibit P-01423.

This is an email to you and others, Mr. Bown, about a MF steering committee meeting. Did you attend this meeting?

**MR. BOWN:** It would have been a phone call.

**MR. LEARMONTH:** Just a phone call? So what is this – are these meetings just to update you on the project?

**MR. BOWN:** It's to update everybody on the current status.

**MR. LEARMONTH:** Mm. Page 2 – we have – of Exhibit P-01423. Number five, "D. Dalley," that must be Donna Dalley is – or Dawn Dalley.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** "...to distribute messaging for boot camps in advance of sessions."

Now, Dawn Dalley is a public relations officer, is that correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** So can you tell me what this is about?

**MR. BOWN:** I don't recall what boot camps were.

**MR. LEARMONTH:** So if I ask – did you attend this meeting by phone?

**MR. BOWN:** The agendas were August the 16th. The matters below are the outcomes of the August 9 meeting.

**MR. LEARMONTH:** Did you attend this meeting by phone?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. Well, then there must have been – did you attend the August 12 meeting that's referred to there?

**MR. BOWN:** August 11.

**MR. LEARMONTH:** No that's – August 9.

**MR. BOWN:** August 9, sorry.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** Yes, by call.

**MR. LEARMONTH:** Okay, well you must know what was meant by boot camps if you were listening.

**MR. BOWN:** Yeah. Well, I don't recall what the context of boot camps was.

**MR. LEARMONTH:** Well I suggest to you that Dawn Dalley's a public relations or communications officer –

**MR. BOWN:** Mm.

**MR. LEARMONTH:** – so this was a – on what I think you call messaging, would that be correct?

**MR. BOWN:** That would be correct.

**MR. LEARMONTH:** Yeah. And that would involve government and Nalcor, right? Correct?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So this was a very – the messaging for Muskrat Falls was a very coordinated – highly coordinated endeavour of both government and Nalcor, is that correct?

**MR. BOWN:** Yes. As I indicated earlier, there was a coordinated effort between communications at Natural Resources, premier's office and Nalcor.

**MR. LEARMONTH:** And August 16, the top of page 2 of Exhibit 01423 it says: "Communication of updated capital cost estimates – B. Crawley" – and – "D. Dalley."

Now, do you remember anything about this item 4?

**MR. BOWN:** No, I don't have notes to recall exactly what that was.

**MR. LEARMONTH:** Well, exactly. Do you have any idea at all?

**MR. BOWN:** I guess they would have been pulling together communications material – intuitively – pulling together communications materials for the updated capital cost estimates.

**MR. LEARMONTH:** But you don't know exactly what that – ?

**MR. BOWN:** No, I'm just reading from the agenda.

**MR. LEARMONTH:** No recollection whatsoever?

**MR. BOWN:** No, Sir.

**MR. LEARMONTH:** Even though you participated?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. And that's a memory issue, is it?

**MR. BOWN:** I can't recall.

**MR. LEARMONTH:** You can't recall. Okay.

Tab 111 – tab 119. I just wanted to – I don't want to go through this in detail, but this is the final management reserve lenders owners' contingency report from Westney as I referred to earlier?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** You've seen this? I've showed you this I think?

**MR. BOWN:** You showed me this.

**MR. LEARMONTH:** Yeah. So you're familiar with it. And you confirm that you never saw it before sanction?

**MR. BOWN:** I confirmed it to you during my testimony that I didn't see it.

**MR. LEARMONTH:** You didn't. And not only did you not see it, you never heard any mention of it whatsoever?

**MR. BOWN:** No.

**MR. LEARMONTH:** And you never heard any –

**MR. BOWN:** You are correct.

**MR. LEARMONTH:** – mention whatsoever of the term strategic risk or management reserve?

**MR. BOWN:** You're correct.

**MR. LEARMONTH:** Okay. Tab – I guess we're now in volume 4, tab 127 – 27 – that would be – tab 127 – okay, (inaudible). Volume 4 we're into now. Exhibit P-01296 at tab 41 of volume 4.

**MR. BOWN:** I have it.

**MR. LEARMONTH:** Okay, now this is on page 2. This is – we went through this, I think, with Mr. Kennedy.

Can you just explain what this is? It's email from Jerome Kennedy to you and then one from you to Jerome Kennedy on November 15, 2012.

What are these points?

**MR. BOWN:** These are the overall messages that – these are the overall messages, concerns or questions that were asked by the Liberal team. It's a summary.

**MR. LEARMONTH:** So, just to clarify, they're not your –

**MR. BOWN:** They are not mine.

**MR. LEARMONTH:** – an expression of your thoughts.

**MR. BOWN:** No, I was asked to attend this meeting.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** And I took, as you saw, full notes and then I summarized what I believed to be the principle issues from the meeting in a subsequent email.

**MR. LEARMONTH:** Okay.

Tab 143, Exhibit P-01435.

This is a letter November 26, 2012 from Jim Prentice at CIBC.com. As you know, the Late Jim Prentice –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** – is a formerly federal Cabinet minister –

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** – and then he left and went to CIBC.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So, why would Jim Prentice – he wasn't part of the financing team or institutions for this project, was he?

**MR. BOWN:** No.

**MR. LEARMONTH:** So, why would he be preparing a draft letter, which is what he appears to do?

**MR. BOWN:** I became aware after the fact that Jim Prentice had been engaged and I think that had been through contacts through Ed Martin, and then discussions with the premier's office that an effort was required to ensure that the loan guarantee was approved in – in 2012. So, that's the reason that he was engaged. I was in a meeting once with him and again, I was copied on an email.

**MR. LEARMONTH:** Who was he engaged by?

**MR. BOWN:** He was engaged by Nalcor.

**MR. LEARMONTH:** By Nalcor, to do what?

**MR. BOWN:** To work with the premier's office and to work with Ottawa to ensure that the loan guarantee got completed in 2012.

**MR. LEARMONTH:** So, he was paid was he, a paid consultant?

**MR. BOWN:** I'm not sure if he was paid or not. I wasn't that close to this, but he was engaged by Nalcor.

**MR. LEARMONTH:** Well, there was some evidence – we heard from Derrick Sturge about some pressure that was brought to bear –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – to use CIBC for financing. Did you hear that evidence?

**MR. BOWN:** I heard that.

**MR. LEARMONTH:** Yeah.

And do you think there's any connection between him writing this letter and his trying to get an inside track on financing for CIBC?

**MR. BOWN:** I don't know if that was his intent for being involved in this, but being involved in the loan guarantee and how the financing process worked, and the fact that the Government of Canada was so fully engaged in this with their financial advisors and their legal team, there was no opportunity for anybody – because it was an open and transparent process, there was no opportunity for anybody to have the opportunity to curry any favour to be part of this process.

**MR. LEARMONTH:** No, if Mr. Prentice was trying to, you know, get on the inside track, he was wasting his time?

**MR. BOWN:** I believe so.

**MR. LEARMONTH:** Okay. And you don't know whether he was paid or not?

**MR. BOWN:** Again, I don't know.

**MR. LEARMONTH:** Okay.

The next document is 144.

Now – Exhibit 01128.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Now, this is a document – if you see on page 4 it was dated November 27, 2012.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So we're talking about – I think Cabinet gave permission to Nalcor to sanction on December 5 or December 6. So it's, you know, say, 10 days before Cabinet gave permission for Nalcor to sanction the project?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So this is a late document. Do you agree?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And it was prepared by Natural Resources and Justice. You were the deputy minister; did you prepare this document or did you participate in the preparation of this document?

**MR. BOWN:** No, staff prepared this document.

**MR. LEARMONTH:** On whose direction?

**MR. BOWN:** This was an initiative that both Natural Resources, Justice and Finance were asked to do in April.

**MR. LEARMONTH:** Well, who asked them to do it? Did you?

**MR. BOWN:** No, it was a directive that they received – that we received.

**MR. LEARMONTH:** From who?

**MR. BOWN:** From Cabinet.

**MR. LEARMONTH:** From Cabinet?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Are you sure about that?

**MR. BOWN:** It's the first bullet, April 2012. Cabinet directed NR, Justice and Finance to prepare an accountability protocol.

**MR. LEARMONTH:** But it says: Direction Note; Department of Natural Resources.

**MR. BOWN:** I'm just reading the first bullet in the Background and Current Status.

**MR. LEARMONTH:** All right. Yeah.

So – okay, I see that now. But if this was April 2012 that Cabinet directed DNR, Justice and Finance to develop options, accountability protocol, so why was it that this report was not prepared until November 27, 2012?

**MR. BOWN:** Staff were given the task to go off and do this. They pulled a team together, which included Mr. Robert Noseworthy, to come up with options. But, clearly, it took them much longer to prepare this than was intended. My focus was clearly on developing the legislation and the loan guarantee at this stage.

**MR. LEARMONTH:** Yeah, but this is – you know, Robert Noseworthy, a former chair of the PUB, was retained – very important issues, I suggest. On page 1, "Accountability Oversight Options" –

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yet I see no indication that any action whatsoever was taken following the preparation of this report, is that correct?

**MR. BOWN:** So there is another exhibit. There's an email from me to Robert that – and I don't know the number.

**MR. LEARMONTH:** Is that at tab 45, volume 4 – Exhibit P-01129?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

**MR. BOWN:** So I send the note to Robert, and the indication is that it's too late to move this forward so keep working on it.

**MR. LEARMONTH:** It's too – hold on – it's too late to move this forward so keep working on it?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Well, if it's too late to move something forward, why would you keep working on it?

**MR. BOWN:** Again, to keep – I guess the intent was to refine the options that were there.

**MR. LEARMONTH:** But if something is too late, then –

**MR. BOWN:** You come back to it later.

**MR. LEARMONTH:** Okay, but did it – was there ever any return to this?

**MR. BOWN:** Ultimately this resulted in the Oversight Committee.

**MR. LEARMONTH:** No, I don't think so because –

**MR. BOWN:** No?

**MR. LEARMONTH:** – this is dated November 27, 2012.

**MR. BOWN:** I know there was a delay. There was a significant delay.

**MR. LEARMONTH:** This seems to be a clarion call to, look, we're about to sanction this –

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** – and we better get our act together and there's a lot of stuff in terms of oversight that we have to deal with.

**MR. BOWN:** Mm-hmm.

**MR. LEARMONTH:** Do you agree with that?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. And I'm suggesting to you that nothing was done, that the recommendations in this document and the observations in this document were ignored – completely ignored. Do you agree?

**MR. BOWN:** I won't say it was ignored. It got lost after the fact; it wasn't followed up on.

**MR. LEARMONTH:** Well, it got lost. Who lost it?

**MR. BOWN:** Well, it got lost inside the department.

**MR. LEARMONTH:** But this was an important document, don't you think?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And if it had been followed and implemented at the time, don't you agree it could've had – played an important role in the Muskrat Falls Project from November 27, 2012, forward?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** But you have – you're the deputy minister. You acknowledge this is an important document of oversight, and you can't give us any information whatsoever as to why this died?

**MR. BOWN:** It got lost inside the department. From this point forward, I moved on to the financing process for the loan guarantee.

**MR. LEARMONTH:** But why did it get lost? I mean, you were the deputy minister, and you had some control over this recommendation, is that correct?

**MR. BOWN:** In preparing it from the department, yes.

**MR. LEARMONTH:** Yeah. So if it died, it died because you didn't do anything about it.

**MR. BOWN:** It was – it got lost after the fact. It slipped off my radar.

**MR. LEARMONTH:** Yeah, so you overlooked it. You didn't do anything with it whatsoever?

**MR. BOWN:** It got – it slipped off my radar after the fact.

**MR. LEARMONTH:** Yeah. Were you told to let it slip off your radar?

**MR. BOWN:** No.

**MR. LEARMONTH:** No. Well, I suggest to you, Sir, that that's a very serious omission on your part. Do you agree with me?

**MR. BOWN:** It was an omission; it slipped off my radar.

**MR. LEARMONTH:** I suggest to you it's a very serious omission. Do you agree with me?

**MR. BOWN:** I agree with you. It's an omission.

**MR. LEARMONTH:** You agree with me that it's a very serious omission?

**MR. BOWN:** I agree that there was – it slipped off the radar. That's my answer.

**MR. LEARMONTH:** You've said that, but I ask you: Do you agree there was a very serious omission? Yes or no?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. Thank you.

Now, I want to take you to Exhibit 00790, which is a transcript of an interview with Todd Stanley.

**MR. BOWN:** In this same binder?

**MR. LEARMONTH:** Yes.

**THE COMMISSIONER:** What tab?

**MR. LEARMONTH:** 00790, tab 47.

**THE COMMISSIONER:** Tab 47.

**MR. LEARMONTH:** Volume 4.

Are you familiar with Todd Stanley?

**MR. BOWN:** Very familiar with Todd Stanley.

**MR. LEARMONTH:** Did you work with him?

**MR. BOWN:** Todd Stanley provided me with legal advice for approximately 15 years.

**MR. LEARMONTH:** For 15 years?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And did you – was he in tune with what was going on with Muskrat Falls, as far as you know?

**MR. BOWN:** Todd was in and out on the project, yes, but he had an understanding, yes.

**MR. LEARMONTH:** Okay.

Now, you've told us, I think, repeatedly, that your instructions were simply to trust Nalcor. Is that correct?

**MR. BOWN:** That was the general view, that we would rely on Nalcor.

**MR. LEARMONTH:** On the information they provided?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Without independent assessment?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay.

Now, page 19 about – a little less than half way down page 19 of this Exhibit 00790, this is a question put to Mr. Stanley: "Can you expand on that, please?" He says: "Yeah.

"There was an aspect that Nalcor was – there were concerns at Natural Resources – concerns in government that there was insufficient oversight or insight into what Nalcor was doing, mostly on the control – on a host of fronts over time. Most of the work that Nalcor did from about – on the Lower Churchill – from, I don't know, 2009 to 2012 or '13, Nalcor was, you know, sort of reporting directly to the Premier's office and intervening departments found out later what was going on."

Do you agree with that observation?

**MR. BOWN:** That Nalcor was going directly to the premier's office?

**MR. LEARMONTH:** Yes.

Well, do you agree with that paragraph? I want you to go through it – you can go through it –

you can either say you agree with it in whole or in part or agree with it completely or you don't agree with it.

**MR. BOWN:** Well, the fact –

**MR. LEARMONTH:** Just take –

**MR. BOWN:** – that we had concerns was noted in the briefing note that myself and Terry Paddon had brought forward.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** And then the fact that the premier – the – Nalcor was going directly to the premier's office, I can't say that – whether that did or did not occur. Generally, if Nalcor was in the premier's office, either the minister was there, the clerk would be there or the deputy minister would be there.

**MR. LEARMONTH:** Yeah. But – okay, let's just go through that sentence by sentence.

**MR. BOWN:** Yeah.

**MR. LEARMONTH:** “There was an aspect that Nalcor was – there were concerns at Natural Resources – concerns in government, that there was insufficient oversight or insight into what Nalcor was doing, mostly on the control – on a host of fronts over time.” Do you agree with that sentence?

**MR. BOWN:** We did have concerns.

**MR. LEARMONTH:** Do you agree with that sentence? If you disagree, tell me how you disagree with it.

**MR. BOWN:** I agree that there were concerns and that's what resulted in the briefing note – decision note – that myself and Mr. –

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** – Paddon prepared.

**MR. LEARMONTH:** So do you agree with that sentence?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** You do agree with it. Okay.

Now, the next sentence: “Most of the work that Nalcor did from about – on the Lower Churchill – from, I don't know, 2009 to 2012 or '13, Nalcor was, you know, sort of reporting directly to the Premier's office and intervening departments found out later what was going on.”

Do you agree with that sentence?

**MR. BOWN:** I can't agree with that. I don't know that for certain.

**MR. LEARMONTH:** So you don't disagree with it, you just –

**MR. BOWN:** I don't disagree with it. I just can't say that it's certain.

**MR. LEARMONTH:** So you have no personal knowledge as to whether that's correct or not?

**MR. BOWN:** No.

**MR. LEARMONTH:** Okay. Then we go down.

“**MR. LEARMONTH:** That was during what period?”

“I'd say ... 2009 to 2013, but even past that.

“**MR. LEARMONTH:** Yes.

“**MR. STANLEY:** So you could have circumstances where Nalcor do – come into government and make a presentation on the eighth floor, go get in the instructions and approvals, go back and then they'd call the government departments and tell them what they were doing. And the government departments would find out through Nalcor what had been approved on the eighth floor, and may not necessarily think the eighth floor had all the information in front of them that they should have when they made decision and not agree with the decision.”

Do you agree with that paragraph?

**MR. BOWN:** I don't agree with that. I can't recall that ever occurring.

**MR. LEARMONTH:** But you were in the Department of Natural Resources.

**MR. BOWN:** I don't recall ever receiving word back that Nalcor had been to the premier's office by themselves, had sought approvals, without any government officials or anybody from Natural Resources, and that being reported back for departments to do. I don't recall that –

**MR. LEARMONTH:** Okay, so –

**MR. BOWN:** – ever happening.

**MR. LEARMONTH:** Okay. So you have – would you disagree with that statement?

**MR. BOWN:** I disagree with that.

**MR. LEARMONTH:** Yeah. But it could have happened without you knowing it.

**MR. BOWN:** It could have happened without me knowing.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** That's what I said. I don't recall that ever happening.

**MR. LEARMONTH:** Okay. Next paragraph.

“So the whole issue of how Nalcor's operating versus how government was operating, and the level of control or insight or – that was a constant issue at lower levels of government than I – than like, sort of, the Premier's office. I'm not sure I'm putting that well.

“There was constantly discussion going on that Nalcor was basically a fiefdom. And we didn't know – always know what was going on over there, you know, at the operational level.”

Do you agree with those two paragraphs?

**MR. BOWN:** No, I don't. I'd never call Nalcor a fiefdom.

**MR. LEARMONTH:** Yeah. Well, you know, you've told us that you were instructed or that you did trust everything they said. Correct?

**MR. BOWN:** By and large, yes.

**MR. LEARMONTH:** Yeah. So they were operating independently of government.

**MR. BOWN:** They were working together with us.

**MR. LEARMONTH:** Yeah. But why can't you acknowledge that they – that it was a fiefdom.

**MR. BOWN:** Wouldn't a fiefdom mean that they had control over what we were doing?

**MR. LEARMONTH:** Over what they were doing.

**MR. BOWN:** Over what they were doing.

**MR. LEARMONTH:** Yeah, I think so.

**MR. BOWN:** Yes. Yeah, but not over what we were doing, and they weren't out of control. They had to report to government. There was constant engagement with the minister, with the premier's office. There was nothing they did of substance that they would have done without getting government approval.

**MR. LEARMONTH:** Well, did they get government approval to suppress the strategic risk report?

**MR. BOWN:** I'm speaking about whether they were going to start a negotiation with a company, whether they were going to seek an equity interest in an oil project, et cetera.

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** Things like that.

**MR. LEARMONTH:** But not the details. They didn't provide you with information on the details, did they?

**MR. BOWN:** On what?

**MR. LEARMONTH:** On the initiatives you just described.

**MR. BOWN:** They would have let us – absolutely. If they were going to enter into a negotiation, let's say for an equity interest in an oil project, there'd be detailed discussions and meetings. There'd be – actually government



would actually participate with them in those discussions.

**MR. LEARMONTH:** Okay. Well, let's go to page 20. This is just a continuation.

**"MR. STANLEY:** You know, there were instances where we went over to Hydro, or Nalcor, for a briefing on something as to how the Muskrat project would be structured – this was fairly early days – and they would tell us it's ... A, B or C.

"I remember a meeting where we went – and I can't remember what the briefing was, the topic of it – but the instructions were, like, you know: And it's gonna work like this. And the government people were sitting there and were like: Well, who said it's gonna work like that? ..., you know, that's the perceived, at least, concerns about how that would be.

"And Nalcor's response was, this was approved by the premier. And one of the Natural Resources people who was there said: Oh, that's interesting, I don't remember writing the policy analysis on that. The comment was facetious. There was no policy analysis on it. Right? It never came through the experts at Natural Resources to say: Okay, here's the wrinkles, here's the hairs on that, here's the problems with it.

"Nalcor came and got approval from the Premier's office." We gotta "do this; marched off and had their instructions and their approvals. So that was unusual."

Do you have any comment on the accuracy of that statement?

**MR. BOWN:** That wouldn't be accurate. That would be a case of a misunderstanding by Nalcor staff, who would've been – I read this piece, and thought about it. It would come from a misunderstanding from the staff at Nalcor, who had been briefed on actions or briefings that had taken place in the premier's office, that they had assumed that what they were being reported back on was an absolute fact, that it was done. Rather, it was more likely that, yes, we agree we're going in this direction, but there has to be a lot more work done yet inside of government.

There would never – I don't recall this ever occurring that this – a situation where the Nalcor staff would tell our folks that this was a done deal.

**MR. LEARMONTH:** So, are you suggesting that Mr. Stanley's making this up?

**MR. BOWN:** I just – I'm saying I don't agree with it.

**MR. LEARMONTH:** You don't agree with it.

And were you one of the Natural Resources people who said: "Oh, that's interesting, I don't remember writing the policy analysis ...?"

**MR. BOWN:** No, that wouldn't be me.

**MR. LEARMONTH:** Do you have any idea why Mr. Stanley would make this statement?

**MR. BOWN:** No, I have no idea.

**MR. LEARMONTH:** Okay.

And on page 21, three quarters length down:

"That would presume insights in Minister Kennedy's thinking ... I'm not sure I'm gonna put on the record.

"Okay.

And he says: "He, I think, viewed them as being, as a number of people in government did as you're getting into" 2010 – 2000, I think that's an error, but anyway – "I can't remember" whether it was 2011, 2012, I think. "You know, they were sort of viewed as being a little bit of a runaway train that we didn't have any control over. You know, so they'd call over and ... say – government – well, I need the following 15 things ... and I need it all done by Tuesday.

"And you get these calls and then you'd be looking at it going this" way "you know, three months work and massive policy issues, blah, blah, blah. But Nalcor's like I don't – we just need it done. So that – personality differences, that kind of stuff, he gave them a hard time" – that's Minister Kennedy – "or purported to give them a hard time on matters. I don't think he had

much of a personal fondness for them or the project and the like.”

Now, do you have any comment on that, that comment that Mr. Stanley gave?

**MR. BOWN:** Not a runaway train, that – I don’t agree with that.

What I would note is that there was a differential between the quantity of our staff and the resources that we had available to us –

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** – versus the quantity of staff that Nalcor had and the resources they had available to them, and sometimes that would be a source of rub between them and us.

**MR. LEARMONTH:** Well, if they weren’t a runaway train, what controls were put on them?

**MR. BOWN:** There was – again, there was constant engagement between Nalcor and government over the activities that they were doing.

**MR. LEARMONTH:** Yeah.

But, like, just as an example, they had a veto power over deciding whether that risk analysis was going to be done on the Manitoba Hydro review. You said that yesterday.

**MR. BOWN:** Yeah, hindsight.

**MR. LEARMONTH:** Yeah. Yeah, well, isn’t that a runaway train? Isn’t that example – isn’t that consistent with the finding that they were the runaway train? They were telling government what the Manitoba review scope of work would be. Isn’t that a good example of that?

**MR. BOWN:** I wouldn’t characterize it as a runaway train.

**MR. LEARMONTH:** Isn’t that a good example of it though? Isn’t that consistent with a runaway train? Nalcor telling government what the scope of work for review of the DG3 numbers was?

**MR. BOWN:** I don’t believe so.

**MR. LEARMONTH:** Why not?

**MR. BOWN:** I just don’t believe so. That’s my answer.

**MR. LEARMONTH:** Well, do you have any – can you tell us why what I just put to you is not correct?

**MR. BOWN:** I guess that would be one example of an action that, in hindsight, you can look at, but in terms of runaway train, it would be completely no control whatsoever any time all the time, and I don’t see that.

**MR. LEARMONTH:** So you think that it’s an appropriate term but maybe just a little bit too extreme?

**MR. BOWN:** I think it’s a little bit too extreme.

**MR. LEARMONTH:** A little bit too extreme?

**MR. BOWN:** More than a little bit.

**MR. LEARMONTH:** Okay.

Well, you know, getting back to the point I just made about them dictating the terms of – the scope of work for MHI, which is what they did. I mean, that MHI review was a very important piece of work for government.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Do you agree?

**MR. BOWN:** Yes, I do.

**MR. LEARMONTH:** Yeah.

And if they had the power to direct government by saying, no, we don’t want any risk analysis done of our work, that suggests to me an incredible amount of power that Nalcor had and that government accepted. Do you agree with that?

**MR. BOWN:** At the time, the argument was sound and accepted by those who were in the room that day. And whether that was done on purpose, I can’t tell you whether that was done to manipulate the process.

**MR. LEARMONTH:** But you acknowledge that it may have been?

**MR. BOWN:** May?

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** It's easy to say may, yes.

**MR. LEARMONTH:** But you acknowledge it may have been done to manipulate the process?

**MR. BOWN:** It may have been, but I have no evidence to say that it did.

**MR. LEARMONTH:** Yeah, well, that's an inference that perhaps will be drawn at some point or maybe it won't be.

Anyway, page 22, Mr. Stanley – this is just one – just near the top: “Yes, there was a level of the civil service that was – whose attitude towards Nalcor as this was going on ... I dunno ... I dunno if I've got the terminology – exasperation, irritation, there was a – as I was saying there was times when Nalcor was treating government as the – the perception was Nalcor was treating government as an entity whose job it was to do whatever ... needed to ... get the projects that it was working on done, whether it was oil and gas or whatever.”

Do you agree with that?

**MR. BOWN:** I think – go back to the comment that I made previously.

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** There was a gap between the number of people that government had and the resources we had available to us –

**MR. LEARMONTH:** Mm-hmm.

**MR. BOWN:** – and they had significantly more people – have – and more resources to attach to a particular activity, and sometimes the speed at which they could move, or wanted to move, was inconsistent with the speed that government could move.

**MR. LEARMONTH:** Did this cause exasperation in the civil service?

**MR. BOWN:** In particular moments, it caused a little bit of irritation.

**MR. LEARMONTH:** Well, he –

**MR. BOWN:** I wouldn't say exasperation –

**MR. LEARMONTH:** Mr. –

**MR. BOWN:** – but irritation.

**MR. LEARMONTH:** – Stanley uses the word “exasperation.”

**MR. BOWN:** Yeah. I wouldn't use exasperation but irritation with the fact that, you know, we can't keep up to your schedule. You're gonna have to work to our schedule.

**MR. LEARMONTH:** Yeah, and the point – “the perception was Nalcor was treating government as an entity whose job it was to do whatever Nalcor needed to do to get the projects that it was working on done, whether it was oil and gas or whatever.”

Do you agree with that?

**MR. BOWN:** No, I don't believe – it depends on which level you were looking at inside of Nalcor, but at the executive level, they knew full well that, without government approval, that whatever it is they wanted to do or needed to do would not get done.

**MR. LEARMONTH:** Yeah, but they knew – Nalcor knew that, in order to get government approval, government would be relying on the information that they provided. Correct?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Yeah. Okay, well.

Now, the next paragraph on page 22: “You know, most of the – I think most of the government, civil service, felt disrespected ... they didn't perceive that Nalcor had any idea

what the role of Natural Resources was. The Department of Natural Resources would be perceived to be a check on Nalcor, what they were coming in with, and instead, they were assumed to be a cheerleader. So there's a fair amount of exasperation."

Any comment on that?

**MR. BOWN:** I don't agree with that.

**MR. LEARMONTH:** You don't?

**MR. BOWN:** No.

**MR. LEARMONTH:** Well, I suggest –

**MR. BOWN:** Again, it was the differential between Natural Resources, small department, and the few number – the limited number of people to work on the files. And they had a lot more people.

**MR. LEARMONTH:** Well, why wasn't government properly staffed in order to deal with –

**MR. BOWN:** We were in –

**MR. LEARMONTH:** Wait 'til I finish the question.

**MR. BOWN:** Sorry.

**MR. LEARMONTH:** Why wasn't the Department of Natural Resources properly staffed to supervise Nalcor on a project of this magnitude and importance to the province?

**MR. BOWN:** Government was in restraint measures. We weren't able to hire any people. We couldn't travel; we couldn't hire.

**MR. LEARMONTH:** So you don't go with – you don't like the word cheerleader, do you?

**MR. BOWN:** I do not like the word cheerleader.

**MR. LEARMONTH:** Well, would you like – would you be – would it be (inaudible) to call –

instead of being a cheerleader, a passive bystander. Would you agree with that terminology?

**MR. BOWN:** No.

**MR. LEARMONTH:** Because that's what I'm suggesting the Department of Natural Resources was.

**MR. BOWN:** No, I don't agree.

**MR. LEARMONTH:** A passive bystander.

**MR. BOWN:** No.

**MR. LEARMONTH:** You don't agree with that? Okay.

When was the decision made to – by government – to proceed with Muskrat Falls? When was the decision made? I know the date of sanction, but when was there no turning back from Muskrat Falls?

**MR. BOWN:** I don't know when there was a no-turning-back point, but there was an MC in 2010 indicating that Muskrat Falls was the next generation source.

**MR. LEARMONTH:** But when was that decision made such that it couldn't be – it wasn't going to be reversed?

**MR. BOWN:** I couldn't tell you that.

**MR. LEARMONTH:** If we could take a short break, I can just put my notes together and end in another five minutes. Would that be possible?

**THE COMMISSIONER:** All right.

We'll do that then, and then, hopefully, we can get to some cross-examination today.

All right, we're – take 10.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Mr. Learmonth.

**MR. LEARMONTH:** Thank you.

Mr. Bown, you stated that when you saw these various changes to the draft reports from MHI that you, I guess, assumed that the changes had been made as a result of information flowing from Nalcor to MHI. Is that correct?

**MR. BOWN:** That's correct.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** That's my memory.

**MR. LEARMONTH:** That's your memory.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** But that is contradicted completely by the evidence of Paul Wilson that he gave to the Commissioner of this Inquiry.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** I want to read you out a part of his transcript from – starting on page 58 and then on 59 and 60.

**MR. FITZGERALD:** Commissioner, I know we're on a tight time frame and you said we're going to start cross-examination. It seems like Mr. Learmonth here now is trying to impeach a witness about something he said.

Earlier this morning Mr. Bown gave some evidence about he had some exhibits and he saw some exhibits, and we were going to try to identify those which identified the RFI process. Those are exhibits 00767 and 00769.

I was going to take those to Mr. Bown when I finish, but now putting this evidence to Mr. Bown, in his role as Commission counsel, trying to impeach him the way he's trying to impeach him, it's not the proper role of Commission counsel and it shouldn't be put to the witness.

**THE COMMISSIONER:** Okay. So what you're suggesting is that he should take him first to two exhibits?

**MR. FITZGERALD:** Two exhibits: 00767 and 00769.

**THE COMMISSIONER:** Okay, so Mr. Learmonth.

**MR. LEARMONTH:** I'm not trying to impeach the witness; I'm trying to get clarification on a comment that he made this morning. Which, I suggest, that his comment is contradicted by evidence given to this Commission by Mr. Wilson. I don't see anything improper or anything like that.

**THE COMMISSIONER:** Can you tell me what tab 00767 and 00769 are, Mr. Fitzgerald?

**MR. FITZGERALD:** I don't even believe they're in the binders of Mr. Bown.

**THE COMMISSIONER:** Okay.

**MR. FITZGERALD:** But his evidence was, in preparing for the Inquiry, he saw documents and just informing the Inquiry.

**THE COMMISSIONER:** Let's bring up 00767, please.

Okay, so have a look at this, Mr. – what I want you to do is familiarize yourself with this, Mr. Bown, before Mr. Learmonth asks you any questions.

**MR. BOWN:** Okay.

Can you scroll to the bottom?

**THE COMMISSIONER:** Can you do – do you – okay.

**MR. BOWN:** Okay.

**MR. LEARMONTH:** Okay and the next one. Is there another one?

**THE COMMISSIONER:** 00769. That's –

**MR. FITZGERALD:** And I believe it might be the last page. It's the table, the RFI table that we've seen a number of times, item number 33.

**THE COMMISSIONER:** Just keep going down to number 33.

Just review that, Mr. Bown, please.

**MR. BOWN:** Okay. I got it.

**MR. LEARMONTH:** Okay.

Now, this is the evidence from Mr. Wilson starting on page 58: “Do you have any record that you actually received additional documents for the Decision Gate 3 transmission line cost elements between the time of your – the first report on August 2, and September 25, the date of this report?”

Answer, “**MR. WILSON:** We would not have received any additional documents.”

“Well, then why is it changed?”

Mr. Wilson – I’m on page 59 now – this has to be “worded just to, I guess, reflect the document that was provided at the time.

“**MR. LEARMONTH:** Yeah, but that’s a – that’s quite a different meaning that you’re conveying here, isn’t it?”

“On one, the earlier one, you’re saying Nalcor did not provide MHI with access to the detailed cost elements, et cetera, and here you’re saying Nalcor provided MHI with a detailed report. It’s a complete flip-flop, I suggest to you.

“**MR. WILSON:** Mm-hmm.

“**MR. LEARMONTH:** Do you agree?”

“**MR. WILSON:** Well, it certainly has got, now, a positive spin on it, absolutely.

“**MR. LEARMONTH:** Do you –

“**MR. WILSON:** Yeah

“... agree it’s a complete flip?”

“**MR. WILSON:** No ... it’s not a complete flip.”

“... Okay.

“... It’s just the same statement but now focusing on positive issues, ’cause it’s the same

document that was provided in our evaluation at the start, it’s just the way it’s reported.

“... And you told us you didn’t get any documents in the meantime between the two reports.

“Well, anyway, you know, that would be for others to judge, but I just wanna make sure that I’ve asked my questions” I said.

“**MR. WILSON:** Unless –

“**MR. LEARMONTH:** – in such a way that it’s understood.”

“And I’m suggesting to you” – that’s what I’m saying, I’m suggesting to you – “that in the earlier report where you say: ‘Nalcor did not provide MHI with access to the detailed cost elements, nor costing ....’” And then you’re saying on page – in Exhibit 00761, page 44: Nalcor provided MHI with a detailed report.

“You don’t see any contradiction there?”

“**MR. WILSON:** We did not get the detailed cost elements, right? But we did get a summary review document, as well.

“**MR. LEARMONTH:** But I thought you said you didn’t get any additional documents –

“**MR. WILSON:** Not additional documents, documents that were provided at the time of the review when Gerry Proteau was on site.”

Mr. Wilson: And so – “And any – whatever documents that Nalcor may have brought with them to Winnipeg.

“**MR. LEARMONTH:** But you said you didn’t get any additional documents.

“**MR. WILSON:** I don’t recall getting any additional documents.

“... Well, then why are you saying documents that Nalcor brought to Winnipeg?”

“**MR. WILSON:** That’s a – okay, that’s a possibility. I don’t recall though, particularly, if they had left documents with us.”

I'm almost finished this.

Mr. Learmonth: Yeah, and the risk assessment you'd suggest, "you can disagree with me, of course – but you've watered down the language.

**"MR. WILSON:** It's certainly been revised, I believe.

"... Yeah.

**"MR. WILSON:** Yeah.

"... Do you read the tone as much milder?

"I can take you through it again ...."

And then later on page 60 there's further discussion to this. But, anyway, based on this portion of his evidence, he's suggesting he didn't get any additional documents on the matters that I referred to. Do you agree that that's what he's saying?

**MR. BOWN:** That's what he's saying.

**MR. LEARMONTH:** Yeah, does that surprise you?

**MR. BOWN:** Yes, it does, because as I said this morning, it was my view that Mr. Wilson would not make any change in the report they did not support. And I did watch Mr. Wilson, and I did watch across from Mr. Wilson who indicated that he did not make any changes in the report that he did not support and that he'd received all the information that he believed that was necessary to complete the report.

**MR. LEARMONTH:** But –

**MR. BOWN:** I'm paraphrasing –

**MR. LEARMONTH:** Yeah, you are.

**MR. BOWN:** – Mr. Learmonth.

**MR. LEARMONTH:** But did you – but having just heard what his evidence was on those pages, does that give you any concern?

**MR. BOWN:** Yes it does. I was under the clear view that he had received all the information.

**MR. LEARMONTH:** Yeah, but this is the same type of response that you give in terms of the Nalcor documentation. You assume – you assumed that Nalcor did this, you assumed that MHI did this.

Is this a responsible way for a senior civil servant to act in such an important matter?

**MR. BOWN:** I had signed the contract with MHI. They were under contract to me to complete a specific piece of work and to report accurately that work to me.

**MR. LEARMONTH:** Yeah.

**MR. BOWN:** So I wasn't involved in the day-to-day activity of them completing their work.

**MR. LEARMONTH:** And you assumed – you made a lot of assumptions, you just –

**MR. BOWN:** I would have put the elements on the professional integrity of the engineers and accountants and et cetera of MHI to provide me with the correct information.

**MR. LEARMONTH:** Yeah, but when you get changes in reports of the magnitude that I pointed out to you this morning, I suggest that should have caused you to say there's something wrong or something unusual going on here and I want to get to the bottom of it. I want to know exactly why these changes are made. I suggest to you a reasonable person in your position with your power would have done that.

**MR. BOWN:** That didn't trigger in me a need to go revisited that.

**MR. LEARMONTH:** Well, I suggest it should have, but anyway, that's not for me to decide.

Now you've said numerous times in your evidence that you treated – that you trusted Nalcor, correct?

**MR. BOWN:** Correct.

**MR. LEARMONTH:** And you know, do you confirm that the – that you were instructed either explicitly or impliedly by politicians to trust Nalcor and accept the information that you were

receiving from them on cost estimates without further review?

**MR. BOWN:** It was implicit.

**MR. LEARMONTH:** Yeah, it was – yeah.

And do you agree that the result of the decision to remove the risk analysis from the scope of work for MHI – the result was that there was never any review? And I emphasize – any review – or audit of the strategic risk management reserve issue with Nalcor. Do you agree with that?

**MR. BOWN:** By MHI, I agree.

**MR. LEARMONTH:** Well by – if MHI –

**MR. BOWN:** Or government.

**MR. LEARMONTH:** – didn't do it and they didn't, government didn't do it –

**MR. BOWN:** Correct.

**MR. LEARMONTH:** So this was a secret that Nalcor had and it was never shared with anyone.

**MR. BOWN:** I agreed with you yesterday on that point, absolutely.

**MR. LEARMONTH:** Yeah.

And were you the senior government official that was, you know, appointed to deal with Nalcor on the Muskrat Falls issue – were you the senior point man on this project?

**MR. BOWN:** I was the senior person in the Department of Natural Resources.

**MR. LEARMONTH:** And senior – and the Department of Natural Resources was the lead department.

**MR. BOWN:** And so there would be the minister, there would be myself as the deputy, there would be – as I moved up the chain – there was an associate deputy minister as well responsible. There was another assistant deputy minister that would have been responsible. But it's important to note that overseeing all of this – all of the work of the department is the

Executive Council, the Cabinet, the Clerk and, you know, it's not just, singularly, the Department of Natural Resources.

But yes, at the end, I was the deputy minister of the department.

**MR. LEARMONTH:** The Department of Natural Resources was always the lead department.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** And at the time of sanction and before that, I think September 12, 2012, you were the lead person in the Department of Finance, next to the minister.

**MR. BOWN:** I was the department head.

**MR. LEARMONTH:** Yeah. So you had a very heavy role to play in the Muskrat Falls sanctioning decision, do you agree?

**MR. BOWN:** I had an important role to play, along with others as well.

**MR. LEARMONTH:** Yeah. But I suggest to you that based on your evidence today – and others can come to (inaudible) conclusions – I suggest to you that you played a very passive role.

**MR. BOWN:** I wouldn't agree to that.

**MR. LEARMONTH:** You wouldn't agree with that.

**MR. BOWN:** Absolutely not.

**MR. LEARMONTH:** No. Well, anyway, that's something that will be considered later.

But do you really believe that you discharged the duty you owed the – to protect the taxpayers with respect to the Muskrat Falls Project? Do you believe that you discharged your duties properly, without exception, in relation to the Muskrat Falls Project?

**MR. BOWN:** I believe that I charged my – did my duties as the deputy minister, receiving direction and providing advice.



**MR. LEARMONTH:** Do you believe that government – not you personally – but government, generally, discharged the duty it owed to the taxpayers with respect to sanctioning the Muskrat Falls Project?

**MR. BOWN:** I don't feel comfortable answering for the government. I'm still an employee of the government –

**MR. LEARMONTH:** Yeah, but this was a different government, so you don't have any worry there.

**MR. BOWN:** Mr. Learmonth, I've been a public servant for many, many years. I've served for many premiers and different political parties, so the government is – continues on.

So I'm just expressing my discomfort in answering that question. That's all. It's just –

**MR. LEARMONTH:** But there's different governments. There's not one continuous government.

**MR. BOWN:** There are different political parties.

**MR. LEARMONTH:** That form a government.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So there's just successive governments.

**MR. BOWN:** Yes.

**MR. LEARMONTH:** So I don't see why –

**MR. BOWN:** I believe I had answered your question earlier today to indicate that, in the vein of continuous improvement, there are improvements that could be made.

**MR. LEARMONTH:** Hmm. And you realized, at the time, you were in the Department of Natural Resources both when you were assistant deputy minister, associate deputy minister and deputy minister – you realize the significance of your role in overseeing the work of Nalcor in the Muskrat Falls Project?

**MR. BOWN:** As part of a group – a part of the team and part of the government.

**MR. LEARMONTH:** Do you think you did?

**MR. BOWN:** Yes.

**MR. LEARMONTH:** Okay. That's all my questions. Thank you very much.

**MR. BOWN:** Thank you very much.

**THE COMMISSIONER:** Cross-examination. (Inaudible.)

Province of Newfoundland and Labrador?

**MR. RALPH:** No questions, Commissioner.

**THE COMMISSIONER:** Nalcor Energy?

**MR. SIMMONS:** Good afternoon, Mr. Bown. Bown – I'm sorry.

**MR. BOWN:** Thank you.

**MR. SIMMONS:** We've been so used to saying your name different ways without knowing the right way to do it that I'll lapse into mispronouncing it, I'm sure.

Dan Simmons for Nalcor Energy.

I'm going to deal with a number of things that were addressed in your evidence yesterday, first. I'll try and move through them as quickly as we can. First I want to go back to some of the natural gas issues –

**MR. BOWN:** Mm-hmm.

**MR. SIMMONS:** – and a couple of specific points that came up, when you were examined by Mr. Learmonth, yesterday.

Can we bring up Exhibit P-01199, please?

And this concerns the call that Mr. Jim Keating had with people from Ziff when they were working on their report for government.

**THE COMMISSIONER:** Tab 76.

**MR. BOWN:** I'll read it from – Thank you Commissioner.

**THE COMMISSIONER:** Tab 76.

**MR. BOWN:** Now which binder?

**MR. SIMMONS:** Okay. So you've seen this one before. This is the message that starts on the bottom where Mr. –

**MR. BOWN:** Commissioner, I'm okay. I'll read it from the screen.

**THE COMMISSIONER:** (Inaudible.)

**MR. SIMMONS:** Oh, sorry. Yes. It starts on the bottom with Mr. Foote contacting Mr. Keating asking: Did the Ziff call go ahead? How did it go? And then as you scroll up you see that Mr. Keating responds and said: It was good and that he'd call him tomorrow.

And you were asked a number of questions about the – I guess the appropriateness – sort of the propriety of Mr. Keating at Nalcor having been involved and having a telephone conversation with Ziff during that process.

Now, Mr. Keating gave evidence, here, and his evidence was that he had been contacted by Mr. Foote and Mr. Foote had arranged this call and that what he understood was that Ziff had asked government – which I presume was Mr. Foote – if they could interview a number of people and that Mr. Keating was one of the people they asked to interview.

Do you have any information – any different than that –

**MR. BOWN:** No.

**MR. SIMMONS:** – as to how that came about?

**MR. BOWN:** No.

**MR. SIMMONS:** Now –

**MR. BOWN:** I wasn't aware of that.

**MR. SIMMONS:** Now, let's assume that's correct and that Ziff asked Mr. Foote: We need to interview some people and Mr. Keating was

put forward was one and that Mr. Foote arranged the interview.

Was there anything that you would find objectionable about that, about Mr. Keating participating in an interview like that?

**MR. BOWN:** No, and I had indicated in my response that Mr. Keating was part of our process as a technical advisor as well.

**MR. SIMMONS:** Right, okay.

Now, you were also asked a number of questions – a fair number of questions, about how the Wood Mackenzie report that was finally completed and released to the public, dealt with the option of whether natural gas could be imported by a pipeline from the Grand Banks, specifically the White Rose Project, and not – and excluding any comment on the potential for important liquefied natural gas as a fuel source at Holyrood.

And I'm not a hundred per cent sure where we came out on that, but if I understand correctly, your evidence was that Wood Mackenzie had provided a report that commented on both options or a letter that commented on both options that you sent that to Minister Kennedy on, I think you said, October 27?

**MR. BOWN:** Correct.

**MR. SIMMONS:** That you were told by Minister Kennedy to have Wood Mackenzie instructed to only deal with the pipeline option and not the LNG option. That's correct?

**MR. BOWN:** Best of my recollection, yes.

**MR. SIMMONS:** Right.

And that you then, contacted Mr. Fleck at Wood Mackenzie on about October 31 –

**MR. BOWN:** Correct.

**MR. SIMMONS:** – in order to give him those instructions, or to ask him to do that.

**MR. BOWN:** Thirtieth or the 31st.

**MR. SIMMONS:** Thirtieth may have been before –

**MR. BOWN:** I think –

**MR. SIMMONS:** – the 31st.

**MR. BOWN:** Yeah.

**MR. SIMMONS:** But – and that by the 31st then, you had a revised letter back from Mr. Fleck that dealt with the pipeline option only.

**MR. BOWN:** I attempted to contact him on the 29th and the 30th. And we made contact on the 30th and the revised report was sent on the 31st.

**MR. SIMMONS:** Okay.

Exhibit P-01432, please.

**THE COMMISSIONER:** Tab 136.

**MR. SIMMONS:** That's tab 136, yes, in your binder.

So this is an email message –

**MR. BOWN:** (Inaudible.)

**MR. SIMMONS:** – and it appears to be early in the day on October 31. That's at 10:20 a.m., you see that?

**MR. BOWN:** Yes, the difference being London time versus local time.

**MR. SIMMONS:** Okay so –

**MR. BOWN:** It wasn't early.

**MR. SIMMONS:** So – well, if that's London time, it's quite early local time then. It's –

**MR. BOWN:** No, no, this would be our time.

**MR. SIMMONS:** Oh, this is local time. Okay.

**MR. BOWN:** So it would be he had time –

**MR. SIMMONS:** Right.

**MR. BOWN:** – more time in London –

**MR. SIMMONS:** Sure.

**MR. BOWN:** – to prepare the (inaudible).

**MR. SIMMONS:** So this is a message you would've received at 10:20 in the morning on October 31?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Okay.

And Mr. Fleck says: "Attached please find Wood Mackenzie's review of Ziff's report in regards to the utilization of natural gas produced from the White Rose field to power generation on Newfoundland."

And if we scroll down, please, a number of pages. I don't have the precise page number. Well, we can go down to where we see the beginning of the report.

Okay, we can stop there.

So this is the – appears to be the attachment that came with that message, and if you need to have a look, we can scroll, Madam Clerk, a little bit, and –

**MR. BOWN:** I'm familiar with the document.

**MR. SIMMONS:** You're familiar with this one?

**MR. BOWN:** Yes.

**MR. SIMMONS:** So you know this is the one that deals with pipeline only and not –

**MR. BOWN:** Correct.

**MR. SIMMONS:** – LNG? So that's what you received in the morning on the 31st?

**MR. BOWN:** Right.

**MR. SIMMONS:** Okay.

Now, let's go to Exhibit P-01579, please.

So this is the same day, and it says that it's at 8:05 p.m. – oh I'm sorry. Can we scroll down?

Okay, stop there.

So this is a message from you to Mr. Keating and Mr. Foote and it's at 7:42 p.m. on October 31. So this is later in the same day. And you say: "Are you ok with these comments on pipeline?"

And, Madam Clerk, could we scroll down to where we can see the report again?

Okay, if we stop there.

So this attachment, this is the same report that deals with the pipeline only and LNG only, correct?

**MR. BOWN:** Say that again?

**MR. SIMMONS:** Is this the letter from Wood Mackenzie that addresses Ziff's pipeline report and not LNG?

**MR. BOWN:** Correct.

**MR. SIMMONS:** Okay.

**MR. BOWN:** That's why – I didn't understand you.

**MR. SIMMONS:** Good. I'm sorry, I put it the wrong way.

And then if we go, next, to P-01206.

**THE COMMISSIONER:** Tab 137.

**MR. SIMMONS:** Scroll down, please.

And we can – so having sent the report at just after 7 p.m. to Mr. Foote and Mr. Keating, we see here that, at 8:13 p.m. on the 31st, Mr. Foote replies with his comments.

**MR. BOWN:** Yeah.

**MR. SIMMONS:** See that?

**MR. BOWN:** Mm-hmm.

**MR. SIMMONS:** And we scroll up to the top, please. And this is where Mr. Keating replies with his comments?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Okay.

**MR. BOWN:** As I indicated yesterday, it was after we had received the revised version.

**MR. SIMMONS:** Exactly. And he says: "yes..WM should say that they were to comment only on the pipeline piece."

Now, I emphasize the word say because the way I read this – would you – do you read this as Mr. Keating not saying: Wood Mackenzie should limit their report to the pipeline piece; but the report should say that that's what they've done in this report.

**MR. BOWN:** He's referring to the opening paragraph –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – of the Wood Mackenzie letter.

**MR. SIMMONS:** Okay.

And if we go please to P-01433.

**THE COMMISSIONER:** Tab 139.

**MR. SIMMONS:** Yes. Scroll down – okay stop there please.

Now here's another message from you on – in the evening of Wednesday, October 31, it's to Bob Fleck, who is the gentlemen who you were corresponding with to get this report prepared from Wood Mackenzie, I believe.

**MR. BOWN:** Mm-hmm.

**MR. SIMMONS:** And you start out by saying: "Can you edit the first sentence to note that you reviewed an analysis by ziff on a pipeline solution for grand banks gas rather than a report by Ziff."

So is this consistent with the comments that we just saw from Mr. Foote and Mr. Keating?

**MR. BOWN:** Right.

**MR. SIMMONS:** That what needed to be changed was the reference in the first sentence to make it clear that this report was just

addressing the pipeline solution because that's, in fact, what the content of it was?

**MR. BOWN:** That's correct and I raised that yesterday as well.

**MR. SIMMONS:** And that all this happened after you had been instructed by the minister to contact Wood Mackenzie and have the change in the content of the report made.

**MR. BOWN:** That's correct.

**MR. SIMMONS:** Some questions for you regarding MHI and how it was retained. Can we go please to Exhibit P-01237? And that is – tab 160 in volume 4.

These are Mr. Kennedy's notes that you were brought to yesterday and this is the meeting on April 1, 2012. And you've told us already that this was a meeting that you attended I believe –

**MR. BOWN:** Yes.

**MR. SIMMONS:** – and that this was where the decision was made to seek to retain MHI to prepare a report for government following the release of the PUB's report a couple days earlier.

**MR. BOWN:** This is where the direction was given to me –

**MR. SIMMONS:** Yes.

**MR. BOWN:** – to go ahead and make the call to MHI.

**MR. SIMMONS:** Ah, yes. And the direction was given to you at that meeting. You attended this meeting –

**MR. BOWN:** Yes.

**MR. SIMMONS:** – were you there for the whole meeting?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Okay and the other people that were there you've noted are – that –

**MR. BOWN:** What I did note in my testimony yesterday was –

**MR. SIMMONS:** Yes.

**MR. BOWN:** – I didn't – couldn't recall whether there was a discussion a day or two before –

**MR. SIMMONS:** Yes.

**MR. BOWN:** – whether there was a prospect of hiring MHI.

**MR. SIMMONS:** Right.

**MR. BOWN:** I just want to clarify that.

**MR. SIMMONS:** Okay.

So this was – and the people attending this meeting were Robert Thompson; the premier, who would be Ms. Dunderdale?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Right. Brian would be Brian Taylor?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Okay. Glenda would be Glenda Power?

**MR. BOWN:** Correct.

**MR. SIMMONS:** And Brian Taylor and Glenda Power are from the premier's office.

**MR. BOWN:** Right

**MR. SIMMONS:** The Ed, you've said, would be Ed Martin?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Charles is you, and JPK is Minister Kennedy?

**MR. BOWN:** Correct.

**MR. SIMMONS:** So the only person from Nalcor at this meeting when this decision is communicated to you is Mr. Martin?

**MR. BOWN:** Correct.

**MR. SIMMONS:** Mr. Bennett's not there; Mr. Sturge is not there; no one else from Nalcor was participating at this point?

**MR. BOWN:** Right.

**MR. SIMMONS:** Let's go to page 10, please, of these notes.

This – these are Mr. Kennedy's notes of the meeting on April 6, and if we can scroll down a tiny bit. You've told us that – there's a reference there to risk analysis and contingency backup, and I understand your evidence to be that this is the meeting where the decision was made to limit the MHI review so that it would not – they would not look into the risk analysis?

**MR. BOWN:** That's correct.

**MR. SIMMONS:** And let's go back up to see who attended this meeting.

So at this one, Ed would be Mr. Ed Martin?

**MR. BOWN:** Correct.

**MR. SIMMONS:** Okay, is that your recollection of it?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Okay. The next name is who?

**MR. BOWN:** Brian.

**MR. SIMMONS:** Taylor?

**MR. BOWN:** Taylor.

**MR. SIMMONS:** From the premier's office. Then would be Robert Thompson?

**MR. BOWN:** Correct.

**MR. SIMMONS:** Glenda Power from the premier's office?

**MR. BOWN:** Correct.

**MR. SIMMONS:** You?

**MR. BOWN:** Correct.

**MR. SIMMONS:** And Minister Kennedy?

**MR. BOWN:** Correct.

**MR. SIMMONS:** So once again, the only person there connected with Nalcor would be Mr. Martin, and Mr. Bennett's not there; Mr. Sturge is not there; no one else from Nalcor is participating in this meeting?

**MR. BOWN:** You are correct.

**MR. SIMMONS:** Okay.

Now, you – it's been put to you that Nalcor had a veto power over what the content of the scope of work was going to be for MHI when they did their report. Now, to me, veto suggests the ability to make the decision and overrule any other decision that anyone else would want to make.

Now, you've said this is the meeting, and you attended it, where this decision was made. Mr. Martin's the only person there on behalf of Nalcor. Did he have a power in this meeting to veto Minister Kennedy and the representatives from the premier's office about that decision?

**MR. BOWN:** I believe Mr. Learmonth's use of the term veto was meant, in a sense, that looking back at this now, looking back at the body of evidence, the email that were exchanged between staff inside of Nalcor prior to this and subsequent to if you look at it in hindsight, implicitly meant that they had a veto, I believe.

I'm not going to speak for Mr. Learmonth, but that's the way I understood the statement and the question that he posed to me.

**MR. SIMMONS:** Okay. Now, there's a difference between trying to influence a decision and having the power to dictate a decision. You'd agree with me on that?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Okay. So was there anything – if you accept, you know, the inferences that have been drawn, or you're asked to draw, from the evidence that you've been shown, you referred to then, if you accept those inferences, does that amount to anything more than an

attempt to convince or – the decision-makers or influence the decision-makers as to what choice they were going to make?

**MR. BOWN:** Just go through that one more time. I need to understand you better, the way you're phrasing the question. I need to understand the exact phrasing of your question again.

**MR. SIMMONS:** Okay. Well, I'm not sure I can do it exactly the same again.

**MR. BOWN:** Yeah.

**MR. SIMMONS:** Okay. So –

**MR. BOWN:** I want to make sure I hear it correctly.

**MR. SIMMONS:** So with – if you accept that you can draw an inference – the inferences that you're been asked to from the evidence that Mr. Learmonth reviewed with you – does that amount to anything more than an attempt to persuade or even influence the decision-makers? Because the decision-makers here are – this is not Nalcor; the decision-makers are government on this.

**MR. BOWN:** I'm going to – for the moment – I'm going to separate the use of the term veto or the inferences that were made.

**MR. SIMMONS:** Yes, yes.

**MR. BOWN:** Again, that was discussed in hindsight.

**MR. SIMMONS:** Hmm.

**MR. BOWN:** If you put yourself in the time of the day in that meeting –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – with the information that was presented to us at that meeting, it would've been that certain things cannot be done so you cannot make your schedule.

**MR. SIMMONS:** Right.

**MR. BOWN:** So, I think, I just – speaking factually.

**MR. SIMMONS:** So there were reasons given as to why it wouldn't work, to do that review within the time available. And – but the actual decision was made by whom? The decision to not to accept that and not include risk analysis in MHI's scope of work. Who was the decision-maker about that?

**MR. BOWN:** Ultimately, that was a decision that was made through a decision note –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – and a Minute in Council.

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** It was a decision that was made by government based on the information that government had.

**MR. SIMMONS:** Mm-hmm. Right.

Could that decision had been made without Minister Kennedy's agreement? He was in this meeting.

**MR. BOWN:** No.

**MR. SIMMONS:** And there were representatives of the premier's office in this meeting. Could this decision have been made without their agreement and implicitly the agreement of the premier?

**MR. BOWN:** No. But, again, it would have been based on the information –

**MR. SIMMONS:** Certainly.

**MR. BOWN:** – again that I would've brought forward to – and again the clerk would've brought forward and the chief of staff.

**MR. SIMMONS:** Right. Scroll down a little bit, please. Stop there.

There's a note that Minister Kennedy has made near the bottom of the screen there that says: Premier – and I read it to be: there – something to be a deadline. It's probably something like

there has to be a deadline. Do you have any recollection of what this refers to and what the message was being conveyed from the premier at this meeting?

**MR. BOWN:** I refer to – I followed Mr. Kennedy’s testimony – that the premier did not – and I don’t recall the premier being in that meeting. But it was in relation to the need to have a public debate inside the House of Assembly –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – and that the timeline was to have all the information done, all the analysis done in advance of that.

**MR. SIMMONS:** Okay. So the timing for the public debate, was that as much a driver of the decision about what could and could not be done by MHI within the time available as any concerns were brought forward by Nalcor?

**MR. BOWN:** There were also project timelines as well that certain decisions had to be made at a certain time and that an extended analysis being done by a consultant could actually impede on that timeline.

**MR. SIMMONS:** Mm-hmm, okay.

Exhibit P-00261 please.

**THE COMMISSIONER:** One-sixty-three.

**MR. SIMMONS:** Yes.

I’m not sure, now, if you were brought to this email message or not. This is a little bit later. This is about a couple of weeks later. And we know it took, you know, several weeks to get the terms actually settled with MHI. The message on the top is from Brian Crawley to you. I think you said you dealt with Mr. Crawley a fair bit through –

**MR. BOWN:** Yes.

**MR. SIMMONS:** – this time frame? Okay.

**MR. BOWN:** Yeah.

**MR. SIMMONS:** Was he one of your prime points of contact within Nalcor –

**MR. BOWN:** Yes.

**MR. SIMMONS:** – at this period? Yeah.

And the subject is MHI in St. John’s. And he says: “Thanks Charles. Tomorrow is fine. The Terms of Reference and the review are obviously Government’s call, but whatever we can do to support we obviously will.”

So the statement made by Mr. Crawley that the terms of reference and the review are government’s call, was that a correct statement made at that point in time?

**MR. BOWN:** Sure. But it was made in the context that I hadn’t contacted him in some time –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – about what the ultimate terms of reference was going to be.

**MR. SIMMONS:** Okay. I don’t understand what – what influence does that context have on it here?

**MR. BOWN:** Well, he was just saying I haven’t heard from you in a while –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – whatever you’re gonna do, you’re gonna do.

**MR. SIMMONS:** Mm-hmm. But was this an acknowledgement though that it was government’s call as to what the final terms –

**MR. BOWN:** Clearly.

**MR. SIMMONS:** – of reference are going to be?

**MR. BOWN:** Clearly.

**MR. SIMMONS:** Good.

Now, you were referred to a number of messages from Mr. Harrington. The first one



was a couple of days before the meeting on April 6 when the decision was made about the risk review. That's P-01178, please.

Okay. So it's April 4. It's from Mr. Harrington and it's internal to –

**THE COMMISSIONER:** Tab 72.

**MR. SIMMONS:** – to Nalcor. It goes to Mr. Crawley, Mr. Bennett, Mr. Humphries and copied to Mr. Kean.

Scroll down a little bit, please.

**MR. BOWN:** Commissioner, where can I find that?

**MR. SIMMONS:** Oh, I'm sorry.

**THE COMMISSIONER:** This is the –

**MR. BOWN:** That's the (inaudible) –

**THE COMMISSIONER:** Yes, this is the (inaudible).

**MR. BOWN:** – and I'm not going to rely just on email.

**THE COMMISSIONER:** Tab 72 in the book.

**MR. SIMMONS:** Yeah, I keep forgetting.

**THE COMMISSIONER:** Tab 72 is in book 2.

**MR. BOWN:** Okay, thank you very much.

**MR. SIMMONS:** Yeah. So –

**MR. BOWN:** Yeah, this one is a lot longer and I just wanted to –

**MR. SIMMONS:** Absolutely. You, the Commissioner and Commission counsel are the ones with the binders and we all –

**MR. BOWN:** Yeah.

**MR. SIMMONS:** We all work from the other numbers so I tend to forget to refer you to the –

**MR. BOWN:** Yeah. But I just recall that –

**MR. SIMMONS:** – to the tab.

**MR. BOWN:** – this one was more than just a message –

**MR. SIMMONS:** Yeah.

**MR. BOWN:** – there's the attachment.

**MR. SIMMONS:** Yeah. Yeah, okay.

And it's the message I'm referring you to here. And I won't go all the way through this with you but if you want to take a moment and have a read here, I had brought Mr. Kennedy to an excerpt from Mr. Harrington's testimony.

**MR. BOWN:** Mm-hmm.

**MR. SIMMONS:** I don't know if you saw his evidence. Did you watch his evidence earlier this week?

**MR. BOWN:** Mr. Kennedy's?

**MR. SIMMONS:** Yeah.

**MR. BOWN:** Yes, I did.

**MR. SIMMONS:** Okay, and I won't repeat that again. The gist of it was that Mr. Harrington's explanation was that the concern he had was how involved this review by MHI was going to be. And they had recently been through the PUB process where MHI had conducted – had prepared a report on behalf of the PUB, and there had been extensive requests for information and responses that had to go back. And there's a lot of material that had to be prepared in response to the requests that were going to be made.

**MR. BOWN:** Mm-hmm.

**MR. SIMMONS:** And his concern was the burden that this was going to be placed on his team at a time when they had a lot of work to do in order to prepare for sanction. That's the general gist of it.

**MR. BOWN:** Yes.

**MR. SIMMONS:** Now, if you take a look at this message, is this message consistent with that, in your view?

**MR. BOWN:** Sure, it's consistent with that.

**MR. SIMMONS:** Yeah.

Does this message say anything about risk reports or risk review or not wanting to do a risk review? I don't – do you see risk mentioned in this one at all?

**MR. BOWN:** I don't see it in the message but I do see it in the attachment when it references the timelines at the back.

**MR. SIMMONS:** Right.

**MR. BOWN:** So there's specific reference to not being able to do this, but I think the comment specifically is: It is not possible for MHI to review the data in this time, April to May; we're still working on estimate, risk analysis, et cetera.

**MR. SIMMONS:** Right.

**MR. BOWN:** This is setting us up to fail; cannot do that. So that would be the specific reference.

**MR. SIMMONS:** Okay.

So, do you – did you take this discussion at that time to be: we don't want MHI involved in looking at risk or we need to – this needs to be done as a manageable review within the period of time available and there's limits in what can be done in order to get it done?

**MR. BOWN:** The latter –

**MR. SIMMONS:** Mmm.

**MR. BOWN:** – that there needs to be limits, there's only so much that can be done. But in this particular case, the only thing that was specifically identified was risk.

**MR. SIMMONS:** Okay, and the cost estimates.

**MR. BOWN:** And the cost estimates.

**MR. SIMMONS:** Which – right, which at that point weren't available.

**MR. BOWN:** Yes.

**MR. SIMMONS:** Now, there were a couple other messages from Mr. Harrington and they are at P-01181 and P-00814, I won't go to them now. But they are April 20 and May 14, so that is – both those dates are long after the meeting on April 6 when the decision has been made about the scope of work. Correct?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Right. So regardless of what Mr. Harrington might have been saying internally or communicating at that time, it's – the decision has already been made about whether risk will be included in MHI's review.

**MR. BOWN:** Now, I think those – without seeing them I think they relate to some additional fine tuning and there was some additional references to risk that were removed.

**MR. SIMMONS:** Okay. Well, let's take a look then. P-01181. Oh, in the scope of work you mean.

**MR. BOWN:** Yes.

**MR. SIMMONS:** Yes. Okay. All right.

**MR. BOWN:** Not in the email.

**MR. SIMMONS:** Rather than in the email messages.

**MR. BOWN:** In the scope of work. Yes.

**MR. SIMMONS:** Yeah.

Now, on the scope of work, all the communications back and forth to MHI on the scope of work went through you, is that correct?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Okay.

And you were – on the – on what you – the work you were doing to negotiate that scope of work, you were reporting to whom on that?

**MR. BOWN:** Minister Kennedy.

**MR. SIMMONS:** To Minister Kennedy.

**MR. BOWN:** But I also had my staff working with me on this as well.

**MR. SIMMONS:** Right.

So you weren't under any obligation to include or exclude anything from the scope of work at the direction of anyone at Nalcor Energy.

**MR. BOWN:** No, not under specific direction.

**MR. SIMMONS:** No.

**MR. BOWN:** Rather it was the information that was provided that said that certain things could not be done.

**MR. SIMMONS:** Right.

And then the – what actually ended up included in the scope of work, that was communicated by you within your department and known to Minister Kennedy when the final decision was made.

**MR. BOWN:** Right.

**MR. SIMMONS:** Yeah.

Now, for – you were asked a number of questions, I think, about the process of review of some various reports that the department commissioned. There is the Ziff report, the Wood Mackenzie review of the Ziff report and there's the MHI report. All of those were commissioned by Natural Resources.

Now, you made, I think, some comment about it being – I may have got you mixed up with someone else, but about it being not uncommon for draft reports to be reviewed when they are being done by various consultants for the department in other contexts.

**MR. BOWN:** Absolutely.

**MR. SIMMONS:** Yeah. Okay.

Can you give me some examples of what sort of things there would be?

**MR. BOWN:** There have been other reports that have been received in the department over the years –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – and I can't highlight specific ones at the time.

**MR. SIMMONS:** Mmm.

**MR. BOWN:** I also know it's a practice in other departments, as I've discussed among my peers –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – that, you know, they've – they're – they received a report but the information they received is not accurate, so they're continuing to work with the consultant to get the piece of work done.

**MR. SIMMONS:** So it's not unusual to want to – because the consultant sometimes comes in fairly cold to a task, has to gather the information they need, has to process it. So I'd suggest it's not unusual for them not to get everything right as far as what the underlying information is first time around.

**MR. BOWN:** You compare it to if you're doing an audit.

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** Generally, that's the kind of thing that somebody would come in and they would hand you a report –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – a consultant's report where you're asking a specific question. More often than not, they don't get it right the first time because they don't have all the information or the appropriate context.

**MR. SIMMONS:** Right, so the back and forth that happens about a report is to make sure the consultant has the context and the appropriate

information so that they can then exercise their independent judgment and give you their views on the question that's been posed to them.

**MR. BOWN:** It's clearly noted in the scope of work that there would be more than one draft, which would imply that it would be reviewed.

**MR. SIMMONS:** And that was the processes that were followed for Ziff, Wood Mackenzie and for MHI?

**MR. BOWN:** Correct.

**MR. SIMMONS:** And in each of those cases the drafts of the reports came back to Natural Resources and through you?

**MR. BOWN:** Yes, and they were shared with – MHI was shared with Nalcor at MHI's request to review the technical information.

**MR. SIMMONS:** Yes, okay.

So the decision about sharing any of those draft reports with Nalcor – the power to make that decision was within Natural Resources. The department could have shared them with Nalcor or they could not have shared them with Nalcor.

**MR. BOWN:** Correct.

**MR. SIMMONS:** Can we go to Exhibit P-01374, please?

Mr. Bown, I'm going to move –

**THE COMMISSIONER:** Tab 20.

**MR. SIMMONS:** – from topic to topic here to try to get – move this along as quickly as possible.

So this is an email message from you to Leona Barrington and Paul Harrington on November 11, 2010. I'll ask you some messages – some questions about the email in a little bit, but for now I want to go to page 22, which is a page that Mr. Learmonth brought you to in his direct examination.

Scroll down, please. You can stop there.

This is the line he brought you to where it says: "A contingent equity commitment of \$300-600M from the Province is also considered prudent and necessary." So this is in a report, which I think is a Nalcor document. How did you come to be reviewing this particular document? And if you need to go to the first page of it, we can do that.

**MR. BOWN:** I was asked by Leona and Paul to review.

**MR. SIMMONS:** Okay. Do you know what the purpose of this document was and what use was going to be made of it?

**MR. BOWN:** It wasn't clear to me at the time. And that's why I made the comments in the margin that if this is going to be made public, then there's certain statements that can't be made.

**MR. SIMMONS:** Right. Okay.

So maybe we can run up to page 8, please. I hope that's 8 of the PDF. And ... okay.

**MR. BOWN:** Eight in red?

**MR. SIMMONS:** The – yeah, no, that's not it. Scroll, oh okay, just go back where you see purpose. Up a little bit, please. Stop there. Okay.

So there's a – on this page here, which is page 6, actually, of the PDF, it says under purpose: "This document outlines the recommendation to Nalcor Energy's Board of Directors to proceed with the phased development of the lower Churchill ... hydroelectric resource."

**MR. BOWN:** Mm-hmm.

**MR. SIMMONS:** So if you reviewed this document through you would have seen that the intention here appears to be that this is a document that's being prepared for presentation to Nalcor's board of directors. Do you recall that?

**MR. BOWN:** No, but I could read that differently as well.

**MR. SIMMONS:** Yes.

**MR. BOWN:** It was a document that is saying – this is – could be a summary document or could be –

**MR. SIMMONS:** I see.

**MR. BOWN:** Right?

**MR. SIMMONS:** Yes.

**MR. BOWN:** And I wouldn't necessarily read it – this is a document that outlines the recommendation.

**MR. SIMMONS:** Yes.

**MR. BOWN:** As opposed to this document is the recommendation to.

**MR. SIMMONS:** I see, yes.

**MR. BOWN:** Right?

**MR. SIMMONS:** And you are correct, you can certainly read it –

**MR. BOWN:** Yes.

**MR. SIMMONS:** – read it either way. But either way, it's –

**MR. BOWN:** That was why I – sorry, I apologize for interjecting.

**MR. SIMMONS:** Yeah.

**MR. BOWN:** But that's why I raised the comment if this is going to be public –

**MR. SIMMONS:** Yes.

**MR. BOWN:** – because I couldn't determine from the purpose whether it was going to be public or not.

**MR. SIMMONS:** So either way, either this is material that's intended to present in this form to the board or it's a summary of material that has been presented –

**MR. BOWN:** Yes.

**MR. SIMMONS:** – to the board, or would otherwise be presented to the board.

**MR. BOWN:** Yeah.

**MR. SIMMONS:** Okay.

So when we go back to page 22 again, and the reference to the \$300 and \$600 million as being a contingent equity commitment from the province, so what did you consider that to be a reference to at the time when you looked at this –

**MR. BOWN:** That would be –

**MR. SIMMONS:** – in 2010?

**MR. BOWN:** That would be equity that would be required from the province.

**MR. SIMMONS:** And it's not only equity commitment, it's a contingent equity commitment. So did you attach any meaning to the word contingent here?

**MR. BOWN:** The reason that it's called contingent is because it has no known understanding of what the purpose of that would be. So, clearly, it wasn't defined to us that there was a meaning behind the 300 to 600. As we'd come to learn, it was because there was a reference to a strategic risk amount.

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** Similar number, but the reference to the 300 to 600 there is that it's contingent and not sure it's going to be necessary or used.

**MR. SIMMONS:** So as contingent equity you'd understand that to be equity in addition to the base equity that's required to be put in, in order to build the project according to budget.

**MR. BOWN:** That's as noted there in the –

**MR. SIMMONS:** Right.

**MR. BOWN:** – second sentence.

**MR. SIMMONS:** Right, so that – you would have understood that to be the meaning then. Okay.

**MR. BOWN:** But I wouldn't have had an understanding of why contingent equity –

**MR. SIMMONS:** No.

**MR. BOWN:** – was required.

**MR. SIMMONS:** No. That's right, okay. But – okay.

Now, after this, in 2011 – the late summer of 2011 – there was work being done at Nalcor to prepare submissions to the Public Utilities Board because the PUB review was underway.

**MR. BOWN:** Mm-hmm.

**MR. SIMMONS:** Some of those materials, I think, went to you. You did get the opportunity to review some of them before they were submitted. Is that correct?

**MR. BOWN:** But the –

**MR. SIMMONS:** Nalcor's materials?

**MR. BOWN:** The document was submitted to me.

**MR. SIMMONS:** Yeah.

**MR. BOWN:** And there's actually email in the evidence –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – I believe it's in the exhibits –

**MR. SIMMONS:** Yeah.

**MR. BOWN:** – that highlights the fact that I passed this off to Mr. Paul Scott to do a review and provide a summary or reference back to me. I didn't review the document myself.

**MR. SIMMONS:** Okay, so which document are you referring to now?

**MR. BOWN:** The – are you saying the PUB submission?

**MR. SIMMONS:** Nalcor's submission to the Public –

**MR. BOWN:** Yeah –

**MR. SIMMONS:** – Utilities review.

**MR. BOWN:** – the same document. That's what I'm referring to.

**MR. SIMMONS:** Right.

**MR. BOWN:** That I had assigned that to the assistant deputy minister –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – to do a review with his staff and bring back any comments or concerns.

**MR. SIMMONS:** Okay.

Did you read it yourself before it was submitted by Nalcor to the Public Utilities Board?

**MR. BOWN:** I –

**MR. SIMMONS:** That's the November 2011 submission?

**MR. BOWN:** Yeah, I didn't read it myself.

**MR. SIMMONS:** You didn't.

**MR. BOWN:** No, I gave it to staff –

**MR. SIMMONS:** Okay.

**MR. BOWN:** – and asked them to review it.

**MR. SIMMONS:** And you relied on them to report back to you on anything of consequence from it?

**MR. BOWN:** That's normal course for documents that come in. You don't read everything, but if they highlight concerns –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – bring it back to you, then you would settle in and ask them why there were concerns and you'd have a look through it yourself.

**MR. SIMMONS:** Okay.

So, may – we'll go to that, please, P-00077. It's likely not in your materials.

**THE COMMISSIONER:** No, it's not.

**MR. SIMMONS:** Okay.

And page 249; there's a number of references in here that I brought Minister Kennedy to, but I won't bring you to all of those. We'll just go directly to page 249.

And there's a section here dealing with strategic risk management and mitigation of progress at Decision Gate 2. Did you – was this – anything in this section brought to your attention, or any of the discussion about how Nalcor was treating strategic risk at Decision Gate 2?

**MR. BOWN:** No, that wasn't raised in the report back to me.

**MR. SIMMONS:** Okay.

And, in particular then, if we scroll down, please, to the top of the next page maybe – no, back up, please. I apologize for not being more precise. Okay, stop there.

So in lines 25 to 28: "With the extent of the mitigation activities undertaken and in progress, and probabilistic cost reductions in the order of" – 400 to 600 million – "being available, and a P50 strategic exposure of \$290 million (in the range of \$187 million at (P25) to \$413 million (P75)), Nalcor executive determined it was not appropriate to create a positive or negative strategic reserve amount at DG2."

Was any of this discussion – or the fact that this was the position being taken by Nalcor regarding strategic risk and strategic reserve – was any of that brought to your attention?

**MR. BOWN:** No, that wasn't raised to me in the review that staff did. However, given the significance of the information that's provided –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – there –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – and it was going – in this document, I would've fully expected that this information would've been shared by Nalcor executive to me –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – either by Gilbert or by Ed or by somebody –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – or that – 'cause it's very important information – and it would've been shared, either with the minister or the premier's office, so I would've had an expectation that for something of this importance – and I'm sure there are other things in there important as well – but I would've had the expectation that that would've been shared with the government.

**MR. SIMMONS:** Okay.

Well, it – this was sent to you to review beforehand. You had your staff review it –

**MR. BOWN:** Yeah.

**MR. SIMMONS:** – rather than read it yourself; so you can't say it wasn't shared with government.

**MR. BOWN:** I would've expected that something of this magnitude, when we were discussing costs –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – that this would've been shared with us. That's the context that I'm raising it with you in.

**MR. SIMMONS:** So as you move forward, then, from the – from this point where this was filed, in November of 2011, you didn't know, did you, that this was Nalcor's position? Is that what you're saying?

**MR. BOWN:** I wasn't aware of it.

And I don't recall this being brought out in the PUB process, coming up in the public utilities' report either.

**MR. SIMMONS:** Okay.

Well, maybe we can look at P-00052, then, for a moment. And we'll go to page 61.

**THE COMMISSIONER:** Again, that'll be on your screen.

**MR. BOWN:** Yes.

**MR. SIMMONS:** So this is the PUB report from March of 2012.

Sixty-one, please. Yup.

Okay, now there's a paragraph there at the top.

**MR. BOWN:** Yes.

**MR. SIMMONS:** And in the third line it says, "Westney had also recommended the creation of a strategic reserve for the Decision Gate 2 cost estimate. The amount of this reserve was set out in a confidential exhibit reviewed by the Board and MHI. This recommendation was not accepted by Nalcor as in its view there had been a reduction in the key risks identified by Westney since its recommendation as a result of factors such as the commitment by the Federal Government for a loan guarantee and the selection of a conventional technology for the HVdc transmission line. Nalcor stated that it would reconsider the need for a strategic reserve amount at Decision Gate 3."

So did this come to your attention when the PUB report was issued in March of 2012?

**MR. BOWN:** No, it did not.

**MR. SIMMONS:** Did you read the report?

**MR. BOWN:** Yes, I did read the report and I don't recall doing – seeing that. But again, we had staff read that over the weekend. We had briefing notes prepared; messages prepared.

**MR. SIMMONS:** Right, so. Okay.

Can I bring you to Exhibit P-01072, please? This may not be in your –

**THE COMMISSIONER:** No, it's not there.

**MR. SIMMONS:** Okay.

**THE COMMISSIONER:** It's on the screen?

**MR. SIMMONS:** Okay, so this is October 30 of 2010. Now I think you were in Halifax –

**MR. BOWN:** Yes.

**MR. SIMMONS:** – while the negotiations were under way for the Emera term sheet?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Do you recall that?

**MR. BOWN:** Yes.

**MR. SIMMONS:** How long did you spend in Halifax, that time?

**MR. BOWN:** Three, four, five days.

**MR. SIMMONS:** Okay. And what was the format in which these negotiations were taking place? How were the teams structured in order to carry that out? Do you recall?

**MR. BOWN:** There was a negotiating team that met with Emera and then we'd come back and report back into the room of – where myself and Todd Stanley sat and there were some other Nalcor staff as well.

**MR. SIMMONS:** Right, so Nalcor had a kind of a larger team there, and there was a subset of that team that would go and do the face-to-face negotiations with Emera and then come back and meet with the larger team again?

**MR. BOWN:** Yes.

**MR. SIMMONS:** (Inaudible.) And for the time you were there, you sat with the larger team?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Do you recall who from Nalcor was there, as part of the larger team that weren't going into the face-to-face negotiations?

**MR. BOWN:** Leona Barrington, Auburn Warren –

**MR. SIMMONS:** Mmm.

**MR. BOWN:** – there may have been Paul Henderson.



**MR. SIMMONS:** Mm-hmm. Okay.

**MR. BOWN:** That's all I recall

**MR. SIMMONS:** Right. So the format of this then – was the format generally that the larger team would discuss positions that were to be taken in the negotiations, the smaller group would go in, have a face-to-face meeting, then come back and report on what had happened?

**MR. BOWN:** Yes.

**MR. SIMMONS:** Yup. Okay. And then there would be further discussion about what might have – about what – how positions might change, or what was to be done next in the negotiations.

**MR. BOWN:** Yes.

**MR. SIMMONS:** Yeah. And did that also then involve reporting back – from your part – reporting back to anyone in government on what was happening in those negotiations?

**MR. BOWN:** The way that the report-back worked was that Mr. Martin would report back to the premier and the minister –

**MR. SIMMONS:** Yes.

**MR. BOWN:** – and I was keeping the deputy minister advised.

**MR. SIMMONS:** Okay. So you would report to the deputy minister and Mr. Martin would do the reporting to the premier and to the minister?

**MR. BOWN:** Yes.

**MR. SIMMONS:** And the minister at that time was whom?

**MR. BOWN:** Ms. Dunderdale.

**MR. SIMMONS:** Okay. And the premier was Premier Williams?

**MR. BOWN:** Yes.

**MR. SIMMONS:** So in the midst of that we have this email here. And if we scroll down a little, please. Okay, stop there.

So the first message in the chain is October 30, and it's from you to Robert Thompson. "Robert; I've completed a re-write of the executive summary to better articulate the story. Please take a read to see if it holds together. I'm getting a little punchy and can't make sense of this anymore."

And just scroll down a little more please. Down to the next page. Stop.

And this is where we see – this is a Nalcor document called Lower Churchill Project Decision Gate 2 Summary Recommendation.

**MR. BOWN:** Yes.

**MR. SIMMONS:** And we looked at a later version of it, later. So why is it you are reporting back to Mr. Thompson on your editing of a Nalcor document called Decision Gate 2 Summary Recommendation?

**MR. BOWN:** I was asked by – I don't recall who it was at Nalcor – I believe it was Mr. Martin – who asked me to have a look at this document, and it didn't have an executive summary – to prepare one. Again, while I was sitting there waiting for them to return from the negotiation.

**MR. SIMMONS:** Yeah. So why would that be done by you rather than someone in Nalcor?

**MR. BOWN:** He asked me to do it.

**MR. SIMMONS:** Okay. And scroll down a little and we'll see some of that executive summary please. Okay.

So these edits we see here, the things that are in red, either underlined or struck through. Are these the changes that you were making to this document as you were editing it?

**MR. BOWN:** I don't know if they're completely all mine. Because it refers to A1 which would not be me.

**MR. SIMMONS:** Okay. Scroll down a little more. So stop there; so we can see there's some fairly extensive changes being made here to this document.

**MR. BOWN:** (Inaudible.)

**MR. SIMMONS:** Now go back up to page 1. So if you're asked by Mr. Martin to do this, why are you sending your rewrite back to Mr. Thompson and not copied to anybody?

**MR. BOWN:** I wanted to make sure Mr. Thompson was aware of the activities I was undertaking when I was there.

**MR. SIMMONS:** Okay. And it appears you forgot to attach the copy and he asked you for the copy?

**MR. BOWN:** Yeah.

**MR. SIMMONS:** And – okay. So let's go to – back to 01237, please. No, I'm sorry. Wait now, no, 01374.

**THE COMMISSIONER:** Okay, so that would be tab 20.

**MR. SIMMONS:** And the first page.

So it appears here where you're dealing with the same document again. Scroll down a little, Madam Clerk, to the beginning of the document. So here we are. This appears to be the same document and you're still working on editing it.

**MR. BOWN:** Yeah.

**MR. SIMMONS:** Back to the top of page 1.

And you're reporting, in this case, back to Leona Barrington and Paul Harrington on this.

So what's happened by – at this point, this is almost two weeks later and you're still involved in editing this document for Nalcor that deals with the presentation to Nalcor's board of directors. Why are you still involved in doing this?

**MR. BOWN:** Actually, it was an exercise that I was asked to undertake while I was unoccupied –

**MR. SIMMONS:** Mmm.

**MR. BOWN:** – in Halifax –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – and then I was obliged to help.

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** I guess, at this stage – and again, I wasn't particularly sure that this was the document that was going to the board, even though it says Gate 2 Summary –

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** – Recommendation, it still wasn't clear that this was the document that was going to the board.

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** And again, hence my concern that this could potentially be a public document that was being prepared.

**MR. SIMMONS:** Mm-hmm.

**MR. BOWN:** So again that was why I had my interest in working on the language in the Executive Summary. No other reason than that.

**MR. SIMMONS:** Okay.

Was your assistance sought in preparing any other similar documents before or after this that you can recall?

**MR. BOWN:** I don't recall. No, I don't think so. Again, it was an exercise while I was unoccupied in Halifax.

**MR. SIMMONS:** You were brought to Exhibit 00926, which was the DG3 alignment presentation, that's the one with the "hit squad" reference in it.

**MR. BOWN:** Yes.

**MR. SIMMONS:** I just want to make sure I understand your evidence correctly on that. I think you've said that the section in that that dealt with the Issues and Messaging, you understood to be the product of a joint effort of the communications staff of the premier's office, Natural Resources and Nalcor.

**MR. BOWN:** That's my clear understanding.

**MR. SIMMONS:** Clear. And even though it is presented as being a Nalcor presentation it is the joint effort of those three groups.

**MR. BOWN:** Absolutely.

**MR. SIMMONS:** Thank you, Mr. Bown.

That's all the questions I have for you.

**MR. BOWN:** Thank you.

**THE COMMISSIONER:** Okay.

Now, Mr. Budden, you're about – I had a list of – I don't have it with me right at the moment, I must have left it on my desk. I think you were one hour?

**MR. BUDDEN:** Yes.

**THE COMMISSIONER:** So do you wanna start now? And I think maybe to be safe for tomorrow I'd like you to go for – at least 'til quarter to 5.

**MR. BUDDEN:** Okay.

**THE COMMISSIONER:** And then – or 10 to 5 and then finish up tomorrow morning. And then I think based upon the numbers I got for everybody else, I think we will finish tomorrow, unless something changes between now and tomorrow.

**MR. BUDDEN:** Thank you.

**THE COMMISSIONER:** So go ahead.

**MR. BUDDEN:** Good day, Mr. Bown.

**MR. BOWN:** Good day, Mr. Budden.

**MR. BUDDEN:** My name, as you know from our introduction earlier –

**MR. BOWN:** Yes.

**MR. BUDDEN:** – is Geoff Budden, I represent the Concerned Citizens Coalition, which I believe you also know by now is a group of

individuals who, for a number of years, have been critics of the Muskrat Falls Project.

I'm gonna ask you a few questions at the beginning about the MHI report. And perhaps we could start with Exhibit 00727, Madam Clerk. And this is the press release that went out of both the – of both your department and the Executive Council on April 2, I believe.

**THE COMMISSIONER:** It's on the screen, this one.

**MR. BOWN:** Thank you.

**MR. BUDDEN:** The – I'll bring you to certain parts of it but just by, I guess, way of opening comment, this follows the day after the meeting which was covered by Mr. Simmons and by Mr. Learmonth of April 1 –

**MR. BOWN:** Yes.

**MR. BUDDEN:** – attended by yourself, Mr. Kennedy, Mr. Martin and various GNL officials. You recall that meeting, of course.

**MR. BOWN:** Yes.

**MR. BUDDEN:** And I assume that this reflects certain decisions that were made at that meeting?

**MR. BOWN:** Without having read through it fully, yes.

**MR. BUDDEN:** It would be consistent with your understanding?

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay.

Perhaps you could – we could scroll down to the fourth paragraph, Madam Clerk. We've done this to other witnesses but perhaps you could read that.

And what I'm interested in is the sentence, the second one beginning: The premier. Could you read that for us, please?

**MR. BOWN:** "The Premier announced today that the Provincial Government has engaged

Manitoba Hydro International, the same experts engaged by the PUB, to provide external and independent analysis of the Decision Gate 3 information prior to any decision on whether or not to sanction.”

**MR. BUDDEN:** Sure.

I’ll ask you the same question I’ve asked other witnesses. What did external and independent analysis mean to you?

**MR. BOWN:** Mean it was not inside of government, not inside of Nalcor and not hired by Nalcor.

**MR. BUDDEN:** Okay, and presumably not controlled by any of those bodies.

**MR. BOWN:** Correct.

**MR. BUDDEN:** Okay.

This, again, has come up but one of your responsibilities as a senior public servant is to advise government – obviously, government, the politicians decide but part of your responsibility would be to go to them and say: Look, these are some of the best practices, these are some of the options that you should consider. You’d agree with me there?

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay.

Did you have any reservations about whether MHI, which after all had – already were on the record as saying that that Muskrat Falls was the least-cost option, did you have any reservations about using them as this external and independent analysis?

**MR. BOWN:** No, I did not. Manitoba Hydro had reviewed the Decision Gate 2 information, had a familiarity with the project, had expressed reservations on certain elements about the project, and that the exercise here would be to do a review of Decision Gate 3 information.

**MR. BUDDEN:** Now, your own premier, in the House of Assembly, I believe the following day, said that MHI – I mean, she essentially lauded MHI as one of the – in defending Muskrat Falls

as an option, she said that they had concluded it was the lowest cost option. You don’t dispute me on that, I assume.

**MR. BOWN:** That would be public information from their –

**MR. BUDDEN:** Yeah.

**MR. BOWN:** – from their initial report.

**MR. BUDDEN:** Yeah, well from *Hansard*, yeah.

So does that not – I’ll ask you again before we move on. Do you not see the fact they’ve already opined as being inconsistent with them now going forward and doing independent analysis?

**MR. BOWN:** No, we were looking for a consultant who could do the work, who was best suited, one – and again, you had a consultant who was just finished doing a piece of work that could pick up – had a familiarity, could pick up this and do it within the time frame that we were trying to get this accomplished in.

**MR. BUDDEN:** Okay.

Speaking of that time frame, you’ve – it’s already been established through Mr. Learmonth that risk analysis was removed from the scope of work because of the desire to have the MHI report done by June. I’m correct on – you recall that?

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay. Now, obviously the report wasn’t done by June. At a certain point an extension was given to the MHI report.

**MR. BOWN:** Correct.

**MR. BUDDEN:** Why not then return to risk analysis since the time pressure was off?

**MR. BOWN:** That information wasn’t provided to – I answered this question with Mr. Learmonth this morning – that information wasn’t provided to MHI. We do know that as the time moved on they became – they got their cost information, they got the CPW information and

they got tactical risk information and contingency information.

It was only after that we learned that they didn't receive the strategic risk information. So they did receive risk information, they didn't receive strategic risk.

**MR. BUDDEN:** Okay, that's not quite what I'm asking. Again, the – there was a specific removal, as was established through Mr. Learmonth, of risk analysis from the scope of work. You're not disputing that?

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay. I guess what I'm asking is once the – and you've explained why it was done. What I'm asking is once the time pressure had been somewhat removed, did it occur to you to go back to MHI and say: Hey guys, we'd now like you to revisit the scope of work to include risk analysis?

**MR. BOWN:** Well –

**MR. BUDDEN:** Did that occur to you?

**MR. BOWN:** I don't recall that it occurred to us at the time.

**MR. BUDDEN:** Okay. Specifically, did it occur to you?

**MR. BOWN:** To me? No.

**MR. BUDDEN:** Okay.

You – in November of 2012, just a month before sanction, your department released a number of short papers. And I'm going to ask a couple questions about these, so perhaps we can start by running through what they are.

And there are six I'm thinking of in particular. We have one, *Upper Churchill: Can we wait until 2041?* That's tab 6 – or rather Exhibit 00061. We have *Gull Island: Why not develop Gull Island first?* which is P-00062; we have *Legal Options: S92A, Good Faith and Regulatory Proceedings in Quebec*, which is P-00063; we've got *Labrador mining and power: how much and where from?* which is P-00071; we've got Electric Rate [sp Electricity Rates]

Forecasting: Muskrat Falls Will Stabilize Rates for Consumers, which is P-00072; and, finally, we have *Environmental Benefits of Closing the Holyrood Thermal Generating Station*, which is P-00073.

So, firstly, do you recall those reports, now that I've mentioned them? Do they come back to your mind?

**MR. BOWN:** Yes, not the specifics of what's in them but, yes.

**MR. BUDDEN:** Okay sure.

They cover a wide variety of topics, obviously; everything from mining through the environmental impact of Holyrood through legal analysis and so forth. But what they have in common – they're all about the same length. I think three of them are actually 13 pages, the others are a little more or less – they all have very similar formats, really identical formats, and I would suggest that they all deliver, essentially, a pro-develop-Muskrat Falls message. Do you take issue with any of that?

**MR. BOWN:** The purpose of those reports – and, actually, if you go back –

**MR. BUDDEN:** Just to stop you there, do you take issue with anything I've said so far of those things? They all follow the same format, they all are about the same length and they all essentially convey a pro-develop-Muskrat Falls message?

**MR. BOWN:** I wouldn't say they all convey a pro-develop-Muskrat Falls message, they're meant to inform about those specific topics –

**MR. BUDDEN:** Okay.

**MR. BOWN:** – in each of those papers.

**MR. BUDDEN:** Okay, well, we'll dive into that a little bit but – okay, why don't we do this: Let's turn to the first one, P-00061, Madam Clerk. And if you could deliver – bring us to page 3 of that, please?

And when we get there, Mr. Bown, I'd like you to read the final paragraph on that page – page 3. And the page is headed: Key Factors. If you'd read the last paragraph, please.

Yes, read it into the record.

**MR. BOWN:** “For these reasons and others described below, it is not feasible to defer Muskrat Falls under the assumption that the province will have plenty of cheap or free power in 2041.”

So I will revisit my response to your last question. I do remember these now and they did have a pro-Muskat Falls message.

**MR. BUDDEN:** They certainly did, didn’t they?

**MR. BOWN:** Yes.

So I apologize for not answering appropriately to your question before but, now, as I read the first one, and the format and the structure, I do recall.

**MR. BUDDEN:** Yeah. We’ll hit a couple of more just to – so that we all get that message. Perhaps we can go to P-00071, Madam Clerk, and page 2 in that case – bit of a variation. And perhaps on this one you could read the fifth and seventh bullet points, please, Mr. Bown, the one that begins: “Muskat Falls could be ....” Do you want to read that to us?

**MR. BOWN:** “Muskat Falls could be an important source of power for mining developments post-2017, and sanctioning of the project may assist mining companies in making positive investment decisions. Availability of power will encourage investment in the province rather than in competing jurisdictions.”

**MR. BUDDEN:** Okay.

By the way, did any of that come to be? Were there any such developments in Labrador, of this – as is contemplated here?

**MR. BOWN:** Unfortunately, the bottom fell out of the price of iron ore subsequent to that. But during this time, we had many mining companies who were at our doorstep who were looking for power in Labrador and it was – actually, it was quite busy. We had concerns that we wouldn’t have enough power to provide to the mining companies –

**MR. BUDDEN:** Okay.

**MR. BOWN:** – in Labrador. So in the context of that time, there was a lot of mining activity and a lot of mining interest.

**MR. BUDDEN:** But no mines.

**MR. BOWN:** Unfortunately, the price fell –

**MR. BUDDEN:** Sure.

**MR. BOWN:** – of iron ore.

**MR. BUDDEN:** And perhaps read that last bullet as well.

**MR. BOWN:** “In the longer term, mining developments may absorb all residual power from the Muskrat Falls development. Further power may be needed.”

**MR. BUDDEN:** Okay.

And perhaps we can go on to tab [sp Exhibit] 00072, Madam Clerk, page 3 in this instance. And, again, the last bullet point when you get there, under Key Findings, if you could read it out loud to us.

**MR. BOWN:** The last bullet?

**MR. BUDDEN:** The last bullet on that page 3.

**MR. BOWN:** “Muskat Falls will reduce the province’s dependence on oil. With Muskrat Falls, revenue that Newfoundland and Labrador Hydro previously used to purchase oil will be used to cover the cost of Muskrat Falls. Billions of dollars that would go to international oil companies would be used to pay for a provincially owned revenue-generating asset.”

**MR. BUDDEN:** Okay and I’ll do the last one of these. Perhaps we could go on to the next one, which is tab 73 – rather Exhibit 00073, Madam Clerk.

The last one, by the way, was – the heading was – the title was: *Electricity Rates Forecasting: Muskrat Falls Will Stabilize Rates for Consumers*. This one, as you can see, is: *Environmental Benefits of Closing the Holyrood Thermal Generating Station*.

So, again, page 3, and the last bullet point on that page, if you could read it out to us.

**MR. BOWN:** “With the development of Muskrat Falls, Newfoundland and Labrador will be powered by 98% clean, renewable energy.”

**MR. BUDDEN:** Okay, so here we are essentially a month before sanction and your department is churning out this pro-Muskrat Falls propaganda. That’s what’s going on, right?

**MR. BOWN:** These – actually, if you go back to minister – Mr. Kennedy’s testimony and also go back to some of his exhibits on his handwritten notes, clear that when he came to the department – and we worked on these all over the summer, so these just didn’t appear at the end, so ...

**MR. BUDDEN:** Well, they did just appear at the end but –

**MR. BOWN:** I know.

**MR. BUDDEN:** Yeah.

**MR. BOWN:** I mean from the – from my context of the preparation.

**MR. BUDDEN:** Sure.

**MR. BOWN:** They didn’t just one moment decide to do them and then they popped out; these took quite a long time to do. So we had an agenda from Minister Kennedy, from very early, of a list of items that he wanted to do public information this document is on.

**MR. BUDDEN:** All of which happened to be pro-Muskrat Falls development.

**MR. BOWN:** Those were the messages that were ultimately put in them.

**MR. BUDDEN:** Sure, because I mean there’s nothing here like: Conservation and demand management; let’s avoid a risky megaproject. You got no papers like that?

**MR. BOWN:** No.

**MR. BUDDEN:** Okay.

So who – I guess I’ll use the word commissioned. Who commissioned these papers?

**MR. BOWN:** Minister Kennedy commissioned the papers.

**MR. BUDDEN:** Okay.

And, again, the purpose being as you understood it?

**MR. BOWN:** To inform public on these matters that were being discussed.

**MR. BUDDEN:** Okay and specifically to inform the public of various pro-Muskrat Falls development arguments.

**MR. BOWN:** I think there’s a little more than that to the documents themselves, but those were the key messages that were in the front.

**MR. BUDDEN:** They certainly were. And you’re not suggesting what I had read out was somehow unrepresentative of the tone or the message?

**MR. BOWN:** No, but I wouldn’t – nor would I say that there was no content in those papers that would help inform the public debate.

**MR. BUDDEN:** Okay, but the content was all tilted one way, it was all pro-Muskrat Falls.

**MR. BOWN:** The messaging was that way but the content was very clear. It was factual.

**MR. BUDDEN:** Okay, but you can –

**MR. BOWN:** I understand your point but what I’m saying is that –

**MR. BUDDEN:** Okay, why are you disputing my point?

**MR. BOWN:** No, there was factual information inside those documents to help inform the public debate. The key messaging that was there had pro-Muskrat tone.

**MR. BUDDEN:** Who wrote these papers?

**MR. BOWN:** They were prepared inside the department.

**MR. BUDDEN:** Okay, not Nalcor, actually prepared inside your department?

**MR. BOWN:** They were done inside our department.

Now, I think on the 2041 paper we had them review that because of the commercial sensitivity of the statements that we were making in there. Other than that, these were all prepared by staff inside the department.

**MR. BUDDEN:** With any input at all from Nalcor?

**MR. BOWN:** I think there was one or two papers that we had asked them for some help with that we didn't get any help that we didn't do. Other than that, the majority of these were done principally inside the department.

**MR. BUDDEN:** Okay. Were they vetted by Nalcor before being released – proofread, vetted, approved?

**MR. BOWN:** I don't have a specific recollection of that. I couldn't say yes or no. I just want to be honest and definitive, that's all.

**MR. BUDDEN:** Yeah, sure.

Were they subject to any formal peer review by other individuals with expertise in the field?

**MR. BOWN:** I believe the 92A paper was reviewed and the – but I can't recall specifically so I'm not gonna answer that they were.

**MR. BUDDEN:** Okay.

**MR. BOWN:** But I know that we moved them outside of the department and into the Department of Justice for them to review or have somebody else review.

**MR. BUDDEN:** Okay.

**MR. BOWN:** So I couldn't tell you exactly who it was.

**MR. BUDDEN:** Sure. And, again, I'll ask you just before we move on, was any – did you – you're a minister – you are a public servant, a senior public servant, did it occur to you to suggest to the minister, you know, we're generating all this information that essentially emphasizes arguments for Muskrat Falls, perhaps we should generate other arguments suggesting advantages to the Isolated Island Option? Did that occur to you?

**MR. BOWN:** These were the documents that were requested by the minister.

**MR. BUDDEN:** Okay, yeah, but that's not what I asked.

**MR. BOWN:** No, but this is the direction that he wanted us to go in.

**MR. BUDDEN:** Understood, but did you suggest an alternative direction to level the playing field between these two arguments which, after all, were being weighed at sanction?

**MR. BOWN:** The titles of these documents, or the subject matter of these documents, are the ones that were part of the public debate. So that was the intent. The answer to your question is no.

**MR. BUDDEN:** Okay, that's fine.

**MR. BOWN:** The subject matter was related to the ongoing public debate and that's the intent of the objective he wanted to achieve.

**MR. BUDDEN:** Okay. He wanted to make a certain contribution to that public debate?

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay.

I'll ask you a few questions about Wade Locke. You know Mr. Locke, of course, I believe he'd been a professor of yours?

**MR. BOWN:** Yes, he was.

**MR. BUDDEN:** Okay. From the time of your graduation, what relationship with him did you maintain from that point through 2012?



**MR. BOWN:** A number of times over the years he was hired within the Department of Natural Resources or Mines and Energy, whatever we were – different configurations of the same department, different names. He was hired on occasion to do work. I can't remember – it wasn't many over the years.

But, yes, I did maintain, I would say, an understanding that Wade was out there and he would be in the department on occasion looking for information. He had contacts. Again, when I was an economist or earlier – lower down in the organization – he had relationships with the assistant deputy minister or the deputy minister, so you would see him on occasion.

**MR. BUDDEN:** Okay. Perhaps, Madam Clerk, we could bring up Exhibit P-00315. This is a short exhibit and you're probably anticipating a question or two about this.

**MR. BOWN:** Yes.

**MR. BUDDEN:** This is an email exchange between yourself and Mr. Locke.

**MR. BOWN:** Yes.

**MR. BUDDEN:** We'll see it now in a second.

There's an earlier email from David Vardy to Wade Locke.

**MR. BOWN:** Yes.

**MR. BUDDEN:** Where Mr. Locke – Mr. Vardy, essentially, declines to participate in a debate. Then we can scroll back up to the exchange between yourself and Mr. Locke – Dr. Locke.

So we have here on Thursday, December 1, at 4:54 p.m. FYI – it's to you: "FYI

"Please do not circulate to anyone.

"wade."

Firstly, do you have any idea why he would not want that circulated to anyone?

**MR. BOWN:** I think it was in deference to his respect to Mr. Vardy that he didn't want anybody to see that email.

**MR. BUDDEN:** Okay.

**MR. BOWN:** The reason that he sent it to me is because he had let me know some days before that this was going to happen. I thought it was a great idea. So, again, that's the reason why he let me know that it wasn't going to happen. So I was – the wow was disappointment.

**MR. BUDDEN:** Okay, yeah. It's fairly demonstrative disappointment, a bunch of –

**MR. BOWN:** Yeah, wow!!!

**MR. BUDDEN:** – exclamation marks. Okay.

**MR. BOWN:** Again, I was disappointed that it wasn't going to happen.

**MR. BUDDEN:** Okay. Why were you disappointed?

**MR. BOWN:** Because I thought it would be an important public policy debate.

**MR. BUDDEN:** Okay.

What role, if any, did you play in briefing Mr. Locke to prepare him for that debate?

**MR. BOWN:** I didn't provide any briefings to Mr. Locke. He requested information and I directed him to Nalcor to seek any information he wanted.

**MR. BUDDEN:** Okay.

To your knowledge, what, if any, briefing did Nalcor – beyond the provision of information, did Nalcor provide him with any briefing or preparation to go into this debate?

**MR. BOWN:** I'm not certain of that. Any information that Dr. Locke had was public information.

**MR. BUDDEN:** Okay.

Mr. Vardy indicated he feared or he suspected going into this that he perhaps was going into an ambush. Do you have any reason to believe what he was suspecting might have, in fact, been true?

**MR. BOWN:** No.

**MR. BUDDEN:** Okay, you –

**MR. BOWN:** No idea.

**MR. BUDDEN:** – don't believe that was true?

**MR. BOWN:** No.

**MR. BUDDEN:** Okay.

**MR. BOWN:** This would've been a very good public debate –

**MR. BUDDEN:** Okay.

**MR. BOWN:** – important public policy issue. Again, the exclamation of wow is surprise. I thought that this was going to happen, then it was disappointment.

**MR. BUDDEN:** Okay.

Madam Clerk, could you please bring us to Exhibit P-00043, again, another one we've looked at. And when we get there I'd like to –

**THE COMMISSIONER:** Tab 49.

**MR. BUDDEN:** Yes, so this would be before you as a tab.

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay. And, again, this is the: Commitment Letter to Assist Financing of Phase One. And I'd like to go to page 3, please.

There's a long quote there and in the interest of time I won't walk you through all of it. But if we scroll down perhaps a little more, Madam Clerk, and there's a bit there: In summary, the Commitment Letter states Government's intention – intent to do all the – to do the following, all of which are critical for financing.

Let's, perhaps, scroll just a tiny bit more.

Yeah, it's the last sentence there in that third bullet point that I'm interested in. I'll just read it to you.

“Second, by confirming that NL Hydro's regulated rates will generate the required revenues, it implicitly confirms that Government

will structure the electricity industry in the Province to ensure regulated ratepayers (the majority of whom are customers of Newfoundland Power) will be captive to NL Hydro to the extent necessary to support these revenues.”

That's fairly ominous language: to be captive to the extent necessary. What did you understand that to mean?

**MR. BOWN:** Again, this is an important feature of a public official. This is truth to power. This is the importance of sharing: we're asking you to do this and this is the implication of doing this. But if you go back through the requirements of the loan guarantee, there had to be an absolute securing of the revenue stream for the project. And if there were opportunities for – and this was explained during Bill 60 –

**MR. BUDDEN:** Yes.

**MR. BOWN:** – that if indeed there were opportunities for other companies to come in and set up and provide power to the customers, thereby taking away the revenue source for Muskrat Falls Project, then the project itself would be in peril and therefore the loan guarantee would be in peril. This was – this is a direct fallout of the requirements of the loan guarantee.

**MR. BUDDEN:** Okay. And Bill 60, of course, those were the 2012 legislative amendments to the Electrical Power Control Act.

**MR. BOWN:** Yeah. But, again, clearly stating, making sure that government was fully aware of what this requirement meant.

**MR. BUDDEN:** Sure.

You're an economist, did you advise the minister of the, I guess, the anti-competition aspects to this?

**MR. BOWN:** We spoke of this, yes.

**MR. BUDEN:** Okay. What was your –

**MR. BOWN:** And we spoke of this in Cabinet, when I brought this paper to Cabinet, and gave them the understanding this is exactly what it

meant. It allowed them – made them understand, I don't recall if it was part of my presentation or not, but I recall the conversation, that this is exactly what it meant, and they knew full well, had full understanding of what making this decision was.

**MR. BUDDEN:** (Inaudible.)

**MR. BOWN:** Again, and it was no different when we had the conversation on Bill 60. Exactly what that meant. So I did inform.

**MR. BUDDEN:** So whatever market innovations might happen, whatever new companies might come in with some way of developing or delivering cheaper power, none of that was going to be of any benefit to the Newfoundland ratepayers?

**MR. BOWN:** That was made known to the Cabinet.

**MR. BUDDEN:** Okay. And did you also make it known to the Cabinet that this was somewhat at variance with, I guess, a general trend in electricity markets towards the promotion of competition?

**MR. BOWN:** I guess it was made in the context that if you want – if you're going to proceed with the loan guarantee – and likely this may have been a condition of financing from a private bank as well – I can't say that, but these types of conditions protecting the revenue stream are not uncommon. But it would've made it clear that if you're going to go forward with a loan guarantee for Muskrat Falls, this is the impact.

**MR. BUDDEN:** Okay.

Perhaps, Madam Clerk, we could move to page 6, same exhibit. I only have a couple of questions about this exhibit.

The – there are five bullet points – I think we need to scroll down a tiny bit more. Yeah –

**MR. BOWN:** Sorry, are we in the same exhibit?

**MR. BUDDEN:** We are. So just a couple of pages over.

**THE COMMISSIONER:** Page 6.

**MR. BUDDEN:** Page 6.

I will have you read this. If you can read from "To protect" all the way down to the final bullet point please.

**MR. BOWN:** So the paragraph and the five bullets?

**MR. BUDDEN:** Yes, please.

**MR. BOWN:** "To protect the Province's financial position and minimize the potential negative consequences associated with this investment, Government could pursue the following strategies:

"Maximize direct Project-related borrowing to the extent permitted by Project finances;

"Ensure all direct Project debt is non-recourse to the Province;

"In loan guarantee negotiations with the Federal Government, attempt to ensure the maximum available guarantee can be accessed;

"Ensure Nalcor funds the Project's equity requirement from internally-generated resources to the maximum extent possible; and

"Structure Project cash flow such that, as a minimum, Nalcor returns to the Province sufficient cash on an annual basis to pay the interest and other debt servicing costs so that these costs are not borne by taxpayers."

**MR. BUDDEN:** Okay. The third bullet point explicitly – or fairly explicitly – references the federal loan guarantee.

**MR. BOWN:** Yes.

**MR. BUDDEN:** But really they're all about that, aren't they?

**MR. BOWN:** They are all about that.

**MR. BUDDEN:** Okay.

And you can walk through these one at a time if you wish, but to what degree were these all

successfully achieved or implemented? By the FLG?

**MR. BOWN:** If we go back to the third bullet.

**MR. BUDDEN:** Yes.

**MR. BOWN:** We achieved the maximum that the Government of Canada was prepared to give.

**MR. BUDDEN:** Which was, I believe, originally 5 billion?

**MR. BOWN:** Five billion, then ultimately 6.3.

**MR. BUDDEN:** Okay. The first bullet point, can you comment on that?

**MR. BOWN:** Again, the terms of the borrowing permitted by Nalcor were set by the loan guarantee. So the debt-equity ratio was set by the loan guarantee. So it was maximized based on the terms of financing.

**MR. BUDDEN:** Okay. And the second bullet?

**MR. BOWN:** All project debt is non-recourse to the province. That was accomplished.

**MR. BUDDEN:** Okay. And the fourth. Ensure ...

**MR. BOWN:** Yes, to the degree possible.

So the way this worked, as the project was in construction, is that the equity request would be: here's the amount that we require for equity this year, this is the amount that we have available from OilCo or CF(L)Co or Hydro. That would be reduced from the total equity amount, and the remainder is what the government would fund. So the answer is yes.

**MR. BUDDEN:** Okay. And finally the fifth bullet point.

**MR. BOWN:** That is where we currently are.

**MR. BUDDEN:** Okay.

**MR. BOWN:** That's today.

**MR. BUDDEN:** So I guess the question is, was Nalcor – or the government, I guess, operating

through Nalcor – successful in achieving the minimum outcome that's contemplated there – that the returns on the province's equity would generate sufficient cash on an annual basis to pay the interest and other debt-servicing costs so that these costs are not borne by taxpayers?

**MR. BOWN:** So –

**MR. BUDDEN:** Under the terms as contemplated there.

**MR. BOWN:** Yes, under the terms contemplated there?

At that time that was – that – based on the cost then, the answer is yes –

**MR. BUDDEN:** Okay.

**MR. BOWN:** – based on the cost now, then that's the current predicament that we are trying to resolve.

**MR. BUDDEN:** Okay. Because, of course, the costs then are not the costs now?

**MR. BOWN:** Correct.

**MR. BUDDEN:** Okay.

**MR. BOWN:** I agree with you.

**MR. BUDDEN:** Okay.

The – even as contemplated here – assuming the costs had stayed where they were projected to stay in – at time of sanction, would the Power Purchase Agreement generate sufficient funds to meet, you know, the requirements of the fifth bullet point in the earliest years of the contract?

**MR. BOWN:** Yes.

**MR. BUDDEN:** You think?

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay.

**MR. BOWN:** It was – at all times, the Power Purchase Agreement was designed to return the revenue to cover the debt expenses.

**MR. BUDDEN:** Yes, I realize that, but it's also somewhat back-end loaded contract – the PPA.

**MR. BOWN:** Right.

**MR. BUDDEN:** Yes, so in the – at the front part of the contract, are you suggesting that it would still generate sufficient funds?

**MR. BOWN:** Yes.

**MR. BUDDEN:** Okay.

**MR. BOWN:** I'm familiar with the revenue streams for the project and how it was constructed.

**MR. BUDDEN:** Okay.

We are at quarter to 5, Mr. Justice. Do you wish me –

**THE COMMISSIONER:** (Inaudible.)

**MR. BUDDEN:** – to stop at this point?

**THE COMMISSIONER:** So are you on – pretty much on schedule –

**MR. BUDDEN:** I am.

**THE COMMISSIONER:** – with your hour?

**MR. BUDDEN:** Yes.

**THE COMMISSIONER:** Okay, how does everybody feel if we just go now and then hopefully finish tomorrow, recognizing there is going to be a bit of snow tomorrow morning, but we'll all get here anyway.

Does that sound okay to everybody else? Okay.

And if there's any change in your estimated times, just let Ms. O'Brien know, 'cause she's got the list, which I'm gonna have tomorrow. And at least I'll be able to follow it; I'm not gonna hold you to it tightly, 'cause I do think we have enough time unless things change between now and tomorrow.

So we're adjourned 'til tomorrow morning, then, at – I think we'll start at –

**UNIDENTIFIED MALE SPEAKER:** 9:30.

**THE COMMISSIONER:** Cut you halfway – 9:15 tomorrow.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.