COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1 Volume 56

Commissioner: Honourable Justice Richard LeBlanc

Tuesday 11 December 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Good morning.

MR. E. MARTIN: Good morning.

MS. O'BRIEN: Good morning.

THE COMMISSIONER: All right, Mr. Martin, you remain under oath at this time. Ms. O'Brien, when you're ready?

MS. O'BRIEN: Okay, thank you.

Mr. Martin, Dick Westney from Westney Consulting Group gave testimony before the Commission. Did you hear Mr. Westney's testimony?

MR. E. MARTIN: Not all of it.

MS. O'BRIEN: Okay.

So, I'll tell you that he has testified that his firm recommended that Nalcor use a P-value of at least P75. Were you aware of that at the time, when we look back, say, 2012?

MR. E. MARTIN: Not that I recall.

MS. O'BRIEN: Okay.

Now Mr. Harrington also testified to this, and I know you heard Mr. Harrington's evidence. He said he did not specifically recall the Westney group making a P75 or higher recommendation, but he did testify that he recalled Westney group giving advice to be conservative in strategic risk, and to use a high confidence level. Were you aware of that recommendation having been given to Mr. Harrington?

MR. E. MARTIN: Not that I recollect.

MS. O'BRIEN: Okay –

MR. E. MARTIN: Recollect.

MS. O'BRIEN: And I do have some further information, and I do believe we will be hearing from Keith Dodson of Westney, and I do have – this is what he might be expected to say based on an interview that he provided to Grant Thornton.

I'll put this to you, he's quoted here as saying: our recommendation on P-value is always at least P75, and in this case, I was saying P90 because it was likely to end up, like, where this one has, with some type of change in government, and government investigation later down the road. I've been in a lot of public project and it almost always happens.

That was one quote of his.

He also said, they – I think meaning the project team, Mr. Harrington and Mr. Kean in particular – wanted us to say picking P50 was a good thing and we would never say it.

Do you have any knowledge of those discussions between Mr. Dodson and Mr. Harrington or Mr. Kean?

MR. E. MARTIN: Not that I can recollect.

MS. O'BRIEN: Okay. Now you've testified yesterday that you went with a P50. Did you – at sanctioning you used a P50.

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay, did you – before making that choice, to go with a P50 number at sanctioning – did you consult with anyone as to what the appropriate confidence level would be?

MR. E. MARTIN: No, I went on my own experience.

MS. O'BRIEN: Okay, so your own experience from Petro-Canada, for example? Is that what you're –?

MR. E. MARTIN: That's one aspect, yes.

MS. O'BRIEN: Okay, so I think you testified yesterday on the projects that – where you were familiar with P-values and confidence levels. And I'm –

MR. E. MARTIN: And I – you know, the – as I said yesterday, the number one consideration for me with the P-value was on the comparative analysis. And from a statistical perspective, P50 lands in the middle of the most likely outcome area underneath the probability distribution curve.

From – you know, from my perspective that was the right place to do – to start a comparative analysis from, where you'd have both sides of the equation in the most likely slot where – from a P50 perspective. And provided you had an apples to apples comparison and maintained it, it was my view that that was the appropriate P-factor to use for that analysis and to carry on through into the project.

MS. O'BRIEN: Okay, so you're saying you didn't consult with anyone on that but that you had – this was based on your own personal experience. In your previous jobs you did talk about where you were familiar with P-confidence levels and such; had you ever been previously responsible for choosing the confidence level on which to sanction a project?

MR. E. MARTIN: With respect to White Rose and Petro Canada, for their interest, yes.

MS. O'BRIEN: Okay, so you would have used P50 in those cases?

MR. E. MARTIN: Yes, I would.

MS. O'BRIEN: And was that a decision that you would have made on your own, or was that made in consultation with a group of the various stakeholders in the project?

MR. E. MARTIN: On my own, it was generally accepted P50 was the place to be.

MS. O'BRIEN: Okay.

So, now, one might ask why you would not have reached out; you had a risk consultant on the Lower Churchill Project. We've heard what the risk consultant's opinion was. Why would you not have reached out to at least get the advice or viewpoint from your risk consultant prior to making the decision for the Lower Churchill Project?

MR. E. MARTIN: It was my decision. I felt comfortable making it. That's my experience in terms of where I was comfortable. I explained the comparative analysis and that's what we went with.

MS. O'BRIEN: Okay.

I'd like to look at – can we go to Grant Thornton, which is P-00014.

MR. E. MARTIN: Binder? Which binder?

MS. O'BRIEN: Yes, I'm getting there, Mr. Martin.

It's going to be binder 5, tab 115. If we could go to page 62 please, Madam Clerk.

So, I understand that you had used the P50 before in the oil and gas sector. In this section of the report, Grant Thornton cites the results of their discussions with various people about the P-factor, and I believe you've had an opportunity to read this section before, but if you want to just take a moment.

MR. E. MARTIN: Which section? The P-factor section?

MS. O'BRIEN: It's right there, right on your screen, right in front of you, Mr. Martin.

MR. E. MARTIN: Sorry, I was looking at the printout.

MS. O'BRIEN: Okay, well I've got this cite right up on the screen there.

MR. E. MARTIN: That's very helpful.

MS. O'BRIEN: So you've had an opportunity to read this section previously, is that right?

MR. E. MARTIN: Yes, I read the report but I'm just finishing reading this again here now.

MS. O'BRIEN: Okay.

So, here –

MR. E. MARTIN: I'm still reading actually.

MS. O'BRIEN: Okay.

Well, I'll read it out loud for you, the section I want to bring to you.

MR. E. MARTIN: Well, I'm –can I just – I'm reading – you know, there's three paragraphs here. I'm almost through the second paragraph, and I'm looking for the context before we answer the question. It shouldn't take me very long. I prefer to read it myself, if I could.

MS. O'BRIEN: Okay. I do need to move things along, though, so I'm just concerned with the amount of time. So I just wanted to bring you to the part I was gonna you a question on.

MR. E. MARTIN: I'm – you – look, just let me read it, please. If we're gonna – I know about the time constraints, but I'm not – I'm gonna have to read things if I'm asked a question.

MS. O'BRIEN: Okay.

MR. E. MARTIN: That's a principle that I would prefer to have established.

MS. O'BRIEN: Okay. Go ahead, Mr. Martin.

THE COMMISSIONER: Let me just hop in here now. So may as well get cracking right at the beginning.

So, Mr. Martin, you have a week to tell your side of the story. I've told Commission counsel that I can only give her 2½ days to get through what she needs to get through. And the instructions that I've given Commission counsel all the way through is to make sure that you put to the witness what – to give the witness an opportunity to respond to things.

So what I'm gonna ask you to do, as best as you can, is to try to accommodate us and our schedule, if you can. I have no problem with you reading what you feel you need to read, and certainly you can ask, and I will definitely permit that. But where we can try to avoid, you know, like, too much delay, I'd like to try to do that, too, because I do – you know, this is a big thing that I'm trying to run here in a particular period of time.

So, for instance, if things come up on the screen, and I know it's nice – for me, I like the hard copy. I don't like the screens because I have a hard time seeing the screen, to be quite honest with you – but, you know, let's try to work together here now to try to see if I can get Ms. O'Brien finished in 2½ days so I can give the rest of counsel their 2½ days to ask questions as well.

But, you know, all I'm asking you to do is just work with us, that's all. All right?

Anyway, go ahead and continue reading that, and we'll get going.

MS. O'BRIEN: Thank you, and I have made an effort to provide documents to Mr. Martin in advance, and we have reviewed this material previously together.

So here, looking at line 29 here, this was a – I'm just gonna read that paragraph: "Grant Thornton asked Validation Estimating if selecting a P50 value for contingency was in accordance with best practice. In response, Validation Estimating noted, '*P50 funding is a concept for portfolio – say you have a major company and you have 300 projects in your annual portfolio, if you fund them all at P50 level it means (half) 150 will be over and 150 will be under and your annual capital budget will be about right. It makes sense from a portfolio viewpoint but on a mega project where that one project is the company – the P50 is extremely aggressive. I don't know any company who will fund a single major project like that at P50. Most companies will fund … at a higher level – commonly P70 or P80.*'"

And he talks about the experience there of Suncor and the Department of Energy and such.

So I just wanna put that to you. I mean, you're working with Petro-Canada. Petro-Canada is a large company with a lot of projects. Here and now, though, when you've moved to the Lower Churchill Project and your position at Nalcor, this is really a single megaproject company more or less – I mean, as we've looked at the numbers, what this project meant in terms of the overall asset portfolio of Nalcor Energy.

Did you give any consideration that, you know, in a Crown corporation, utility project, single major megaproject on the books, that a higher confidence level may be appropriate?

MR. E. MARTIN: I did get – I did give some consideration to that, and – but that was a secondary consideration, you know, to be frank.

My first consideration was the comparative analysis, and I'll get back into that again at another time so we don't waste any time here right now as to why that's valid. But from a portfolio perspective, you know, I did realize as well that we are a Crown corporation owned by the province.

You know, Nalcor and Hydro, and they were companies themselves, had other projects, capital projects on the go throughout the system. The oil business had ownership shares in some of the large construction projects that were going on here.

And in addition to that, one thing that did strike me was that – and I'm not sure people understand or realize this, but the way the royalty system works in Newfoundland and Labrador is the province actually assumes, you know, significant massive cost risk on those projects because the royalty regime is structured in such a way that, until the owners of those projects who are constructing them actually recover their costs, plus a significant return, the royalty rate stays at a very, very, very low level and doesn't kick in.

So the province as – generally, I perceive them as an owner of the offshore projects that they're a royalty share in, and that crossed my mind as well, that there was a multitude of projects, you know, out there that the province was taking, you know, a portfolio of risks on as well, but it wasn't my primary concern.

MS. O'BRIEN: And this isn't something you discussed with anyone else?

MR. E. MARTIN: No.

MS. O'BRIEN: Okay.

So, I mean, we know what the cost of the Muskrat Falls Project has meant to the province, and it's – has a significant impact on the provincial coffers. Would you agree with that?

MR. E. MARTIN: Absolutely.

MS. O'BRIEN: Yeah. All right.

And so you chose to do it on a P50. You didn't speak to anyone else. Were you aware that Paul Harrington has testified that he considered a P50 to be aggressive?

Were you aware that Mr. Harrington, with his experience, considered that to be an aggressive approach?

MR. E. MARTIN: I would – I'm aware of that, and I would hope he would. That's – you know, part of the issue with a project team is that I would consciously give them an aggressive budget.

MS. O'BRIEN: Okay. And you would consciously sanction on an aggressive budget?

MR. E. MARTIN: I would sanction on a P50 for the reasons I mentioned. You know, with respect to comparative analysis was my key driver. Two separate things.

MS. O'BRIEN: Did you have any discussions, you know, with Government of Newfoundland and Labrador? I mean, they're the shareholder here. They're responsible to the people of the province. Did you talk to anyone in government about, look, I've decided based on my experience that it's appropriate here to sanction this on a P50. Here's why. Here's the puts and takes, the pros and cons. Did you ever have that discussion with anyone?

MR. E. MARTIN: I did. I – you know, I remember having those discussions. I can't remember who. It wasn't like I was up there seeking, you know, permission to do that. But, you know, at several times I can remember describing that, you know, we're at a P50 which means 50 per cent chance of going higher or a 50 per cent chance of going lower. It was more of an information than a, you know, seeking approval on something.

And that would be something that I would say – if not frequently, I've said it many times.

MS. O'BRIEN: Okay. So nobody from Government of Newfoundland and Labrador who's testified here has given us evidence to that effect. In fact, the evidence from the people we've heard from from government is that they had very little understanding of P-values, that you did not discuss with them the pros and cons of a P50 versus a P75. There's no – no one has any recollection – who we've heard from to date – of you having these conversations with them about this.

You're saying you did. Do we have any notes, any records –?

MR. E. MARTIN: Well, I'm saying that – I just would like to clarify one thing, Mr. Commissioner. You had quite a broad array of what I said. I didn't say all of that, no.

MS. O'BRIEN: Oh.

MR. E. MARTIN: I was just making the point that it would be something I would talk about. You know – it was something that I would have explained during a budget presentation possibly. But I didn't want to leave the impression I was up there seeking approvals – going through the pros and cons of it. I did not do that.

And just as an, you know, as an aside, you know, it was something that – speaking about it wasn't a problem. I mean, you know, I like to use the example of the PUB submission for instance. I know it was, you know, it was discussed in the PUB submission. It was a public document. P50 was described there and talked about.

It just wasn't a thing that wasn't discussed or anyone was open about. That's my point.

MS. O'BRIEN: Okay. So let me put this – put it to you this way.

We've had evidence from Nalcor's own risk advisor. They thought at least a P75, up to a P90, would have been appropriate for this position. Similar information has come in the Grant Thornton report from John Hollmann of Validation Estimating. Your own project director has said that, in his mind, P50 was aggressive.

And your evidence here is you decided to go with it anyway without consulting with anyone for the Lower Churchill Project. And – let me just, please, continue.

MR. E. MARTIN: Oh, I'm sorry. I thought you were finished.

MS. O'BRIEN: So we look at what government was told, because people from government have testified that they understood that this was – you know, this was a very conservative number, this was an all-in number that they were working with, and they had no understanding that, look, other Crown corporations, other project owners sometimes do go with a higher confidence level. This is – to do that you'd go with a P75. That's what it – you know, what it means to go with a P50 is that we're as likely to go over as we are under.

They didn't have any of that discussion with you, they didn't have any of that understanding, yet these people were voting to sanction this project. These people were elected, on behalf of the people of the province, to make – and, ultimately, this was a decision, as you said yourself, that they had to make, they had to sanction.

Don't you think that the people in government would have wanted to know what the options were, what this meant to be, you know, sanctioning this project at a P50 number?

MR. E. MARTIN: So two points there. The first point: I think I heard you say that other utilities do not use a P50 or may not use a P50. I'd just like to point out – and I think it's been here in evidence before that – my understanding is Manitoba Hydro, BC Hydro are two examples, and Hydro-Québec is another example on projects – on the project side of things that use a P50. So I just wanted to put that out there. Now, there's a myriad of other companies as well, you know, in other sectors that I'm aware that use P50s, so it's not an unusual thing.

And the second point I wanted to make is I did have, you know, many discussions with the province with respect to the comparative analysis. And, you know, I want to make the point again that as you increase the equation on the Muskrat side, and if you use, as a proxy, increasing the P-value to demonstrate that, if you also increase the P-value on the Isolated side, particularly, because of the impact of the oil to 60 per cent of the Isolated side, I was always crystal clear that the more you added on one side, you were adding more on the other and the gap in favour of Muskrat widened.

And that was a conversation I constantly had with the government. And from that perspective, I also made the point that we were being conservative from a comparative analysis, conservative because we did not put in a cost of carbon impact. And, you know – and I believed that was the right thing at the time, but it could've easily have gone in and increased the comparative favour (inaudible) – in favour of Muskrat to about 3 billion.

We could've easily used the expected price of oil, not the reference price, because we were recommended to do so. That would've brought us to 3.6 billion in the difference. If we'd gone to P75 in oil, that would have increased to – closer to 5 billion. It just goes – it's just the nature of the comparative analysis.

So, from that perspective, I was more focused on the decision from a comparative perspective in helping the province understand that what we were doing was not attempting to favour Muskrat, but attempting to be in a conservative mindset with both, and for certain not trying to favour Muskrat because of the feeling that people would think that that was something we were trying to do.

MS. O'BRIEN: Okay.

But here we're just talking about sanctioning Muskrat Falls and we'll put the comparative aside. This is a decision that has to be taken, you know, can this province afford this? And what the province, the people in government, have testified, they were concerned with that question: Can we afford this? What is this really going to cost? They were very concerned about that. Do you acknowledge that that would be a concern of theirs?

MR. E. MARTIN: We had many conversations about exactly that.

MS. O'BRIEN: Okay.

But they're saying that you – they have had no – they understood from you that this was an all-in number, this was a good solid number, this was a high-confidence number that you were putting before them when you were giving them a P50 number. So the –

MR. E. MARTIN: I was –

MS. O'BRIEN: You have it – there's a discrepancy in the testimony here.

MR. E. MARTIN: I don't believe there is. I was and am saying I was confident in the number; I made that clear to them. And looking back on it, I still feel that at the time I had confidence in the number. You know, we approached – a lot of the discussions were approached – back to your original question about what – you know, what is the economic situation in the province and that was discussed many, many times, our ability to fund it.

And that's when we constantly discussed, you know, the value of the excess sales, which we purposely excluded from the comparative analysis and that was in a nominal perspective in the $3-billion range. The second thing I talked about frequently was the fact that we had built in to both sides of the equation a return on equity. So whatever equity the province put in, they would get an 8.4 per cent return on that. And that was included as part of the rate base in both cases.

And that yielded – over a 50-year period on the Muskrat side that yielded $22 billion of return that people were in essence paying to themselves in the province. And on the Isolated side, because the majority of it was oil and the timing of the capital, it was approximately 4 billion. So the net difference was approximately $18 billion over 50 years at the time on return on equity.

The third thing we talked about was the province chose to charge Nalcor water rental. (Inaudible) and that –

MS. O'BRIEN: Okay, Mr. Martin, I'm just going to stop you here.

MR. E. MARTIN: And that –

MS. O'BRIEN: We will get back to the benefits –

MR. E. MARTIN: And that comes in to about 1.2 billion. And when you add those up and take an allowance for the potential to fund an overrun from a debt-equity perspective, that's the view we took and it was substantial.

MS. O'BRIEN: Okay.

My question really here, Mr. Martin, is about: What did the province understand about you putting forward to them a number that was more likely – the number you were giving them, the ultimate number, was more likely to be higher than 6.2 billion than it was to be less than 6.2 billion. Because the number you gave them was a P50 number that only considered tactical risk, didn't consider any strategic risk. So if you'd considered strategic risk at a P50, it would've been a higher number than 6.2.

The number you gave to the government was 6.2 at a P50 tactical only. So the reality is the math on that is that the ultimate number of this project was more likely to be higher than 6.2 billion than it was to be less than 6.2 billion. And my point to you is that that was not understood by our government because you did not explain it to them. You didn't tell them what a P50 meant; you didn't give them the pros and cons of a P50 to a P75.

That's the point, that's the issue I'm asking you to address. Why didn't you explain very clearly to the people, to the people's representatives of this province, the government officials – why didn't you explain to them very clearly what the choice that you had made was to go to a – with a P50 number, and why you had done it and what the potential consequences of that were?

MR. E. MARTIN: So I just fundamentally disagree with your characterization for openers – just fundamentally disagree with that. And I'm going to go back and I'm going to be forced to repeat myself so, Commissioner, please stop me if I'm repeating. You know, I'm going to characterize it in the way it actually was in what happened.

And I started off and I indicated that we had to make a choice for power. It's a comparative analysis; we came down to two options. I was clear to the province during certain discussions, using a P50 or not, that was discussed. I didn't seek permission for it, but it was on the table and it's certainly clearly available to anyone in the PUB report and other things. So it wasn't an issue that was not being addressed; it just was an issue that I felt was the right way to go because other utilities were using it. And on the comparative analysis, because it's the highest probability of an outcome, to me, that was the right place to go. In addition to that, the more you pushed up that type of number on both sides it began to favour Muskrat more and more and more. I could not help that.

From a – what – your term, a strategic risk, I didn't use those terms with the province. And in my career I often didn't use – usually didn't use those terms. All through my career in the private sector as well when I was dealing with executive committees, and various shareholder groups and analysts who represented shareholder groups, I was always – and that was the norm in where I worked. We always talked about the risk in clear terms, things such as what the project team would have control over. Things that – over and above that – that could happen that they don't have control over.

We didn't put names to it – you know, strategic, tactical. That wasn't the point. The point was to make sure everyone understood those things. And that's what I did with the province.

And, you know, whether I'm sitting with Premier Dunderdale or the larger group with the ministers and others in it, there was no question that we talked about the comparative analysis; we talked about the numbers would grow as I just mentioned. We talked about the fact that the province would have substantial ability – through the reasons I just mentioned – the, you know, return on equity, the excess sales, water rentals and some other items I won't get into right now – that would give them the ability, you know, to fund an overrun.

Now, that being said, you know, I believe that they had a clear understanding of what the 6.2 was. I did express confidence in that number. There's no question I expressed confidence in that number to them. And – but respect to adding up the strategic risk on top of that – as we're calling it now – they were clear that other things could happen, and they were clear that there was funding available to handle that. And that's the way I described it.

And, you know, and upon reflection as well, as I've seen this unfold, I'm gonna make a point that – it's not necessarily totally relevant to this point, but I think it has to be made because I haven't heard it expressed yet – that, you know, from a comparative analysis perspective, you know, if we'd gone to P75 on everything – which I don't believe is the right thing to do. I just fundamentally don't. But if we had done it, from a comparative analysis perspective – I looked at the sensitivity analysis over the last while, and we did a 25 per cent sensitivity analysis on cost, and that took the CPW difference from 2.4 to 1.7.

If you went all in with this P75 and stuff, that would have been about 16 or 17 per cent increase, which means that the CPW would still have been around 2 billion dollars. Now, I'm not defending that, but I want to put that in context of what we're talking about here.

And, you know, that's part of the message, I think, that the government, you know, and the people need to understand, is that's the impact on a comparative analysis. But I'm not saying do that because I believe in what happened, and I stick by it fundamentally for the reasons I talked about.

But I just wanted to make that point.

MS. O'BRIEN: So just going to take you back to some of that. So, one, you're saying you very clearly communicated to government that you had confidence in the number?

MR. E. MARTIN: Yes, I did.

MS. O'BRIEN: Okay. Would they have understood you were highly confident in the number?

MR. E. MARTIN: I'm confident in the number.

MS. O'BRIEN: Okay.

MR. E. MARTIN: I think that's what I would say. I was confident in the number.

MS. O'BRIEN: Okay.

MR. E. MARTIN: I expressed confidence in the number.

MS. O'BRIEN: You expressed confidence. So if they understood you had confidence in this number, do you not understand from that they might have taken that – this to be a number that was more likely than not to be achieved?

MR. E. MARTIN: Absolutely not. Because I expressed confidence in the number, but then I also clearly communicated – Commissioner, clearly communicated – that I could not guarantee a 6.2.

MS. O'BRIEN: No one said you'd guarantee –

MR. E. MARTIN: The things that could happen outside of the 6.2 – and I was always clear on that so that is why I'm not accepting the fact that I left an impression that it was gonna be less likely than more, as you say. What I did express was confidence in the number and clarity that there's things outside of that that could happen that we had to be prepared for.

MS. O'BRIEN: Okay, so there – they've given their estimate – their testimony to the Commissioner, but they've understood that they've – that this – that you did have great confidence in this number, that this is – that they could have high confidence in this number.

You talked about other utilities using it. Now, here's – the P-factor – so here's the evidence that's before us. From the report that was put in by Dr. Holburn, we know that the Darlington Refurbishment Project was sanctioned on a P90. We know that, when the UARB was considering the Maritime Link, they wanted to look at the P97 numbers for that project.

SNC – who we understand was involved in a number of Hydro-Québec's work – the evidence there in the Grant Thornton report that's still up on the screen was that their best recommendation was a P85. We've also heard from Dr. Bent Flyvbjerg that he felt a P80 would be appropriate. You've mentioned Manitoba Hydro – we don't have the numbers from Manitoba Hydro. Dr. Holburn didn't have those.

But we do know that the Keeyask Project in Manitoba is currently looking like it's gonna be at least 70 per cent over budget compared to what it was at its sanction date.

And we don't have any direct evidence on Site C in British Columbia.

But there's lots of evidence here, before the Commissioner, that other utilities are looking at much higher confidence levels that the P50 that you did.

MR. E. MARTIN: So a couple of points there. I do believe – and I'll have to check with my counsel – that we did file examples of BC Hydro and Manitoba Hydro that are on file. If we didn't, we will.

So, you know – so my understanding is just to enlighten you on BC Hydro – it is a P50; Manitoba Hydro – P50; Hydro-Québec – P50 on construction projects. I'm familiar with the Maritime Link – you mentioned they looked at P97 but they sanctioned on P50.

MS. O'BRIEN: Yeah.

MR. E. MARTIN: Well, I didn't hear you say that so I wanted to make – I thought you may have missed that point. The Maritime Link was sanctioned at P50 –

MS. O'BRIEN: Oh no, that's been – that has been – but they did want to look at the P97 numbers.

MR. E. MARTIN: – and I'm just gonna continue here for a second, please?

As far as, you know, SNC-Lavalin goes, SNC-Lavalin is not the owner company, they're a contractor. And I think their drivers are very noble with respect to what they need to achieve for the shareholders. But you know, looking after and stewarding the interests of the owner company is not one of them.

Bent Flyvbjerg, I also understand that he was clear that as far as what they – what the project team or what the gets would be at P50. I understand he said P80 overall, and I can talk to that in a minute. But make no mistake that he was also suggesting that the project team get P50. And he went as far as, to say, a contractor should understand P30. So there's a lot of drivers that enter into that discussion.

And you mentioned Keeyask, and that as you said – or I'm not sure if you did or not – it was sanctioned at P50.

So I just wanted to add, you know, more flavor and topics to that, and likely point out that, you know, I can find in my subsequent research, you know, no clear definition of what exactly to use.

And, I think, it's useful to have a range out there, to let folks know there is a range, but for one person to land on this is absolutely the right way to go, period. It's not there.

And that means that, you know, the person who's running the operation makes the decision and you have to make it on some basis, and I've explained that, and made it.

MS. O'BRIEN: I think that what you just said there is very important, Mr. Martin. You said it would be important to have a range and I think that's just the point.

The evidence from government is that they were never advised: Look, there's a potential range here, here's what it is. And it could be a P25 – this number; P50 – this number; P75 – this number; P90 – this number. That that kind of information that I put to you that people who are ultimately making this decision would want to have was never provided to them by you.

And I think, that is –

MR. E. MARTIN: I don't agree with that.

MS. O'BRIEN: Okay.

So you believe that you gave them like a P75 number (inaudible) time.

MR. E. MARTIN: I've already noted – I didn't give them the P-factors. I didn't speak in terms of strategic risk, tactical risk, P-factors and all of those other terms that's not the way that, you know, I came up in business talking about those terms in that fashion at any given time or always with respect to, you know, the senior folks who were involved in decision-making.

But I was, you know – I had a reputation of explaining things clearly to people and that, you know, whatever success I had in the private sector was based upon that that I had a reputation throughout the super majors and the majors who I was dealing with on the projects that I worked on over the years that I told it like it was and I gave them things that they would often comment on and say: I finally – I got what you're saying. It's very clear. At least someone has finally explained to us exactly what's happening here. Exactly how it's structured – I got it. Let's talk about that.

And I have a reputation for that. I believe I did the same with the province.

MS. O'BRIEN: There's no evidence that you ever provided them a range of numbers like this. You had a range. You acknowledged that. You had the work. You knew what the P25, the P75, the P90 numbers were. Right?

That work had been done and you were aware of that?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

So you had a range in actual hard numbers. Why didn't you communicate that range to government?

MR. E. MARTIN: I communicated to government – to me, I communicated exactly what had to happen.

We had a base estimate. We had escalation on that base estimate. We had, you know, tactical risk – we'd call it now. We had contingency on that. And I expressed confidence in that number and I – like I said – I never (inaudible) it was P50 or not. And I didn't feel compelled to start giving ranges around that.

The way I handled that, more so, was to explain clearly that I had confidence in that number, but over and above that, things could happen. And I would give them examples of some things whether it, you know, things outside of our control and I said: The key thing from that perspective is we have to be able to understand – can we fund that if it happens? Because if we can't, we can't proceed. And then, we would spend our time discussing about the potential funding of that.

To me

MS. O'BRIEN: Did you give them the potential number?

MR. E. MARTIN: To me that was a clear methodology of dealing with it and that's my belief. That's what I did.

MS. O'BRIEN: When you had the hard numbers before you as to what you could potentially be funding, why wouldn't you have communicated that to government? When you're in a discussion about what could potentially have to be funded, why wouldn't you have given them the best evidence you had as to what they could potentially be needing to fund?

MR. E. MARTIN: I've explained. I – my view was the most important discussion was the ability to fund if something happened outside of the estimate. And that's what I did.

MS. O'BRIEN: Okay. And these are intelligent people that you were dealing with in government, I take it?

MR. E. MARTIN: Yes –

MS. O'BRIEN: Okay. And you've heard –

MR. E. MARTIN: – Ms. O'Brien, they were intelligent people.

MS. O'BRIEN: Okay. And you've heard that Mr. Kennedy was very concerned about the details.

Were you aware of that?

MR. E. MARTIN: Absolutely.

MS. O'BRIEN: Okay. Don't – did you not consider that he might want to actually know what the hard numbers were?

MR. E. MARTIN: I've already answered that.

MS. O'BRIEN: So your answer was you didn't feel compelled to give them to him.

MR. E. MARTIN: I felt that the information that I provided in the format I provided was clear and got us in a position where we were talking about the true issues and what needed to be discussed.

MS. O'BRIEN: All right. There is evidence before the Commissioner that the decision to go with the lower P-value and the decision to exclude strategic risk from the project estimate was made during the negotiations with Emera for the term sheet.

So I'm going to bring you to some of that evidence now.

MR. E. MARTIN: Ms. – I just –

MS. O'BRIEN: Can we –

MR. E. MARTIN: You know, but that's – it may be in evidence, but I'd like for openers to indicate that exclude or remove, I don't agree with that.

MS. O'BRIEN: Okay. Well I don't need – why don't we start – we can go to the evidence after. You can tell us what happened, to your understanding, in the negotiation of the Emera term sheet.

MR. E. MARTIN: Fundamentally simple – between myself and Mr. Huskilson and the two teams – Mr. Huskilson being the CEO of Emera. They were looking to replace – or meet their environmental standards, and they had a portfolio that they felt – of projects they felt would meet that. That had a price attached to it.

They were comparing the Maritime Link cost to that. And if the Maritime Link cost was equal to or less than that, they wanted to proceed with the Maritime Link.

And from my perspective, we had a number in mind as to how that would work, and what we needed, and that suited us. And essentially I went into a negotiation with him to see if we could land on a number that was acceptable to both of us.

Naturally, my starting point would be higher than where I would like to end up. I can't speak for Mr. Huskilson. But I assumed that he was coming at it from a different angle, and we negotiated, and we landed on something that was suitable for both.

If I had not landed on where it was suitable for me, there would be no Maritime Link. But we did land on it and we made a deal.

As far as going in – was I padding my estimate, was I putting extra money in it – absolutely. But it was a single negotiation situation and it would be totally separate from anything else to do with the allocation of any type of risk – strategic, tactical, or otherwise – or P-factors.

It was a pure negotiation, separate from the other events that occurred. Totally.

MS. O'BRIEN: Were you padding your numbers with a higher contingency or reserve amounts – is that some of the padding that you were putting in there?

MR. E. MARTIN: I just had a bigger number and I selected, you know, just a big number.

MS. O'BRIEN: You selected a big number. Okay.

So I'm just gonna put some of the other evidence to you. So we've already looked at this – it'll just come up on your screen there – P-00808.

MR. E. MARTIN: Do I need the binder?

MS. O'BRIEN: No you won't. It'll just be there on the screen. This is a note that is in the DG2 QRA, the first draft. Page 26.

THE COMMISSIONER: It is at tab 78 if you need to go to it, at (inaudible) four.

MR. E. MARTIN: Yeah. Thanks.

MS. O'BRIEN: So this is a document that we've reviewed with Jason Kean and this shows that, in the first draft of the – it's not – it was a signed-off version of the DG2 QRA – it was signed off after the Gate that there was – showing that the numbers had a strategic risk exposure of 6 per cent.

And the note here was that: "During the negotiations of the Term Sheet with Emera, Senior Management elected to drop the Strategic Risk Exposure allowance of 6% from the overall capital cost recommendations for … the Muskrat Falls and Labrador – Island … Link Projects in order to address Emera's concern regarding its ability to sell the Strategic Risk concept to it's the Nova Scotia regulator, the Nova Scotia" – UARB.

So that note was there. Mr. Kean has testified that he was later asked to change this document to have it aligned with what had been filed at the PUB as CE52 – which – that document says that at DG2, you had elected to neither have a positive nor a negative strategic reserve for various reasons, but that you'd be revisiting it at DG3.

We also had Gilbert Bennett testify that his recall was that – if the levelized energy price negotiated was too high, if that was – it would be unlikely to pass muster with the Nova Scotia regulator. And so, in order to keep the price lower, Nalcor removed risk amounts from its capital cost estimate.

So, that was Mr. Bennett's evidence. He said that you made that decision, but that he was consulted and that he agreed with that decision.

I understood – you did listen to Mr. Bennett's evidence on that point, is that right?

MR. E. MARTIN: Not on that point.

MS. O'BRIEN: Okay.

We also had evidence from Derrick Sturge.

Did you hear from Derrick Sturge on this? Did you hear his evidence?

MR. E. MARTIN: No.

MS. O'BRIEN: Okay, so let's bring up P-00834.

MR. E. MARTIN: I assume you're coming up to a question, are you 'cause I'm –

MS. O'BRIEN: Yep.

MR. E. MARTIN: – have things to say, but I wouldn't wanna just leave (inaudible) –

MS. O'BRIEN: Yeah, no.

I just wanna put the evidence –

THE COMMISSIONER: (Inaudible.)

MS. O'BRIEN: – that's in before you.

P-00834 – sorry, it's not in your – it's not in the binder. It will come up on the screen – on page 3 there.

These are from Mr. Sturge's notes. And this – these are notes that he took on October 27, 2010, during meetings with Emera. So, you were there and Mr. Bennett was there. And he has a note here up at the top, and it says: "We need to focus re escalation and contingency to get the cost estimate reduced for the NS regulatory" – and I'm not sure what that last word is – "filing." Sorry – "filing."

So he's testified similar to Mr. Sturge that his understanding was that it came out at the – in the negotiations with Emera.

Mr. Sturge also pointed us to P-00871, and that will come up on your screen as well.

And he pointed to – this was a document that Mr. Sturge identified for us, done two days after his note that we just looked at, where we see "Emera Levelized Energy Cost" and there's some reductions being made here in going from a P75 to a P50 case – to set the contingency at 15 per cent and bring it down by that point.

So, we have had a number of pieces of evidence before the Commissioner that, indeed, at the – during the negotiations with Emera – that up to that point there was consideration of using – having strategic risk in the estimate and even having a higher confidence level, but that the decision was made at that time to take it out.

I understand your evidence is that's not what happened. You say you went in with a higher number but not necessarily a higher number padded by strategic risk or additional tactical risk.

Is that correct?

MR. E. MARTIN: You're (inaudible) – just that last question or the whole thing you just went through? You know, I'm just wondering what –

MS. O'BRIEN: Just start with that last question.

MR. E. MARTIN: I think that's – well, I said that already (inaudible).

MS. O'BRIEN: Okay. I just was confirming, right?

So we have a bit of discrepancy here on what's being said –

MR. E. MARTIN: No discrepancy, no discrepancy.

MS. O'BRIEN: Okay.

Well, I'll let you explain that. So let me put all the evidence out there.

I also understand – we are going to be hearing from Mr. Huskilson – but – so he's been interviewed. I understand him – he will be saying that there was no reduction in the numbers. That you started with 5 billion and 1.2 billion and that you ended with 5 billion and 1.2 billion. So he doesn't have recall of you coming in with a higher number into the negotiations.

So I wanted to put that evidence out there for you, Mr. Martin, and obviously give you an opportunity to address it. You've said that you don't see any inconsistency here so, please explain that for the Commissioner.

MR. E. MARTIN: When I run negotiation, I run a negotiation. What goes on in my head I don't share with everybody. I don't feel compelled to do that. If I want to go in with a number and change numbers, to get some place I have to get to, I do it.

With respect to how others would interpret it in this case, how we would have phrased some of this stuff, that's up to them. And, you know, I'm not fussed by that in any event.

I don't think it's much more complicated than that. This is not a – this is a negotiation. I go in; in my head where I want to end up. How I get down to that number, you know, as long as I get there, the path there and how it's documented by others, interesting but not necessarily relevant to me. And how they perceived some of this – any of those people you just mentioned – I find they're all top notch people, you know, they would be running numbers and doing their analysis and trying to come up with, you know, ways to get to where I wanted to get to. How they phrase that, they can suit themselves.

MS. O'BRIEN: So, I mean, Mr. Sturge is taking notes during a meeting that you're there with Emera and that's where he's writing at that time. We have to focus on escalation and contingency to get the cost estimate reduced for the Nova Scotia regulatory filing. That's what Mr. Sturge is recording during the meeting.

Do you recall any discussions of that?

MR. E. MARTIN: I think that's just what I said. I mean, they were trying to meet a number that suited them. And we were getting to a number that suited us. And we landed in the right place.

MS. O'BRIEN: So was – were the discussions – was there a discussion of removing escalation contingency to bring the number down?

MR. E. MARTIN: Fundamentally, I can't remember the detail of that. But there certainly could have been. I really wouldn't – wasn't fussed on how we got to the number and, you know, if the – maybe a way to look at it, Commissioner, is that, you know, these people – the investment evaluation people, the cost people – they are very rigorous in terms of how they build their cost estimates and how they do their analysis. And I know – from experience myself is – that to change those numbers, they are very meticulous in terms of documenting it because they're asked for different scenarios all the time.

So they'd like to be able to say: Look, this was the scenario that we presented here; I took this, this, this, this and this out and here's the number we got now. And I might say – or someone else might say: I need another number somewhat higher. And they would go back and they would find a way to document that, this, this, this and this. Because that's just the way they think.

I wouldn't be involved with that. I wouldn't correct them on it. I wouldn't ask them to just whip off 20 per cent and pass me the number. If that's the way they wanted to do it, it wouldn't be on my radar screen. But I could see how they would be knocking stuff off and trying to find things, you know, and talking to me about it. And I would say: Look, as long as it works technically, however you want to, you know, structure that, go ahead with it – with respect to this negotiation.

So I don't see that – anything to it other than that. And any changes that – as I'm looking down through here, the way they have structured some of this, and – I probably should get the (inaudible) book out to take at where we are on this. But anything here, you know, from a technical perspective – line losses and stuff like that would have to be – if that's the way they were going, that would have to be checked off with the technical people. I wouldn't be involved in that.

But as long as I got to the number I got to and, you know, and it fit within our parameter, I wasn't too fussed on how it was structured.

MS. O'BRIEN: But your bottom-line number that you got to did not include any amount for strategic risk.

MR. E. MARTIN: Never intended to.

MS. O'BRIEN: Okay.

Were you aware that Emera – in their numbers – they were giving strategic risk consideration?

MR. E. MARTIN: No, wasn't aware of that.

MS. O'BRIEN: You weren't aware of that. Okay.

So I think the evidence will be that they did. So they considered all risks –

MR. E. MARTIN: I'm talking about –

MS. O'BRIEN: – in their numbers.

MR. E. MARTIN: I'm talking about during the negotiations. Now, I've read some stuff since.

Recently, a note that Chris Huskilson wrote to the Commission – I haven't got it in front of me right now, but I'm just trying to ascertain – make sure I'm separating the data I have recently from the data I had then. And I – that's why I'm hesitating here for a second. But, you know, I can't remember.

But let me put it this way: If we were in the negotiation and Mr. Huskilson, you know, started to talk about strategic risk in or out, I would listen to that and be respectful, but I would take in in the context that, you know, he's also in a negotiation state and, you know, I would be aligning his comments to what the bottom-line numbers were.

Not that there was any lack of trust, but when you're in a negotiation, you have to realize that you've got to stick to where you're trying to and the other party is gonna to present things in such a way that they may want to get to another number.

Just respect that and make sure that you keep your number straight and you get to where you need to get to.

MS. O'BRIEN: Okay.

So it was never your intention to include any strategic risk in the project estimate.

Is that correct?

MR. E. MARTIN: In the project estimate (inaudible), to the project management team, absolutely.

MS. O'BRIEN: Well, just to the project estimate that was being used and communicated?

MR. E. MARTIN: Now that's gonna be – we're into another topic. I can go there now, Mr. Commissioner. It's gonna take a little while because we're right into the heart of the matter, so –

MS. O'BRIEN: Well, were you – was it your intention ever to put strategic risk into the project sanction cost?

MR. E. MARTIN: Into the project budget considerations, yes.

MS. O'BRIEN: No, was it ever your consideration to put –

MR. E. MARTIN: I'm gonna –

MS. O'BRIEN: – strategic risk –

MR. E. MARTIN: Here we go.

MS. O'BRIEN: – into the project sanction cost?

MR. E. MARTIN: It's a comparative analysis. I handled it in a fashion that reflected it properly.

MS. O'BRIEN: So my question was, was it ever your intention to include an amount for strategic risk into the project sanction cost?

MR. E. MARTIN: To reflect it in the budget – is my answer and I need to explain that so I can – but I'm – Commissioner, I want to be able to explain it but I don't want to seem like I'm avoiding something or taking extra time, but it's a key point.

MS. O'BRIEN: I just would like you to answer that question.

MR. E. MARTIN: And so, I'm gonna answer that question –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – but at the end of my, you know, at the end of my framework.

So if we start off, as I said before, the base estimate contingent – escalation, and we'll call it tactical risk right now and then strategic risk. And as I mentioned earlier, on a comparative analysis, we put in the base estimate, the escalation, and the tactical risk to compare both projects.

Putting in strategic risks opened the doors – I mentioned earlier – to much higher numbers (inaudible) on the Isolated side. So we did not put the strategic risk in either side of that analysis. And I feel that was a proper thing to do, because it favoured Muskrat so much, it started to skew the reality of the numbers to people who may have an untrained eye on this thing.

So right there is where I'm saying: We accounted for in the budget; the fact that – from a Muskrat Falls, which was winning the day from every angle and dollars-wise and economics – not to put it in there was a reflection that we were being conservative with respect to that, and it was covered. And the more you put in, the broader it went.

So following that, we said: We're gonna assign the base estimate escalation and tactical risk to the project team. And from a strategic risk perspective then – because we accounted for in budgeting – the key element for strategic risk at that point was – we don't know what it's gonna be, but can we fund it?

And that's the discussion that I took to the province and the board in terms of can we fund strategic risk.

So that's what – how it was handled and accounted for.

As far as putting – now back to the question, as far as putting strategic risk into the project team budget? No, for the reasons of I was not giving them any money that was un-earmarked or unknown to spend.

From a public perspective, my advice would be: Do the same. Don't add in strategic risk and the parameters of strategic risks for, you know, to the public because that – it would be information useful for the public, I understand that, but the offset to that is commercial sensitivity.

And you're getting into, you know, stakeholders at that point – contractors being one of them, you know, other environmental stakeholders, other people who – in my estimation on a project of this nature – is not wise to do that because of access to information.

And frankly, all I have to do – you know – and Commissioner, this has nothing to do with this Inquiry or yourself – but frankly – if we look what's happening in this Inquiry, separate from yourself, this is exactly the reason that, you know, I would refuse to put this kind of amount out public.

The fact that we're sitting here – nothing to do with yourself again, Commissioner, but the fact that we're sitting here discussing, you know, tactical risks, discussing productivity factors, I mean, we're just serving up a platter to, you know, the contractors here, which I cannot fundamentally believe and right at the time when these things come to fruition.

I'm sorry to express frustration on this. I'm going to back off of this now because this is not the Inquiry's issue – this is another issue but this is exactly the reason, from my perspective, that this type of thing should not be out there and in the public because of the commercial sensitivity and the rationale that things like this could happen.

MS. O'BRIEN: Okay.

Well, in all of that, I actually didn't hear an answer to my question.

So I'm going to just ask my question again: Was it always your intention to keep strategic risk out of the project sanction cost?

MR. E. MARTIN: And I just answered that – that we covered it in the comparative analysis so it was in as far as budgeting went but it was always my intention not to include it in the project team or the public side of the equation.

MS. O'BRIEN: Okay.

So just maybe if you could just give me a yes or no on it.

Was it always your intention not to include strategic risk in the project sanction cost?

MR. E. MARTIN: I've given my answer.

MS. O'BRIEN: I still don't know whether it is a yes or no.

MR. E. MARTIN: I don't want to repeat the same thing again because I, you know –

MS. O'BRIEN: Could you just answer yes or no please?

MR. E. MARTIN: I've already answered my question.

MS. O'BRIEN: Mr. Commissioner, I'm asking I – what I believe is a yes or no question to Mr. Martin and now he's refusing to answer my question.

So I don't know what to do with that. I'll ask –

THE COMMISSIONER: Well, let's just leave it and move on.

MS. O'BRIEN: Okay.

So I understand what you're saying is that you never intended it to go to the project management team's budget; so we'll talk about that in a few minutes, and that's about the red-meat syndrome and we've got evidence on that and I'm gonna take you there.

But what we – what I'm interested in is whether you were ever going to communicate to government what was in your budget for strategic risk. So –

MR. E. MARTIN: The –

MS. O'BRIEN: – let's go there.

MR. E. MARTIN: – answer is yes. And, you know, I told them that there was nothing in the budget for items that we could not foresee happening and we had no control for outside of 6.2.

So that was my phraseology for strategic risk.

MS. O'BRIEN: So you never kept any budget for strategic risk, ever.

MR. E. MARTIN: No, as I mentioned, to me it's a matter of – budgeting is a matter of funding.

MS. O'BRIEN: Right.

MR. E. MARTIN: How do you fund it?

MS. O'BRIEN: Yes.

MR. E. MARTIN: So I look at the terms: we've used "management reserve"; we've used "contingent equity"; I think I've heard "strategic risk allowance" has been out there; and, I believe the other term that has been out there is "completion guarantee." And, Commissioner, from my perspective that's one term, that's one pile.

And from a strategic risk perspective, when you say "budget," to me, I hear "fund" – the ability to fund. In Nalcor's case, we had to look at that in conjunction with the government because they were the ones who would be providing the contingent equity. And so from that perspective – is yes, we did budget for it by establishing an agreement with the government that they would fund additional equity to cover things that were unforeseen.

MS. O'BRIEN: Did you ever care – did you ever tell – communicate to the government any amount of money that would be needed to cover things –

MR. E. MARTIN: I –

MS. O'BRIEN: – that were unforeseen?

MR. E. MARTIN: I did not give them a specific number, but in general terms – I will be frank – you know, I – it would've been clear I wasn't thinking billions. I was not.

I'm not sure who it was – I mean, I've talked to – you know, probably to Premier Dunderdale and I've talked to other people. I can't remember the exact terms. But it dawns on me that, you know, she would be thinking in terms of hundreds – probably, you know, probably lower hundreds. I can't give a reference. I would not have disputed that, Commissioner.

So I wanna make that clear. I wasn't suggesting that, you know, the numbers that occurred was what I was thinking. It would've been lower than higher to them, in general – in conversation, 'cause I can remember just having those kinds of dialogues, but not exactly, specifically what the number would be.

But if Premier Dunderdale – I would be confident – well, I shouldn't speak from Premier Dunderdale, but she wouldn't be expecting billions of dollars. I can be frank on that.

MS. O'BRIEN: Okay, so I'm hearing you say that you did not provide any numbers to government for strategic risk.

MR. E. MARTIN: Not specifically, no.

MS. O'BRIEN: Okay. So we'll come back to that – maybe at Gate 3.

But let's talk right now about this idea of this red-meat syndrome.

So what I'm hearing you say is that – very consistently – that you would never give your project team more than a P50 budget to work with, right?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

And I understand this is the idea of kind of holding the feet to the fire: you don't want them to know that there's more money available to – you know, so that they're careful in their spending. Is that fair to say?

MR. E. MARTIN: That's fair to say.

MS. O'BRIEN: Okay.

Wouldn't you be able to communicate – okay, to the – I mean, the project management team, they're the one people who did know what the evaluation of strategic risk was, right? They were the one group who did get to see the QRA work done on strategic risk.

MR. E. MARTIN: That's correct –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – but they also mitigated it in the final analysis to zero. So from their perspective, there was nothing available for 'em.

MS. O'BRIEN: Well, that is not consistent with their evidence, but we'll get to hear yours.

But so – but they're the ones who actually knew this analysis that had been done. And, in fact, I think the evidence from Mr. Harrington and from Mr. Kean is they understood that that work had been done and evaluated at about $500 million. So that is their evidence.

But they at least knew that work had been done. So they were the ones who actually knew that that number was out there; that work had been done. What would've been wrong with still saying to them: Look, here's your control budget, here's the budget you have to wok with. You're only getting the 7 per cent tactical contingency that you can work with. That's your budget.

They knew about that other half million – half-billion dollars that had been looked at. Why couldn't you have told government about that? Like, why could you not have said to the government: Look, I'm giving the project management team an aggressive budget that I want them to work with, the P50. But just to let you know, here is the work that we've done on strategic risk, here is what you have potential exposure for. I want you to know that.

And you've said to the Commissioner just then – talked about ATIPPA and not wanting it out publicly. I mean, they – there was – ATIPPA – there was an exemption there for commercial sensitivity for Nalcor. So you could've provided that number to government and not had it go out as a public number, correct?

MR. E. MARTIN: Incorrect. Mr. Commissioner, we're mixing a couple of concepts here.

So I'm understanding there's two questions. One is the – and I'm gonna address the 497. And then, I think, the second point was why not, you know, give the project more or allow them, you know, to have control of that (inaudible) –

MS. O'BRIEN: Can you address the second question now, 'cause we're gonna go to the 497 in some detail this afternoon? But if you could just, right now, look at the why not – that's the question I'm asking you: Why could you not, you know, give the project team the P50 amount and still communicate the other exposure to government?

MR. E. MARTIN: They're somewhat related, but I'll keep it short if we're going to it this afternoon, Mr. Commissioner.

The 497 was identified, you know, mid-year or sometime mid-year prior to sanction and then we set the work to mitigate that. And if we're gonna talk about that this afternoon I can go through that. But the advice to me, at the end of the day, was that 497 was zero. In terms of the analysis, it was mitigated out as point (a); point (b), so there's not a number I could give to the province that would make sense; I never gave them numbers that couldn't be supported. So, you know, there was not a number.

But that doesn't mean all the risk of that nature went away. And that's why I went over – no number because that number was zero by the time we got there. But when I went over I did say additional things could happen. Those risks – some of those risks could still manifest themselves if some unknowns happen that we don't know about. And that's when I turned the discussion to funding.

And I won't repeat my comment there on the funding – we went into the various elements that could handle that.

MS. O'BRIEN: So the question is why – even if you were giving the project team an aggressive budget to work with, why couldn't you give additional information to government as to what the potential exposure was?

MR. E. MARTIN: Well, I didn't have that information. It was unknown. I told them the exposure existed, but I didn't have a number for it.

MS. O'BRIEN: Okay. Well, we'll look this afternoon at some documents that you did have.

So you're saying if you had a number you would've given it to them?

MR. E. MARTIN: Sure.

MS. O'BRIEN: Okay. So then what was your worry – talk about ATIPPA, then, when you were giving evidence about your concerns about ATIPPA?

MR. E. MARTIN: Could you –

MS. O'BRIEN: Like, I'm hearing you now say: Look, if I had a number for strategic risk that I thought was reasonable, I would've given that to government.

MR. E. MARTIN: I would've informed them, I – but I would not have published it. I would not have put it out in the public. I would've asked them – if it's going public and everything else I would not provide it. I'd just verbally talk to them about it. I would make them aware if I had a number, but I would be adamant about not going public with it – adamant.

MS. O'BRIEN: Okay. So lets talk about – so you – but you – your evidence is you would've given it to them. You would've told government about it.

MR. E. MARTIN: If I had a number that was identified that was, you know – and as I mentioned so there's no confusion on the 497, you know, we had mitigated that particular risk. And I can go through that now or we can do it this afternoon.

MS. O'BRIEN: I think we just talked about we're going to do that later on today, Mr. Martin.

MR. E. MARTIN: Okay, so I won't go there.

So I want to make the point, though that's – so the 497 is zero. It's not there, so I got nothing to communicate to the government. And this was an ongoing process, now, that occurred within Nalcor and the project team, as well as other divisions in Nalcor.

Risk analysis, risk management, is a constant event that is happening in all aspects of the business, and this was – been going on from the start, that we would be identifying risks, we'd be doing risk analysis, and the very purpose of doing that was naturally to identify as many risks as you could, so as early as you possibly could, you mitigate them.

MS. O'BRIEN: Mm-hmm.

MR. E. MARTIN: And I was not constantly communicating that work and those reports and that output to the board or the government. We just didn't do it. That was part of our risk management that, as I explained yesterday, was within the purview and responsibility of Nalcor as the company.

So that was nothing new. So to go up to – so come up to mid-year of 2012 and be doing this, continuing to do this work and continuing to mitigate – that wouldn't be different than what we'd been doing for the six years before that. And communicating it the same way.

MS. O'BRIEN: Okay, so if you had a number, you're saying you would've communicated it to government.

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

And, wouldn't it be a decision for government – I understand you could give them a view, like, I don't think you should make this public, here's why – but ultimately, wouldn't it be the government's decision as to what they felt they should communicate to the people of the province?

MR. E. MARTIN: Absolutely. Government, you know, owns Nalcor, 100 per cent. They can do what they want, but we would've had a serious difference of opinion and probably, you know, a mis-meeting of the minds on that –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – if it had occurred.

MS. O'BRIEN: All right.

MR. E. MARTIN: (Inaudible.)

MS. O'BRIEN: So, and you're – so you acknowledge that it would've been their decision to make. I take your point your concern – if you put a larger number out there, that contractors will be aware of it, that – you know, this idea of a red-meat syndrome, right, when they know the money's there they'll go after it and try to get it for themselves.

Is that the concern?

MR. E. MARTIN: That's one element of it, yes. That's the concept.

MS. O'BRIEN: Okay, was – is there other elements?

MR. E. MARTIN: As I mentioned, there's gonna be contractors, you know, there's other stakeholders who, you know, may have an interest in it. I look at the recent situation, for instance, where – I have not been involved in it, but the recent – since my departure from Nalcor – the issue around Nalcor and the government working with the Indigenous groups, reservoir – additional reservoir clearing appears to have become quite an issue.

I've been trying to follow some of the monthly reports. I haven't seen that reflected as strategic risk anywhere. The fact that those numbers are pretty doggone massive, if that ever happened; I don't know if it's been resolved. But you know – that's for an example – so I haven't seen any strategic risk laid out in any public reports there, you know, and I think that's the right thing to do.

If, you know – but if folks wanted to put that kind of thing out there, then I think that's the issue. That's another example of a stakeholder, and once again, with the upmost respect to the Indigenous people, that's not meant to be disrespectful. That's just meant to be, you know, a commercial manifestation within a – Nalcor, and board and shareholder, and how I believe things should be presented.

MS. O'BRIEN: Okay, so your concern is, if you went out publicly with a higher confidence number – a number that took greater consideration of potential risk, so it was a higher confidence number – if you went out with that, your concern is that may cause contractors to go after extra money and it may cause other stakeholders, such as Indigenous groups to make greater demands on – for work that would cost money.

MR. E. MARTIN: That's correct, and –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – that's only at the start. I mean, a lot of that will happen near the end such as here, at this time frame in the project when this stuff heats up from a contractor who's looking to, you know, finalize their bottom line with claims, those types of things. And once again, to the contractors – I've been working with wonderful contractors for 35 years – that's the business.

MS. O'BRIEN: Okay.

MR. E. MARTIN: Now make no mistake, a big part of it is gonna come in the next while with respect to, they're gonna be seeking to go after the claims. So yes, I wanted to make sure that just wasn't at the outset – of the beginning of the project. It's also, and probably more so, as we approach the end of the project.

MS. O'BRIEN: Okay, so let's see what – let's look at Bent Flyvbjerg's paper. This is actually not in your binder – it will come up on your screen. P-00004 please Madam Clerk – page 25 – and the last paragraph on this page.

He writes, "In practice, some decision makers are concerned about large contingencies. They fear what has been called the 'red-meat syndrome', i.e. that the mere fact that contingencies are available will incentivize behavior with contractors and others that means the contingencies will be spent. The data for hydroelectric dams and other large projects show clearly that even large contingencies are not excessive but realistic. Instead of avoiding realistic contingencies projects need to put in place incentive schemes…accountability and transparency…to ensure that contingencies are spent only if and when needed, so" – that – "the "red-meat syndrome" may be avoided. Good project leaders know how to do this."

So I think Mister – Dr. Flyvbjerg's position is that you can put controls in place to keep the red-meat syndrome from having a negative impact. And I wanna put to you similar evidence that was given to the Commissioner from Derek Owen.

So you know that Derek Owen is – has worked for many decades with megaprojects. You're aware of Mr. Owen?

MR. E. MARTIN: Yes, I'm aware of Mr. Owen.

MS. O'BRIEN: Okay and you – Mr. Owen was selected to be on the Independent Project Review team for Nalcor?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

So he – your counsel was questioning him about the red-meat syndrome and Mr. Smith said: The reason I'm putting this to – putting this forward because Dr. Flyvbjerg talked about the strategic risk which is often part of quote unquote management reserve indicating that there's a principle recognized in the construction world referred to as the red-meat syndrome. You put meat out there in front of hungry contractors and they're going to look for it. And as a result there's some concern about putting a level of management risk or sorry management reserve into the actual numbers. So that's what Mr. Smith put to Mr. Owen.

Mr. Owen said: I read that, I don't fully subscribe to it and I'll explain why if I may. Because I think it's important that the way the cost estimates are built up, it will be almost impossible for any contractor to know, relative to his scope of work, exactly what the owner's estimate is for that work. Because the owner estimates the work and puts allowances into that number to reflect what the owner believes the contract value is likely to be.

In addition to that, as I mentioned yesterday, below the line at the bottom there is an overall contingency. That contingency is a risk-based contingency and is made up of individual sums of money to address risks that have come out of the quantitative risk analysis. So even if there was a contingency there of 100 million, there's no way that a contractor would ever know what portion of that 100 million is applicable to his work. So really, the way that risk is handled and the way contingency is handled and the way the estimate is built up, I don't subscribe to the fact that if the money is in the sanction, then the individual contractors know how much money they've got to go at.

So I think what Mr. Owen's point here is: look, if you just put out an initial budget nobody knows how that's broken down when all the contractors – they don't – you don't say, we have this percentage in for strategic risk or this percentage in for tactical risk. You just put out a number, a realistic number and a high confidence number; and you put it out there and the individual contractors, they negotiate a contract, it's for a set amount, they don't know what, if anything, you have in your back pocket for contingency or risk. They don't know what's there to go at and as you're spending up your budget, they don't know how much you've spent, what you have left in your back pocket.

And even as you're going through often project owners reduce the contingency as you go and risks don't materialize so that if you handle it properly, the concern's not there. So I think that's the position that's been put forward to the Commissioner, and I'd like to have – give you an opportunity to respond to that.

MR. E. MARTIN: Well, for openers, you know, let's make it clear: Consultants don't run businesses. CEOs and vice-presidents run businesses. Consultants are extremely useful. They generally come in, you know, for a short period of time, as requested, and they review work and give opinions based upon what their knowledge and expertise is, and it's very helpful.

At the end of the day, though, there's no way that they can, you know, replicate the work of hundreds of people who have been involved in a particular undertaking, you know, for years. I think that's the norm. So you take advice from these people and do with it what you may.

From my perspective, you know, I'm not going to go tit-for-tat on each of these points, but the main points that come to my mind is that there's no discussion here of comparative analysis. You know, as I heard some of those and read some of this stuff unfold, I felt that this – excuse the pronunciation – Mr. Flyvbjerg or Flyvbjerg?

THE COMMISSIONER: Flyvbjerg.

MR. E. MARTIN: You know, I believe he was talking in a single project mindset from a particular distinction, and that's fine. But in a comparative analysis, I've already discussed, you know, the probability factors and such that impact that, so that's different.

With respect to the fact that contractors may not be able to find out what's happening line-by-line, I think that is difficult to do, but I've already made point that we, you know, we live in this jurisdiction and, you know, with some uncertainty around what would happen, and I do draw the example, again, that you just have to cover your risk.

Here we are, and the information is coming out in this Inquiry – because it has to – is, you know, is just an extreme amount of detail that a contractor, for instance, or any other stakeholder, could use to their advantage that is beyond my comprehension that would come out. And from that perceptive, there are a couple of examples, but I took, you know – you know, in my mind, what we did was correct; I stand by it. It was the right decision. I took advice from various areas within the company on it, but it was my call in the final analysis.

MS. O'BRIEN: What advice did you take from various –

MR. E. MARTIN: Just –

MS. O'BRIEN: – areas?

MR. E. MARTIN: – discussion from the project team of – we – I think you've talked about some of the P50s, you know, strategic risk levels, their interpretation of what work had been done – consultant's work – so just dialogue and understanding what they were. I understood, you know, where we were, and I – the information was shared with me and explained to me by the team. That's what I meant by advice.

MS. O'BRIEN: Talking about the comparative analysis, you have said that, had you done the comparison at a P75, there would have been a larger differential between the two options that you did choose to analyze to do the least-case analysis.

Now, we have seen no evidence of that. So we have seen no evidence of that these projects were ever done a comparison on a P75. Am I – is there anything that we're missing?

MR. E. MARTIN: I believe you are.

MS. O'BRIEN: Okay. You believe it – they were analyzed at a P75?

MR. E. MARTIN: As a proxy, Commissioner, I think the sensitivity analysis would be very helpful if we could pull that up? And I could walk through that. I don't know how close we are to break. Could I please check that?

THE COMMISSIONER: We're about –

MS. O'BRIEN: A ways off.

THE COMMISSIONER: My plan this morning was to take a break around 25 to 11 or somewhere around there, so we've got about 15 minutes more. So if you want to leave this 'til the break, you can –

MR. E. MARTIN: That would be helpful.

THE COMMISSIONER: Okay, is that –

MS. O'BRIEN: Sure.

THE COMMISSIONER: – suitable for you?

MS. O'BRIEN: Okay. So we'll come back to the comparative analysis after the break.

Okay. So let's talk about strategic risks. So I assume that you would expect your project management team to mitigate all risks to the greatest extent possible. Is that …?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Yeah. Okay. And also, would it be fair to say that no competent project management would not – project manager – would not do their very best to mitigate all risk to the greatest extent possible. I mean, that's what you'd expect, and that's what any competent project manager would do. Is that fair to say?

MR. E. MARTIN: Yes, it is.

MS. O'BRIEN: Okay. Now, it is true that no matter how competent your project manager and project management team is, not all risks can be fully mitigated. Would you agree with that?

MR. E. MARTIN: I think that's a fair comment.

MS. O'BRIEN: Okay. And that's particularly true for strategic risks, right?

MR. E. MARTIN: I wouldn't say particularly.

MS. O'BRIEN: Well, I just – put it this way – I understand, as you defined strategic risks, they were things that were outside the project management team's control?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: So if they have less control over them, one might think that then they – there's a lower ability to mitigate?

MR. E. MARTIN: I think that makes sense.

MS. O'BRIEN: Okay. All right.

So would you also agree that one of the major reasons that megaprojects go over budget and over schedule is that risks that were not foreseen or accounted for ultimately materialized?

MR. E. MARTIN: I think that's a contributor. I don't have the data to be able to say, you know, definitively that that's the main reason or such like that.

MS. O'BRIEN: Okay. Well, let's look at Hebron. You had some experience with Hebron. Hebron went over budget, correct?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay. So what was the – if you looked at what the root cause of Hebron going over budget, was at least part of that – a part of strategic risks materializing that hadn't been accounted for?

MR. E. MARTIN: I won't get into detail on that, Commissioner. Mr. Keating handled that for me, and I was not in the – you know, the day-to-day operation of that, so I can feel immediately that I'm going to start speculating without the proper data.

MS. O'BRIEN: So you aren't able to say that there was – that strategic risks came to arise that weren't foreseen?

MR. E. MARTIN: I can't say it actually, and I haven't been there for several years, and Mr. Keating has been handling it, and I guess, out of professional courtesy, I wouldn't want to be speaking for the operator either and speculating on that.

MS. O'BRIEN: Okay.

MR. E. MARTIN: I'd like – you know, I guess, you can say it goes to follow, but once I go down that path, I'm into, you know, doing exactly what I said I wasn't going to do. I don't have the data to support that, to support me being able to talk about it.

MS. O'BRIEN: Did you ever do an analysis, like, looking around at other megaprojects, what the experience was for other hydro projects in particular in terms of overruns on costs, schedule? Did you ever look around and see what was happening?

MR. E. MARTIN: Not in detail for hydro projects, no.

MS. O'BRIEN: No.

So when – I assume now – because you said you read Dr. Flyvbjerg's report, so you're aware now, I take it, that these projects, in particular, have a very poor track record of sticking to their budgets and schedules.

MR. E. MARTIN: I believe he pulled that work together – was it 2014? I think it was after sanction, is my understanding, that he pulled that data together. So I have not read it. I have heard some of that in his testimony, and certainly, you know, that wasn't available at the time according to the information I heard him say.

MS. O'BRIEN: I understand some of the studies were not available, but certainly, the projects that those studies were based on, a lot of those – well, we can look at the dates of them, but they go long – well before you were working on the Lower Churchill Project, would you understand that?

MR. E. MARTIN: It seems reasonable.

MS. O'BRIEN: Okay.

So – but you never looked around to see what the experience was on other hydro projects?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

Well, what about megaprojects generally? Did you, you know, when you were -

MR. E. MARTIN: Excuse me, Ms. O'Brien.

I did interrupt you because I wanted to complete the last question, but I wanted to add the point though that, from my perspective, that would be, you know, a project management team endeavour, and I believe that the project management team and myself from a distance had – you know, we had respect and faith in SNC-Lavalin. And I do know that I did not personally go and look through various projects, but I was aware that they were very experienced in hydro projects in northern climes and I believe that they were benchmarking – you know, I think it was La Grande and another one – for Muskrat Falls. So I will add that – that it wouldn't be – well, I would see – I would do it, but I would be expecting the project management team would be handling that.

MS. O'BRIEN: Okay, so – and we've heard what, in terms of risk assessment, what SNC's view was, but –

MR. E. MARTIN: Was that a question, Ms. O'Brien –?

MS. O'BRIEN: No, no. I'm just – I wanna take you back to my question, actually. 'Cause my question was: What did you do?

So I'm understanding – you know, did you look around and see, well, what's been the experience with other megaprojects in terms of cost overruns and schedule overruns?

MR. E. MARTIN: I have my own – my – two things, again – once again, I'm in the CEO role and the project management team, you know, would be handling that effort. I would expect them to be doing it. That's where it would be handled. I wouldn't be doing it personally.

But from my own experience, you know, it would've been through the projects that I had been involved in and some of the related projects that could've impacted them that I had some knowledge of.

MS. O'BRIEN: Okay.

MR. E. MARTIN: That would be my –

MS. O'BRIEN: So those – in your experience, projects – did you have megaprojects go over budget, over schedule?

MR. E. MARTIN: Some did, some didn't.

MS. O'BRIEN: Okay. And ones that did, was there an element of risks coming to fruition that hadn't been foreseen or accounted for?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

So as I understand that an important part of risk management is doing these quantitative risk analysis and that's to help quantify appropriate contingencies and reserves. Would you agree with that?

MR. E. MARTIN: I agree with that.

MS. O'BRIEN: Okay. And the evidence we have here, that contingencies and reserves are quantified in dollar values for items that may cost money, and you can also do quantitative analysis in terms of days, weeks, time, when we're talking about schedule impact. Would you also agree with that?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay. And would you agree that one of the reasons that you do a quantitative risk analysis is to ensure that there is an availability to fund any risks that do arise – that would be a primary reason for doing the QRA. Is that not right?

MR. E. MARTIN: I think that would be one reason.

MS. O'BRIEN: Okay – yes, but an important reason.

MR. E. MARTIN: Important reason. I think probably the most important reason is to identify early things that can and should be mitigated so that you're working well ahead of a sanction date or another decision period so that you can remove those risks, if identified, to the extent possible.

MS. O'BRIEN: Sure.

And, of course, any project manager is gonna – project management team is gonna try to mitigate all risks to the greatest extent possible, right?

MR. E. MARTIN: Yes –

MS. O'BRIEN: Yes?

MR. E. MARTIN: – yeah.

MS. O'BRIEN: And when we look at some of the – QRA work has done, we see curves for unmitigated and mitigated, so that's – can be a consideration that's given in the QRA analysis, right?

MR. E. MARTIN: Sure.

MS. O'BRIEN: Okay. All right.

So one of the reasons is to make sure that we're – you have an ability to fund, and the other is, of course, to get a sense of whether you may need to have some schedule reserve, and that's for the time risk analysis, is that correct?

MR. E. MARTIN: That's part of it, yes.

MS. O'BRIEN: Okay.

And would an external validation of how risks were being dealt with would've – would that have been something that you wanted to have ensured happened on the Lower Churchill Project?

MR. E. MARTIN: Could you repeat that question, please?

MS. O'BRIEN: Yeah. Looking at how the – your project management team was handling risks and their risk management, would you wanted to have had an external validation as to how that work – that was being done?

MR. E. MARTIN: Not particularly, no.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And the rationale for that, Commissioner, is, you know, as far as the mitigation goes – you know, you bring in the – as I said, we run the company. Consultants don't run the company. But once you get a certain amount of information in, you know, you also have to avoid, you know, paralysis through analysis.

I mean, you know, once you understand and identify what the risks are, then I would want 100 per cent of the team's effort – by "the team" I mean the people who are on the ground, have been with the project development for a long period of time, who understand what's happening. You know, that's what I want, their 100 per cent focus in terms of mitigation. And the value to bring someone in on a shorter-term arrangement to look over some stuff, I just don't think that would be of high value at that point.

MS. O'BRIEN: Okay, I just want to put to you something – this is something we discussed in our interviews, so I wanna read some of your transcript to you.

I asked you – we were talking about risks and how they were being dealt with, and I said: Okay, all right, and whose final decision would it have been as to how you were going to deal with and define the risks?

And this was your answer: You know, within the context – it depends, you know, the organization depends then on the expertise that you acquire around you – bring forward the information based on all those inputs. And I mentioned that the expertise and experience that they – and I think that's the project team – would bring forward the information and detail. That would come forward to the executive team, myself included, and you would – I would, in particular, as well as others, would delve into it and ask the questions, check the process and make sure we had, you know, some kind of external validation of it and satisfy myself that, you know, the people applied – and I think the people here would be your project team – the right processes and recommendations. And at the end of the day when I satisfy myself with that, then I would be the one who would say, okay, I can support that, let's move.

So when I asked you about that in your interview you indicated that external validation of what the project management team would be something that you wanted to make sure that you had.

Have you changed your testimony here today?

MR. E. MARTIN: Not at all.

MS. O'BRIEN: Okay, so you still wanted to have external validation?

MR. E. MARTIN: Well, Commissioner, just make the distinction again, I – the question I heard was: Would I like external validation of the way we mitigated things? And I answered that just a moment ago.

What I'm discussing right there, as far as external validation, I was thinking in terms of identification of the risks, like a Westney. I was thinking in terms of periodic reviews of the project management team expertise and those types of things. That's the data I was talking about there. So I see no inconsistency whatsoever.

MS. O'BRIEN: So I think previously – and I'll just bring that up again, what we were talking about.

MR. E. MARTIN: I just want to check that break time again, Commissioner.

THE COMMISSIONER: (Inaudible.)

MR. E. MARTIN: I want to check that break time again.

THE COMMISSIONER: It's – are you doing okay?

MR. E. MARTIN: (Inaudible.)

THE COMMISSIONER: It's about 10:30 now, so another five minutes or –

MR. E. MARTIN: (Inaudible.)

THE COMMISSIONER: – are you – or would you like to break now?

MR. E. MARTIN: If I could, I would.

THE COMMISSIONER: Okay. Well, let's – is it okay to break now from –

MS. O'BRIEN: Sure.

THE COMMISSIONER: – your point of view?

So let's take our 10 minutes here.

MR. E. MARTIN: Thank you very much.

THE COMMISSIONER: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Ms. O'Brien.

MS. O'BRIEN: Thank you.

Mr. Martin, just before we broke. I just want to – looking at the transcript, I had asked you how – we were – the question I put to you is whose final decision would it have been as to how you were going to deal with and define risks, and it was in response to that I think your answer was at that time that look, you would get information from the project management team, you'd wanna make sure that you had external validation of that, and then ultimately the decision would be yours.

Is that – do you agree with that?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

And I think the question I put to you before I went to the transcript was: Would external validation of how risks were being dealt with would have been something that you wanted to ensure happened. And I understand that your answer to that question is yes.

MR. E. MARTIN: Could you repeat that – I thought I said no.

MS. O'BRIEN: Like, would you want – would you have wanted to have external validation as to how your project management team was dealing with risk?

MR. E. MARTIN: I think the phraseology – dealing with risk – I think I said no, with respect to the risk mitigation activities. I didn't feel necessary for that, but the identification of the risks and, you know, the type of work that goes into that and validation of, you know, the project team makeup and status and how they were performing and those types of things, yes.

MS. O'BRIEN: Okay. And so now let's go back to the comparative analysis. So can we bring up P-00014, please, Madam Clerk? I think it's going to be page 54 – my memory's still working.

MR. E. MARTIN: In the binder, again, please?

THE COMMISSIONER: (Inaudible.)

MS. O'BRIEN: Yes, volume 5, tab 115.

Okay. So I had put to you the question that in looking through documents from Nalcor we – your evidence to the Commissioner was that if we'd done the comparative analysis at P75, the differential between the Isolated Island case and the Interconnected case would have been much greater.

Now, I put to you that we have found no evidence that any comparison of the two on a P75 level was ever done. And I asked you if that was consistent with your memory, or might we be missing something? And you said – yes, you're definitely missing something. And then you wanted to go to this table here. So, that's where I brought you now. So –

MR. E. MARTIN: Actually, I wanted to go to the table on page 55.

MS. O'BRIEN: At DG3?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

MR. E. MARTIN: For an example. And so here's the logic and analysis I would've been depending upon, Mr. Commissioner. So, you know, for starters, to go to a P75 we'd have to go on both sides. Obviously, that's the point. So, if we start with a capex first – you know, when I – and I'll use the current numbers that we've been talking about to make the point. And I believe that, from my understanding of the documentation that's been presented, a P75 for tactical and strategic risk, I think, came in at around $7.1 or $7.15 billion.

MS. O'BRIEN: 7.5 billion is the evidence that we have from the project management team.

MR. E. MARTIN: Let's use that.

MS. O'BRIEN: Okay.

MR. E. MARTIN: You know, that's – you know, I'm just looking for a reference point. So, if you use 7.5 all in and then I compare that to an increase of capex of 25 per cent on this table and I believe an increase in capex – rough numbers again – works out to be about 7.8 billion.

MS. O'BRIEN: Sorry. Where are you on this table here?

MR. E. MARTIN: I'm on increase capex 25 per cent.

MS. O'BRIEN: So here, on this one at DG3 the Interconnected Island base case is 8.4.

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay. So –

MR. E. MARTIN: Come down to increase capex 25%.

MS. O'BRIEN: Okay. So it increases to 9.6.

MR. E. MARTIN: So, I'd like to move over to the difference column.

MS. O'BRIEN: Okay. So, here we've actually reduced the differential between the two. We increased the Isolated –

MR. E. MARTIN: Do you want – should we do it together or should I go through it myself? I prefer to just walk through it myself, here, because I get confused in terms of who's saying what here, Commissioner.

So, point number 1is that increase capex 25 per cent on both sides of the equation is a rough equivalent to P75 on capital.

MS. O'BRIEN: So, in that case what has happened here is the difference has gone from 2.4 billion to 1.7 billion but the capex amounts went up on – for both cases. Okay?

MR. E. MARTIN: That's correct. Now, the second point – if you go to P75 – and we're talking, you know, a measure of increased – you know, a feeling that you're going to reduce the chances of going over something, then the second point I would go to carbon pricing commencing 2020. And in that particular case, if you compare the base case to the carbon price commencing 2020, it goes from 2.4 billion to 2.992 or basically 3 billion. So about a $600 million (inaudible).

MS. O'BRIEN: Okay. So we have no – I understand what you're saying. We understand how these – we've had evidence as how these sensitivities work, but we have nothing that links carbon pricing to a P75 or fuel pricing to a P75. The evidence that we've had to date is that P75 and these confidence levels, what comes after you do a QRA on your capital costs and you, you know, you get confidence level and – you know, how risk may affect the – your base estimates and construction costs.

But –so we do understand. And I think the evidence is very clear about the different sensitivities that were run, but we don't have anything that links what you're talking about here to a P75.

MR. E. MARTIN: So I would have put that in, Commissioner, for more certainty. Which would have increased it by 600 million. But I take your point about, you know, the fact that – the point to a P75 risk analysis would be – is not there. But I would still put it in.

The third thing, probably most importantly, would be the fuel price. And if you look at the fuel price – and I'll take expected – 'cause I'm – pardon me. I'll take the base case which is a reference price. That's – so, using an oil reference price is 2.4 billion in difference. Using expected – which we were recommended, but chose not to – it would increase it to 3 billion.

But if you use a P75, the P75 actually comes in between the reference and expected and high.

MS. O'BRIEN: So where – we haven't seen any evidence of that – saying P75 comes in at any – we've never – not seen any evidence –

MR. E. MARTIN: You've never seen anything on that?

MS. O'BRIEN: No. That links –

MR. E. MARTIN: (Inaudible.)

MS. O'BRIEN: – PIRA to a P75.

MR. E. MARTIN: Well PIRA provides that, Commissioner. It's at Nalcor.

MS. O'BRIEN: Okay. So we'll look for that. You're saying that PIRA provided you what their P75 number would be?

MR. E. MARTIN: Actually, I'm going from memory now. It's the – it's called the PIRA scenario planning guidebook. That's what it's called.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And in there – and I'm going from memory now, but it'll show you a probability distribution curve. And on that one particular curve in particular it'll – well it'll show you on each curve. It'll show you the break between low, you know, best, most likely and high, and the break from most likely to high occurs at a P72.5, and it gives you numbers for that.

MS. O'BRIEN: Okay.

MR. E. MARTIN: A probability number.

MS. O'BRIEN: Okay, so we'll look for that.

MR. E. MARTIN: Well, I'm not finished yet.

So that is clearly available from PIRA. I think, in my mind, P72.5, I didn't seek more data from PIRA at the time because it was pretty close to P75, but you could get it. It's just a cumulative probability curve range that PIRA has.

So from a P – from that perspective, in my memory, it came in between the expected and the high. So the expected went from – brought the 2.4 to 3 billion, and to go from expected to high, it went from 3 billion to 6.5 billion. So somewhere in between those two numbers, not exactly half but not a bad approximation in my memory, would be – it would've gone from about 2.4 to about 4.5 billion.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And then you offset that against the increased capex decrease, but I get back to my point that you're looking at, instead of a 2.4 billion – I don't have – I'd have to go back – my, you know, my old calculations were – I didn't have them with me, but you're obviously well into north of the 4 billions of preference for Muskrat Falls. That's my point.

MS. O'BRIEN: Okay.

So I take what you're saying, you know, and we have had lots of evidence on the various sensitivities.

Now, this idea that you said there you were recommended to use the expected value here, the PIRA fuel expected, but you chose not to.

Who made the recommendation for you to use expected?

MR. E. MARTIN: I believe that came from Westney. The project team had commissioned them to provide us a view on that.

MS. O'BRIEN: So we did hear that, and that is actually in evidence, but we did – did you hear Mr. Westney's evidence on that report that he gave?

MR. E. MARTIN: No, I didn't.

MS. O'BRIEN: Okay, so that report was done, it's in evidence at P-01160. I think it was done in July of 2012, so long after Gate 2, and you used the reference case for the Gate 2 analysis, correct, the one that was analyzed before the PUB?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay, so this report from Westney was done after that – it was done in July 2012 – is that the one you're referring to?

MR. E. MARTIN: I take your word for it. I don't know.

MS. O'BRIEN: Okay.

Mr. Westney said his firm had never been asked to give an opinion of that nature before, that they don't do this type of forecasting and that he had advised Mr. Harrington that this was not within their expertise but he was asked to give the opinion anyway.

Would you – were you aware of that, that this was not within Westney group's area of expertise?

MR. E. MARTIN: Can you tell me what – can I read what he said, what was in his area of expertise because, Commissioner, if it's oil price forecasting, absolutely not. No that's PIRA.

But if it is statistical analysis, their – well, obviously, that's their company, is statistical analysis, probability analysis, et cetera, you know, anything to do with stats. They are experts, in my mind, in that part of it, but certainly not oil pricing.

So as long as, statistically, they gave a view, then how that was applied to oil price, they wouldn't be involved in that. Because you didn't go to PIRA, you know, scenario planning guide book and that kind of information, and you would see what the oil price was related to that. But, statistically, you know, I would think that they would have a very deep understanding of the different concepts from statistics.

MS. O'BRIEN: Okay. And I think Mr. Harrington had testified that it was you who wanted to go to Westney to give that opinion and that you knew this – you know, making recommendations on which PIRA forecast to use for forecasting purposes was not within Westney's area of expertise.

So are you agreeing – I think you're agreeing with Mr. Harrington on that, that you knew that making a recommendation as to what PIRA forecast to use for a 50-year forecasting analysis was not within Westney's area of expertise?

MR. E. MARTIN: What I was trying to say is that, you know, using a reference price of an expected or a low or a high, you know, I believe that was in their expertise, not the price, but the statistical interpretation of what to use. They would know the difference between the reference – statistically the reference price versus expected. And I was looking for a view on that, not on oil price.

MS. O'BRIEN: Why wouldn't you have gone to someone who does have expertise in forecasting for utility purposes and gone to, like, a Morrison Park or someone who works in that area and asked them, look, we're doing a 50-year forecast, what's the appropriate, you know, PIRA forecast for us to use when we're doing a 50-year planning? Why wouldn't you have gone to someone who works in that area and who does have expertise in that area and get their view?

MR. E. MARTIN: I believe Westney did. It's a statistical expertise they have. I highly value their opinion from a stats perspective.

MS. O'BRIEN: No, my question is why would've you have gone to someone who does work in energy forecasting?

MR. E. MARTIN: Well, we had PIRA, who is, in my mind, one of the premier oil price forecasters. We've used them for a long, long time – very well-known. Many people use them. They provide, you know, a range of – they provide the prices and, you know, a statistical range, you know, of categories. We had that. I was just looking for a statistical expertise to say what do you – you know, which level, statistically, of those categories do you think would be best to use to be most accurate? I was looking for some data.

MS. O'BRIEN: Right. So –

MR. E. MARTIN: They had that expertise.

MS. O'BRIEN: – you were looking – you had a range from PIRA, and so PIRA had given you an expected, a reference, a low and a high. And the question was, when we're doing our 50-year forecast here, which of these is appropriate for us to use. That was the question, right?

MR. E. MARTIN: Absolutely.

MS. O'BRIEN: Okay, so why wouldn't you have gone to someone who works in that area, who has expertise in energy forecasting – like Morrison Park was one example I gave you – like go to someone who works in that area and say, look, in your opinion, which is the appropriate PIRA forecast for us to use?

MR. E. MARTIN: Because I wanted a statistical expertise to give that recommendation. I had the oil price forecast; I wanted a statistical expert to give me a view on which one, separate from that, would be good to use.

MS. O'BRIEN: I –

MR. E. MARTIN: I don't –

MS. O'BRIEN: Okay.

MR. E. MARTIN: I don't see that complicated actually. I thought it was a reasonable thing, it was very useful information, and we ended up not using it, but it was a good piece of data. It wasn't much more complicated than that.

MS. O'BRIEN: And why, if you were wanting to get an expert view, would you not have gone prior to Gate 2? When you first did the CPW analysis, you were going before the PUB; why wouldn't you have got an outside view prior to that point? Why wait until July 2012 when essentially the work was largely done?

MR. E. MARTIN: I mean, not to be rude, Ms. O'Brien, but why not? I mean, we went through DG2, we had a reference price, you know. I thought of something that I'd like to understand further for DG3, and I went out and got it. A useful piece of information, glad I did.

MS. O'BRIEN: Okay. Now, we know that – oh, we were talking about the comparative analysis.

So what I understand you to say, you decided to go with a P50 for the comparative analysis when you looked at the two options that you did look at, and that's how you did the decision.

But after that point, like, were there still – as I understand it, there's really two things going on here. One, you did a comparison of two options to compare them as to which was the least-cost; and then the other thing was there was a decision made as to whether to sanction the development of the Muskrat Falls Project. Would you agree with me these were two different activities?

MR. E. MARTIN: Two different activities. You know, one overall totally interrelated, you know, exercise –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – totally.

MS. O'BRIEN: But for example, if the least-cost analysis had been done and Muskrat Falls was the preferred case but it turned out that the cost of the project was more than the province could afford, that was something that would have to be taken into consideration at the sanction decision, not necessarily at the comparative analysis point, right?

MR. E. MARTIN: And we did that.

MS. O'BRIEN: Okay.

So, why couldn't you – like if you had said look: We're going to compare the projects. We think the best way to do the comparison – or your opinion was the best way to do the comparison is at P50. Was there anything then from preventing you – okay – but now when we're going to make the secondary decision about whether or not we're going to sanction the Lower Churchill Project, let's look at the number at a higher confidence level. Let's look at it at a P90, let's look at it at a P80 to really make sure that we're satisfied that we can afford this project and it should be sanctioned.

Did the P-values have to be linked for the two stages? Could you not have used P50 for one and P80 for the other?

MR. E. MARTIN: I believe you needed to use the same for both.

MS. O'BRIEN: And why?

MR. E. MARTIN: Well, I'm going to go back through it again. A lot of repetition's going to happen here, Commissioner. I'll try to be succinct.

Need for power, comparative analysis – P50's the best route to go in my view for comparative analysis primarily because it's the highest likelihood of happening and so from that perspective the decision is made on the comparison. It has – something has to be done. No decision is a decision. Not making a decision is not on so you constantly have to anchor yourself back to the comparison and that's where the buffer exists, in this particular case 2.4 billion when you only consider the CPW.

If you consider the full benefits to the province on the net basis it's actually $7 billion and from that perspective, I believe, that was right to maintain that comparison and then, to me, sanction of Muskrat Falls was a choice between these two. The project itself was then sanctioned. I explained earlier why I thought it should stay at P50 and the key point at that – after that was from a funding perspective, that the province had the ability to fund things over 6.2 and we went through an analysis rather consistently about the fact that what was available for the province to actually fund an overrun.

And I've already stated those things being the excess sales, a portion of the return on equity and what it ran, you know, specifically. That's what we did.

MS. O'BRIEN: Okay.

But what I'm hearing you say is that was a choice that you made. Like you made the choice that we're going to do the comparison at P50 and we're also going to make the sanction decision at P50.

MR. E. MARTIN: For the reasons I explained, yes.

MS. O'BRIEN: Okay but that was your choice?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

And this is not – when you made that decision that we're going to do the sanction at P50 that was not a decision that you consulted with government on. For example, you didn't go to them and say: Okay, this what I'm –

MR. E. MARTIN: I –

MS. O'BRIEN: – this is what – this is my view that was just – you did not consult with government at all on that decision.

Is that correct?

MR. E. MARTIN: Well, consult – we talked about this earlier again, you know, I did not go up and, you know, seek approval to do that. But, Commissioner, I continue to make the point that this was discussed, it was out there, it was in the PUB report. I mean, I took exception last week, I guess, when I heard Mr. Learmonth and others speaking about secret documents and stuff, you know, so that's probably a little bit sensitive to that. It just wasn't in that context.

You know, the folks who were involved in each of that knew, as I said it was public in the PUB. I did not deal with that at that level with the government for the reasons I expressed but I keep coming back to that because I'm a little bit sensitive about the connotation that, you know, it was something that couldn't be talked about. Let me put it that way.

MS. O'BRIEN: Okay.

But I just want to make clear here – that the decision to sanction this project at a P50 was a decision that was made by Edmund Martin and it was a decision that Edmund Martin did not consult with the Government of Newfoundland and Labrador on. Correct?

MR. E. MARTIN: That's correct, but once again with the consult it was out there.

MS. O'BRIEN: Pardon?

MR. E. MARTIN: I'm just making the same -

MS. O'BRIEN: You told them it was P50, you're saying in the PUB submission.

MR. E. MARTIN: That's correct and -

MS. O'BRIEN: Okay.

MR. E. MARTIN: – it had been discussed otherwise too. But other than that caveat, the answer is yes.

MS. O'BRIEN: Okay.

And I know you say it had been discussed otherwise but I don't know if you heard Mr. Kennedy's evidence, but he kept copious notes of his meetings and his meetings with you and he did not have a P-value in his notes at all for the Muskrat Falls Project. The only note he could find where there was P-values discussed it was for a range of P-values on the Maritime Link Project.

Were you aware of that evidence?

MR. E. MARTIN: Yes, I can't, you know, comment on Mr. Kennedy's state-of-mind or the degree of notetaking. I mean, that's up to him.

MS. O'BRIEN: Okay. But you didn't keep any notes.

MR. E. MARTIN: No.

MS. O'BRIEN: Okay.

Okay, we know that Westney did a QRA for both tactical and strategic risk and they did it at both DG2 and DG3. And as we understand, or as I understand certainly, the evidence to date is that the work that Westney did on tactical risk was accepted and that was for the DG2 estimate. It was accepted and you used a 15 per cent contingency in the $5 billion project cost at DG2.

Is that right?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

And the work that Westney did for tactical risk was accepted and you used that work to set the contingency level at 7 per cent at DG3.

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

So, we've had a lot of evidence to date that is centred around the strategic risk assessment work and how you approached strategic risk and I believe you've already actually covered this in one of your answers earlier today, but as I understood it you see that the idea of strategic risk, strategic risk reserve, management reserve – these are all equivalent for you.

MR. E. MARTIN: Yes, they're referring to the same thing. And it could also include –

MS. O'BRIEN: Contingent equity. Right?

MR. E. MARTIN: I was just about to say that.

MS. O'BRIEN: Yeah, that was the other one we said.

Okay.

Now, there's actually some differences between the work that was done at DG2 by Westney and presented in the Nalcor QRA and that, which was presented before the PUB. But I'm going to go to the PUB work because it's the – it has the lower assessment.

So, I'm going to bring that one up. Can we bring up P-01003, please?

MR. E. MARTIN: What binder is that?

MS. O'BRIEN: Yes, I'm –

MR. E. MARTIN: Oh, I'm sorry, I thought you were –

MS. O'BRIEN: – looking for it. It's actually not in your binder. It will come up on the screen.

So this is this Exhibit CE-52. This is the confidential one. This was what was filed the PUB discussing strategic risk.

Are you generally familiar with document, Mr. Martin?

MR. E. MARTIN: Generally, but if we're going to get into I'd like to have a copy.

MS. O'BRIEN: Okay.

What I'll do is I'll – ask if – perhaps they can print you off a copy of P-01003 and then I'll move along my questioning now, and we can come back to it.

So if Madam Clerk can make sure that that gets done, please.

Okay.

So, what I understand the work shows and I can actually probably bring you to P-00097, which such be in the – public – in the common binders.

Commissioner, do you have a site –

THE COMMISSIONER: It's actually at tab 82 of binder 4.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Now, I don't know if that's –

MS. O'BRIEN: No, that may be because it's going to direct us to the common binders.

THE COMMISSIONER: Okay, so.

MR. E. MARTIN: Okay.

MS. O'BRIEN: It's going to be common exhibits, binder five, tab 19. So, Mr. Martin, you'll have common exhibits, I think, on the trolley next to you and if you take out binder 5, tab 19.

Do we have a copy of…?

MR. E. MARTIN: Thank you.

MS. O'BRIEN: Okay, so we can go to it either place, but if – you have a copy of P-01003 in front of you now?

MR. E. MARTIN: Yes, I do.

MS. O'BRIEN: Okay. Can you go to page 10, please? And we'll start there.

MR. E. MARTIN: So we're going to 01003, right?

MS. O'BRIEN: Yeah, we can go to 01003. 'Cause attached to this Exhibit was the risk analysis results for the option of Muskrat Falls first. So this is Westney's work at DG2. Okay.

And can we go to page 23, please, Madam Clerk?

So do you recognize this document, generally, as the work that Westney did, the external consultant did at DG2, Mr. Martin?

MR. E. MARTIN: Generally.

MS. O'BRIEN: Okay. And at this time at DG2, this document identified that you were working with a P1 schedule. And I think that's there on page 23.

MR. E. MARTIN: Where do you see that?

MS. O'BRIEN: Here on page 23, this is the "Full Commercial Power - Time-Risk Analysis" and it says – there's the curve there, shows the P25, P50, P75; it shows the ranges from P90 to P10, and then it says: Current schedule, May '17 is a P1.

MR. E. MARTIN: Just bear with me – on page 23?

MS. O'BRIEN: Yes.

THE COMMISSIONER: Right (inaudible) –

MR. E. MARTIN: Oh, I see – I got – I see now. I got it, yeah.

MS. O'BRIEN: So the question this – so this is the work that Westney did, and the question I want to put to you is: What did you communicate to the Government of Newfoundland and Labrador about strategic risk and schedule risk at DG2?

MR. E. MARTIN: Exactly what was communicated to me.

And, Commissioner, I need to make, you know, a distinction immediately. You know, a time-risk analysis is a document, and an entirely separate document is the schedule. So I do not equate time-risk analysis to schedule. And where I'm going with that – and I've been clear on this, you know, in my own mind and in the company – is that this is not a P1 schedule. We did not sanction – although this is DG2 – I'm going to say we did not sanction on a P1 schedule. This is a time-risk analysis which gives you an indication, depending on what's in there, whether it's just risk, whether there's opportunity, whether there's mitigation. None of that stuff is reflected here. This is an indicative document.

And from that perspective I can go on to say, you know, to the government, I was – told them what I was told – is that from a schedule perspective we have an achievable schedule. And the reasons for that – I went through it with them and I can go through those reasons now, but I haven't been asked. I'm sure we're gonna get there. But I'll stop there.

MS. O'BRIEN: So I'm just referring now to Decision Gate 2. You're saying that you told – what you told government at Decision Gate 2 is that you had an achievable schedule.

And what did you tell them about strategic reserve at Gate 2?

MR. E. MARTIN: I can't – I actually can't remember. The fact that we had – I can't remember. I'm thinking about the fact that we had identified some strategic risk, but we had some, you know, some significant opportunities as well. I knew that we, you know, in my mind – as discussed with me – we didn't need to have a strategic risk allowance there because of that offset. But I can't remember the dialogue around that to tell you the truth.

MS. O'BRIEN: Okay.

And were you aware of the work that had been done at DG2 by Westney that indicated that the schedule that was being used had a very low probability of being achieved? Because that's, I think, the evidence of what this work shows. Were you aware of that at the time?

MR. E. MARTIN: I'm trying to think back. I can remember DG3 much more clearly. DG2, I can't remember.

I think the process would be the same. You know, there's a lot of input from Westney and – but there's a lot of input from others as well – SNC-Lavalin – other benchmarking work that happened and other things that the project team would bring to me and give me an assessment of where we were with respect to the schedule being achievable. And I would've taken their advice.

MS. O'BRIEN: Okay. But achievable is like a best-case scenario, is it?

MR. E. MARTIN: I didn't say that.

MS. O'BRIEN: Okay. So what did you understand "achievable" to be?

MR. E. MARTIN: Achievable would be that, you know, we have confidence that the schedule that has been put out there – we can depend on it; it has a reasonable, you know, probability of being met.

MS. O'BRIEN: So when you say "a reasonable probability of being met," would you be evaluating that on a P50 type basis?

MR. E. MARTIN: Yeah – P40, P50, P55, you know.

And once again, Commissioner, the reason I say that – and I don't know if it's been in evidence before, but in this time-risk analysis and risk analysis work, I mean, they are tools to inform. You know, they're subject to the inputs that people put into them – there's Monte Carlo analysis. But, you know, I've been cautioned before and I would caution others to be careful of using exact numbers and exact dates coming out of a time-risk analysis –

MS. O'BRIEN: Mm-hmm.

MR. E. MARTIN: – because it's a tool, and you have to think of risk analysis in terms of being informed, and think in terms of ranges and make sure you do not get locked into specific dates and numbers. (Inaudible) you can look at a range as a good indicator.

MS. O'BRIEN: Okay.

So you were told that this was achievable, that the schedule had a reasonable probability, and you're putting that at somewhere around the P50 number – I know you said P40, P55, but somewhere around P50.

So that's what you're saying your project management team told you?

MR. E. MARTIN: As I said, my memory on DG2 is not that clear, Commissioner –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – and so I'm – I don't wanna state something that I can't remember the exact phrasing on.

MS. O'BRIEN: Okay.

Well, let's look at what was communicated to the board of directors, at least, with – what I'm understanding you're saying – achievable scheduling, you don't really remember what you told government with respect to strategic reserve.

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

So let's look what was communicated to the board of directors. Can we bring up, please –?

MR. E. MARTIN: Are we finished with this CE-52?

MS. O'BRIEN: For now we will – we are, yes. I'm gonna bring up another document.

Can we look at P-00093? This is gonna be in volume 4 of your books, Mr. Martin, at tab 71.

Thank you.

And so this is the Decision Support Package for Gate 2, and this is the one that went to the board of directors.

MR. E. MARTIN: I only have two pages over here, is that all I need?

MS. O'BRIEN: No, there should be more –

MR. E. MARTIN: Three pages, I got three pages.

MS. O'BRIEN: It may be that that's – let me look at it in the book – Commissioner, that may be referring us to the common Exhibits. P-00093 – yeah, if you look in your common Exhibits binder 2, tab 8.

And page 22, please, Madam Clerk?

MR. E. MARTIN: And what page are we at?

MS. O'BRIEN: Twenty-two.

So this is what was communicated to the board of directors at DG2 with respect to contingent equity, which I understand you say is equivalent to strategic reserve in your mind. So "A contingent equity commitment of $300-$600M from the Province is also considered prudent and necessary."

Would you have ensured – would you have communicated that to government that a strategic reserve or contingent equity reserve of 300 to 600 million was necessary?

MR. E. MARTIN: I can't remember, but I would put it in a context of what was summarized in CE-52, that that's a, you know, a key piece of data there, that we had offsets to apply for the strategic risk as well.

MS. O'BRIEN: The CE-52 was created long after Decision Gate 2, was it not?

MR. E. MARTIN: I don't know. I'll have to check the date, but I don't see how – that's not relevant to me. You know, the concepts are still valid.

MS. O'BRIEN: But at – what – I think what's – what we're looking here is what government knew at the time that Gate 2 was passed, and this is a decision to pass a Gate, I understand, that you wanted to ensure you had both the approval of the board and of government at Gate 2, right?

MR. E. MARTIN: Just for clarity, now, there was 2A and 2B that was –

MS. O'BRIEN: Yeah, we're talking about 2.

MR. E. MARTIN: 2A?

MS. O'BRIEN: Nope. We are talking about Gate 2, so I can review that evidence for you. So I understand that when you were looking at the Gull Island-first scenario, that you – there was a decision made because the engineering-type work – front-end work was progressing faster than some of the financing work, and the work been, kind of, divided into two streams.

So there was a Decision Gate 2A package done on the, say, the engineering side for the Gull Island first scenario with the idea – and that was 2A – with the idea of being, once the financing and the other work stream caught up, they would do a Gate 2B package, and then, ultimately, that project would go through Gate 2. But after Gate 2A was completed, before you ever got to 2B, the decision was made, for the reasons we've already discussed, to go with Muskrat Falls first and thus Gate 2B never happened.

And then what happened was that you did Decision Gate 2 for the Muskrat Falls-first project, and that was done in November of 2010.

Does that accord with your recollection?

MR. E. MARTIN: I believe so.

MS. O'BRIEN: Okay. So what we're talking about here is Gate 2. November 2010 is when the project – the Muskrat Falls Project passed Gate 2.

So this is the decision support package for that Gate that you gave to the board of directors. So this was done before the PUB process and before CE-52 was created for the PUB process. That's all 2011 work, okay? So we're still in 2010 here.

So here, at Decision Gate 2, before the board was asked to make a decision on Gate 2, it was communicated to them that contingent equity commitment of 300 to 600 million was necessary from the Government of Newfoundland and Labrador. Do you agree with me?

MR. E. MARTIN: That's what it says there.

MS. O'BRIEN: Okay. And my question to you was would you not have ensured that you communicated that information to government?

MR. E. MARTIN: No, and as I said, I'm going from memory here, Commissioner. I mean, I'd need to go through this document – it's really – it's been a while ago. You know, in my mind, we did have offsets, as well, that were understood at this time. I can't recall if they're in this document or not, and I don't want to speculate.

MS. O'BRIEN: Okay, but this document says, would you agree with me, that 300 to 600 million of contingent equity is "considered prudent and necessary"? That's what you told the board of directors.

MR. E. MARTIN: Absolutely. It's in the document.

MS. O'BRIEN: Yeah. And you wouldn't have told – said something – you would have made sure the information you were giving the board in the decision support package was true, would you not have?

MR. E. MARTIN: So I'm seeking – and I don't have the recollection right now of what else is in this document. It could offset that. And I just don't – I'm not gonna be able to flip through those pages quick enough to be able to have a view on that.

So I'm not gonna attempt that.

MS. O'BRIEN: Okay. So right now, you have no reason to believe that this paragraph here that's right before you is inaccurate. Do you have any information before you to believe that this paragraph in the decision support package is –

MR. E. MARTIN: No, absolutely not.

MS. O'BRIEN: – inaccurate?

MR. E. MARTIN: It's in the Decision Gate – my point is, is that there's offsets that were available for strategic risk, so I don't want to let one statement stand out there without the offset, as if the – as if there, you know, there wasn't an offset. That's my point.

And my recollection on DG2 is certainly not, you know, up to date.

MS. O'BRIEN: I understand that this contingent equity or strategic reserve amount of 300 to 600 million was essentially what had been – came from the work that Westney had done on strategic risk. Do you agree with that – that that evaluation came out of Westney's work on strategic risk?

MR. E. MARTIN: I would assume it would.

MS. O'BRIEN: Okay. Given that the risk consultant had recommended a contingent reserve in the range of – a strategic reserve in the range of 300 to 600 million, do you not believe that that would've been important information that government would have wanted to have when it was going public at DG2 with an announcement of $5 billion?

MR. E. MARTIN: If there was an offset, no. And there was an offset. And you know, I guess I could come back to the point of, again, we had strategic risk offsets. That was clearly, you know, stated, and, you know, we're dwelling on this point now.

But, you know, once again, if you move back into the PUB review, where MHI led the review, all this stuff was included in that review, all of it was discussed; the offsets were named, and it was clear there, and you know, that document and that submission would've reflected our view of DG2.

MS. O'BRIEN: Well –

MR. E. MARTIN: Because that's what the PUB review is based on.

MS. O'BRIEN: – I think that Mr. Bennett has given some evidence on that – that this – that was a 2011 view. What we have from 2010 is what's before you, and I wanna put to you what you said to me when we discussed this in our interview, Mr. Martin.

So we were looking at this document, and I was asking you about what you had communicated to government, the premier, the minister of Natural Resources. And I put to you: Did you give them the number that Westney had provided to you on strategic risk at DG2. That's – Westney had ranged it between 300 and 600 million at a P25 to a P75.

You said: I can't remember. And I said: Would that not have been important information that the government would want to have when they were going out publicly with these numbers.

And you said: Absolutely. You know, once again, that's a bit of a truism. But you asked me if I communicated. I just can't remember. What I said, I did communicate, though, there were factors and things that could happen either way, and you know, described – would've communicated to them that, you know, it could change. It could go up, you know, and that's it.

So at that time, when I put the question to you about whether government would want to have this information, your answer was, you know, absolutely they would.

MR. E. MARTIN: Yes, but I'd like to –

MS. O'BRIEN: And now today when I'm asking you, you're –

MR. E. MARTIN: I don't see a difference, and Mr. Commissioner, I think the –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – key word there is truism.

You know, when I was in the interview at that point, I was taking the statements as they came, and, to me, it came across as, if there was a 300 to 600 million, you know, wouldn't you want, you know, that to be public and – or go to the government. Well, to me absolutely – was my response. I wasn't thinking in terms of, you know, of offsets. I was thinking more in the terms that we were going to be coming in to, you know, this type of form, you know, with just seeking more information and fleshing things out.

I wasn't, you know, feeling that that type of arrangement was a problem or not and I answered the question as: Sure, if there's some big number like that. I guess in retrospect, knowing the way this has unfolded and watching the way that, you know, the questioning has gone and what I feel is a hypothesis has been, you know, created and, you know, questioning designed to prove that hypothesis. That's my view.

Well, I'm sitting back now, saying: Well, I'm going to take more time to answer these questions and I'm not just going to say it's a truism. I'm going to give the perspective, which I would have done at the time.

But I don't see anything wrong with that because to me it's normal if there's 300 to 600 million out there and, you know, without offsets and stuff in my mind what I communicate I said already I would.

But I wasn't in that mindset at that time. And now, I'm being much more contextual and careful and specific where I can be because, you know, where I believe some information has been created for a particular viewpoint that, as it unfolds, I don't agree with it.

MS. O'BRIEN: We're looking at a document that was created for the purpose of informing the board, when they were being asked to make a decision on passing this project through Gate 2. That's the document that's before us and the information is on – that is on the screen – was that contingent equity investment was necessary from the province to 300 to 600 million. That's the fact that's in the document that was before you.

And we spoke about it at the interview, Mr. Martin. We talked about how this came from Westney's work and I asked you whether you would not consider it important for government to know that work had been done at Gate 2, when they went out and publicly announced $5 billion. And when I asked you that question then you said: Absolutely. Okay.

So, that's – what – I put to you –

MR. E. MARTIN: (Inaudible) notes – I'm not going to repeat. If I had – I would just say on evidence I would read back my answer to what I just said in response to that.

MS. O'BRIEN: Okay.

Can we – we're going to do the – look at DG3 now as well. So, I'd like to look at the work that Westney did at DG3 and that's going to be P-00130. And that's going to be in your common book of binders, Mr. Martin, at volume 4 – tab 16. It's up there on the screen as well.

So this is the QRA document that the – it's formally called the Decision Gate 3 Project Cost and Schedule Risk Analysis Report that was done and signed off for – DG3.

And if we go to the work that Westney did on strategic risk at Decision Gate 3 – it's one of the appendices to this report. And I'm gonna go to that work now. If we could go to page 282 please, Madam Clerk?

Okay. So it is "Attachment B.14." And so the first page here is set out. This is the "Analysis of Potential Management Reserve and Lender's Owner Contingency for the Lower Churchill Project."

Mr. Martin, are you familiar with this document generally?

MR. E. MARTIN: Generally.

MS. O'BRIEN: So let's go to page 282 please. Oh, sorry, I already went to that page. My apologies. Go to 287 please. Okay.

So this is the work that Westney did looking at strategic risk for Decision Gate 3. And here's where we – I said we'd come back later on – I'm guessing I'm a little bit ahead of schedule – to the $497 million.

And here, what I understand this to be made up of was essentially – as Mr. Kean has described it – it was three main risks. One is the schedule time extension risk. And we'll look at it in a bit more detail, but we understand that this work was – the sanction date here was a P1 so there was some risk, obviously, that the schedule would run over and that the dollar –

MR. E. MARTIN: P1 – I'm not – just for the record, I'm not equating that to schedule.

MS. O'BRIEN: Okay. So we'll come to that evidence here in just a moment.

So what we have here though is the risk of going over the schedule date that you were working with and obviously, the extra cost that would be entailed if you didn't complete on your scheduled completion date. If it–

MR. E. MARTIN: And if it wasn't mitigated.

MS. O'BRIEN: Okay, but if you didn't complete by your scheduled date and the project extended longer, would you not agree with me that there'd be extra costs incurred?

MR. E. MARTIN: Now, there's a truism.

MS. O'BRIEN: So I take it you're agreeing? Okay.

So what I understand that the evidence is – that this amount here is a QRA analysis of how much that would cost if you ran over your scheduled completion date, okay?

Do you agree with me on that?

MR. E. MARTIN: I agree with that.

MS. O'BRIEN: Okay, so that was part of it, and then the next part had to do – was a productivity risk, and so that was evaluated. And then, as I understand, there was this – both of these – the last two here both addressed – labour availability, shall we say, and it was looked at as ways to ensure availability – it would be potentially having a completion bonus and providing a wage rate that was competitive in order to ensure that you had the labour available.

Do you agree with me so far?

MR. E. MARTIN: Yes, I do.

MS. O'BRIEN: Okay.

And if we go to P-00290 of this document, please.

THE COMMISSIONER: Page 290?

CLERK: Page?

MS. O'BRIEN: It's page 290, sorry.

Okay, so this shows the S-graph for the potential strategic risk exposure, and it actually shows a range as you've talked about before. So it shows a range going over here from a P10 to a P90 and then what's graphed is the P75, P50, and P25 on the actual graph itself.

And it talks about in the sidebar here what the predictive range was looking at the P25 to P75 for the potential strategic risk exposure beyond estimate contingency and are placed at around 330 million to 630 million. And it says these results are mostly influenced by the schedule risk and the productivity risk.

MR. E. MARTIN: Right.

MS. O'BRIEN: Okay.

So you're generally familiar with that, I take it?

MR. E. MARTIN: Generally.

MS. O'BRIEN: Okay, and if we go to page 297 please, Madam Clerk.

So this is the work that was done for time range risk, and this is the one – now in earlier drafts, this was the – this is for the first power date; there's another graph for full power. But first power – what we understand is – at the time of sanction, that Nalcor was working with a first power date of July 2017, is that right?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay, so that's what was said in the MHI report at DG3. So what they have done here is they've looked at that target date, and they've done an analysis – time-risk analysis of the schedule, and they've looked at the – done a probability assessment of – on the schedule in terms of time risk, and they have identified that the target schedule right now is a P1 based on this QRA probability analysis. Would you agree with that?

MR. E. MARTIN: I don't – whenever you say schedule is P1, I'll disagree.

MS. O'BRIEN: Okay.

MR. E. MARTIN: The time-risk analysis is a tool, it's unmitigated, it doesn't have opportunities in it. It was built for the express purposes of seeking to stress the operation to find out issues that you need to focus on.

So just as – on the record, Commissioner, you know, so I don't slow things up too much. Every time I hear P1 – any P1 schedule or we sanctioned on a P1 schedule, I will disagree with that.

MS. O'BRIEN: Okay, you sanction on a schedule of first power July 2017, right?

MR. E. MARTIN: That is correct.

MS. O'BRIEN: Okay.

And a qualitative risk analysis was done of that schedule to look at risks that could arise and affect your schedule and give an assessment of how risks may impact that. And one of the reasons that work was done would be to help assess what might be needed as a schedule reserve, right?

MR. E. MARTIN: I think before schedule reserve – more importantly, what mitigation activities needed to be undertaken to minimize that to the full extent.

MS. O'BRIEN: So it's looking at what are the items that are most likely to affect the schedule – what are the most critical items on the schedule, right?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay. But it's also looking at what you might need to have for schedule reserve.

MR. E. MARTIN: Two things: schedule reserve implications will come after the mitigation; mitigation is the primary focus, whatever reserve requirements are left after that, to the extent there are, then that would be a useful tool to understand that.

MS. O'BRIEN: And I understand that – well, anyway, we'll have more evidence on that.

So when I – looking here it says when they did their analysis on the schedule with Mr. Kean and Mr. Harrington they're looking at the schedule, they said: Look, the results are still largely driven by timing of the Muskrat Falls generation facility. These are – the major risks for that facility are: timely placement of the concrete; ability to place the cofferdam and RCC dams while avoiding flooding; availability of labour, skills and front-line supervision; and, weather windows.

So that was the work that they did and they – in the QRA analysis assessed that the probability of the target schedule that you were using, at this time, had a probability of less then 1 per cent of being achieved, correct?

MR. E. MARTIN: Incorrect, because you used schedule again. I said that earlier so I wouldn't have to repeat myself.

MS. O'BRIEN: Well, it does say here right at the top, "Risk Adjusted Schedule Suggests Potential for an 11 to" – 20 [sp 21] months delay for first [sp full] power.

MR. E. MARTIN: It says in the graph, "Muskrat Falls - Island Link … Potential Time-Risk Exposure." Different animal than schedule.

MS. O'BRIEN: Okay –

MR. E. MARTIN: Schedule and time-risk exposure –

MS. O'BRIEN: – see here it says (inaudible) –

MR. E. MARTIN: – elements are two different things.

MS. O'BRIEN: The evidence here is it shows that it says "Target Schedule" in the corner. Do you see that?

MR. E. MARTIN: I see that.

MS. O'BRIEN: Okay.

And are you aware in earlier drafts of this document, it actually said equals P1, but Jason Kean asked to have that removed?

MR. E. MARTIN: I heard – I think I heard that in his evidence. And that's interesting stuff. I'm making the point – the schedule is different than time-risk-exposure analysis – perform such as this.

MS. O'BRIEN: Okay –

MR. E. MARTIN: I cannot abide by hearing someone say we sanctioned on a P1 schedule. It's not gonna happen.

MS. O'BRIEN: Okay.

So the – this information was done, this risk analysis was done on the schedule.

MR. E. MARTIN: The risk analysis was done on a rolled-up QRA-type of analysis, which the schedule – and I think I've heard this before, so I'm not speaking anything new, but I need to clarify it. The schedule is the schedule comprised of a detailed – I don't know exactly the number, I've heard, you know, the 14,000 line items. From that 14,000 line items – from that effort to do a QRA, you roll it up to much, much less than that to try to find, to the extent possible, you know, something that you can work on to help you identify a critical path and key elements. I've heard numbers tossed around, like, a hundred line items. It could be more. It could be less. It depends.

Those are two entirely different documents. And that's why I'm adamant about making the distinction.

MS. O'BRIEN: Okay. So those two documents – you wanna talk about the schedule that's been analyzed here. So what I understand was that you would've had a very, very detailed schedule with every activity that was going on, and that schedule you were working with said: We're gonna get to first power in July 2017. Correct?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay, so it was long, detailed; all the work that was gonna be done was on that schedule.

Now, I understand that this is standard practice when you do a QRA; that you don't do an analysis of every item on the long schedule. You pick the key items that are on the critical path, the ones that are most likely to be pinch points, or have impact on you – the ones that are most critical to you achieving your scheduled first-power date.

MR. E. MARTIN: The attempt is made to do that –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – yes.

MS. O'BRIEN: So that's – and that's what you do. You pick out – what are those key items? And then you take a much shorter schedule that just has the key items, but it still has the same first-power date of July 2017, right?

MR. E. MARTIN: Yeah, that's correct.

MS. O'BRIEN: Okay.

And then you do your QRA analysis of that and you test – look, if risks arise, what's the likelihood of us actually achieving this first-power July 2017 date, right?

MR. E. MARTIN: Based on that truncated, you know, time-risk exposure, you do that – and there's a couple of ways to do that, Commissioner. You can do it just looking at risks and things that could go wrong, and you could do that on a reasonable basis or you could do that on a very aggressive, stressful basis to really push the element. And you could stop there, which was done.

You could add significant opportunities that arise – that was not done in this case. That was not the purpose of the exercise. And so not only did you not have opportunities included, this was a time-risk study that was being stressed. It wasn't being, you know, a reasonable outlook on risk. It was being stressed to see and identify those pinch points.

MS. O'BRIEN: I think your evidence that opportunities was – were not considered here is inconsistent with that of Mr. Kean, who did do this analysis with Westney. He said that when you look at risk, he stressed a number of times to the Commissioner that risk also includes, you know, things that could go wrong and things that could go right. So opportunities are there as well. And when you look at how strategic risk was analyzed by Westney and then rolled into this schedule risk, that many times there was a – the best-case scenario showed an opportunity, so a reduction in cost, reduction in time, that type of thing.

So I do believe the evidence is that opportunities were accounted for in doing this work.

MR. E. MARTIN: I disagree with that. And, you know, need to check the testimony. Because one of the – probably one of the biggest key opportunities, it was clear to me, was not included.

MS. O'BRIEN: And what was that?

MR. E. MARTIN: The schedule itself was based upon working six out of seven days. That the benefit, in this analysis – not the schedule but the time-risk analysis – the benefit of putting in a seven-day schedule, which would be very, very helpful from a time perspective move, I think at the time it was told to me, you know, it could have an impact based on rough calculations of seven to eight months opportunity. My understanding is that that was not included in this potential time-risk exposure.

MS. O'BRIEN: And from whom did you get that understanding?

MR. E. MARTIN: It would've been from the project team at the time.

MS. O'BRIEN: Specifically whom?

MR. E. MARTIN: It would've – I can't remember who. It would've been through (inaudible) – you know, thinking logic – would've been Mr. Bennett, Mr. Harrington and Mr. Kean.

MS. O'BRIEN: Okay. So Mr. Bennett has testified that he didn't know what was communicated to Westney when we did this schedule, but Mr. Kean has testified to this in response to questions from your counsel.

MR. E. MARTIN: I thought I also heard Mr. Bennett – I did see part of that, and you probably need to check this I think –

MS. O'BRIEN: Yep.

MR. E. MARTIN: – you know, I did remember part of his testimony. I did what – he obviously knew about the six to seven days, and I'm not sure if he said if he said if he – who communicated it, but I remember him saying that.

MS. O'BRIEN: Yeah, and he said he had some memory of that, but he didn't know what was communicated to Westney or what was done at the time. And so, let's – but, Mr. Kean was actually – Mr. Harrington was not questioned by your counsel, but Mr. Kean was, and this is what Mr. Kean said in response to your counsel, Harold Smith: The schedule is very complex. It's 10,000 line items of data. We simplified that into a model to give – undertake a time analysis, risk analysis. The detail schedule included was predicated on six working days; however, our assumptions have always been that we would be working seven days a week.

That was built in as an allowance for non-productive time, site – you know, site changing, change out, shift turnovers, you know, some weather downtime, weather day here and there. So, that's how the planners incorporated that into their allowance, just like, I think, it was indicated in the exhibit a little while ago. Mr. Lemay and his team looked at a 20 per cent allowance on the hour. So, it wasn't, you know, trying to accommodate – it wasn't, you know, trying to accommodate – recognize there's certain risk. Let's try to accommodate for some of that now. So, that was included in – that's what underpinned the July 2017 schedule.

So, Mr. Kean's testimony is that this additional day was known and accounted for at the time, but it was used to account in the July 2017 schedule for weather downtime, shift turnovers, site changing, et cetera. So that was known at the time that Westney did their work. Do you have any information to the contrary?

MR. E. MARTIN: I don't understand the relevance. That still doesn't mean you can't, you know, add a workforce on the seventh day. I don't see that as inconsistent.

MS. O'BRIEN: Well, I think Mr. Kean has said they always knew they'd have a workforce seven days a week.

MR. E. MARTIN: They knew they could have a workforce seven days a week.

MS. O'BRIEN: They were planning on having a workforce seven days a week.

MR. E. MARTIN: But it wasn't incorporated. That opportunity existed in this analysis to go from six to seven days. That was the information I had from the outset, and I have no reason to disbelieve that because I was told that, and that opportunity is very, very significant. It was not worked into this particular time risk exposure, and that's just a piece of data; that's a fact.

MS. O'BRIEN: Well, the evidence we have from Mr. Kean was that this was known at the time, and it was always known that you'd be working seven days a week, and that the sixth day was used to – the seventh day was used to account for weather, et cetera, those things, and that's how it was built in, and that was done –

MR. E. MARTIN: The weather –

MS. O'BRIEN: – prior to –

MR. E. MARTIN: – and those –

MS. O'BRIEN: – Westney doing their work.

MR. E. MARTIN: –for weather and those things, but Commissioner, you know, in my understanding, that doesn't mean you can't add workforce on the seventh day.

MS. O'BRIEN: I don't –

MR. E. MARTIN: That's my point.

MS. O'BRIEN: – believe he was suggesting that you weren't back when Westney did the work planning to have seven days a week. There was never a time where you were planning on six days a week and then decided to add a seventh, was there?

Like, would we find a document to that you're saying, you know …

MR. E. MARTIN: I'm not the one to ask that. I get back to the point, you know, I'm the CEO, I'm not into the depth of the documents, I'm being as clear as I can be here, and I'll say it again, because we just seem to be cross – talking at odds here, is that this is a potential time risk exposure document –

MS. O'BRIEN: Mm-hmm.

MR. E. MARTIN: – it's not the schedule. The purpose of this was to stress the time risk document to try to find the key pinch-point areas that you'd wanna focus on to mitigate risk. Opportunities were not included in here, and mitigation was not included in this, at this point.

That's the main point, and it was communicated clearly to me that we were in the main schedule on the sixth out of seven day work plan, and it was clearly indicated to me that the seventh day could be utilized as an opportunity to add more workforce to gain time. That was an option that was not incorporated in this document.

MS. O'BRIEN: Okay, so that's, I think, in some ways, inconsistent with what we've heard from Mr. Kean. I understand that that was considered when this work was done, but you're saying that this was something that was communicated to you after Westney did its work, is it?

Is that what your evidence is?

MR. E. MARTIN: After Westney did what work? Are you in –?

MS. O'BRIEN: The work we're looking at here on the screen?

MR. E. MARTIN: Absolutely, yeah, I think that's pretty clear.

MS. O'BRIEN: Okay, so, we should – we'll look for – we haven't found but we'll look for documentation on that.

Now, this is not something you ever mentioned to me in our interview, is that right?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay. And I don't think Mr. Harrington testified –

MR. E. MARTIN: Mr. Commissioner –

MS. O'BRIEN: – to it either.

MR. E. MARTIN: – I will go back to say, though, I – you know, I was certainly in a different mindset at that interview. You know, I was certainly feeling that whatever information needed to come out would come out. I can't speak for the two Commission counsel, I don't know what they're thinking; but how I perceive them is that, you know, there has been a significant change in the approach on that.

So, I don't – I wanted to make that clear that I certainly wasn't withholding information or anything like that. I was just speaking in general terms about how I understood at the time, and as things headed in the direction they headed, I became much more precise and in terms of the information I was remembering, forcing myself to remember, and getting on a particular path that would not match up to where some of this, I feel, is going.

MS. O'BRIEN: Okay. Can we go to page 326 of this document please?

So here's what we understand the evidence to be. And I just want to confirm whether you were aware of it at the time. But here we have in early September, September 5, Jason Kean – I think this is following the IPR when they did a presentation to you. The IPR did their review at DG3. Derek Owen had mentioned something about a P1 schedule, which his evidence was that – or the evidence was you were not – that seemed to blindside you or take you by surprise. Do you recall that?

MR. E. MARTIN: I apologize, Ms. O'Brien, I was thinking about something else as you were speaking and I shouldn't have done that. There's a couple of points I wanted to raise on the previous discussion we had. Your choice. We can – I – you can either ask me quickly again or we can go back and (inaudible).

MS. O'BRIEN: No, I'm going to ask the question again –

MR. E. MARTIN: Okay, go ahead.

MS. O'BRIEN: – because I'd like you to answer it.

MR. E. MARTIN: Sure.

MS. O'BRIEN: 'Cause it's – I want to bring you to this document here. So do you recall this P1 being mentioned to you at the IPR team presentation to you at DG3?

MR. E. MARTIN: I recall – but I believe I recall more because I heard that in evidence here in this Inquiry.

MS. O'BRIEN: Okay. All right. So you heard it in evidence here. You don't recall it from the time?

MR. E. MARTIN: No, but it certainly triggered some thinking. But I really couldn't recall it –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – no.

MS. O'BRIEN: And – all right. So I understand that after that, that it caused some concern. So this is Jason Kean then writing to Jack Evans at Westney. And he is saying look, "My fundamental question is:" our current knowledge of the project – sorry, '"Does our current knowledge of the project, increase the P'" value '"of our base planning schedule?' I believe the answer is yes, however are we now at P20 or P30?"

So that was a question that was posed to Mr. Kean. And when we go through this document, you can see here that he's given him a bunch more information on mitigation measures that are being taken to improve the probabilistic analysis of the schedule.

Were you aware at that time that this work was going on?

MR. E. MARTIN: Not to my recollection.

MS. O'BRIEN: Okay. And I – okay. So I'll bring you to P-00321.

MR. E. MARTIN: But that wouldn't be unusual, Commissioner.

MS. O'BRIEN: Page 321.

MR. E. MARTIN: I mean, you know, that's the ongoing risk work for the team.

MS. O'BRIEN: Okay. So they're trying to mitigate here. The schedule had been evaluated as a P1. They're looking at mitigation measures. They're asking Mr. Evans to re-analyze it and he does. And he comes back with – and Mr. Kean is thinking it may be at P20 or P30 now – and the analysis comes back that well not much of a change here. You're at P3.

Were you aware of this – this is on September 6 of 2012 – were you aware that this further analysis had been done by Westney?

MR. E. MARTIN: Not to my recollection, but I know there was discussion about – obviously discussion about mitigation and those types of things. And so when you talk about adjustment of days and, you know, the schedule was adjusted based on mitigation – I remember some of those discussions – but primarily, in my discussion with the project team about, you know, the achievability of the schedule

MS. O'BRIEN: Okay, did you understand that you were working with a very aggressive schedule?

MR. E. MARTIN: I would say aggressive schedule, not very aggressive – but yes, aggressive schedule.

MS. O'BRIEN: Okay.

MR. E. MARTIN: I mean, time was, Commissioner, time was marching on. We had a July date – I'll go through it. I'm gonna – I'm sure I'll get a chance to go through the mitigation and why, you know, from the risk – time-risk analysis perspective, I was comfortable that we had addressed these items. I'll talk about achievability of the schedule.

But that being said, there was no question that time was marching on, things were happening, and each month would put more, you know, aggression into the schedule.

And I'll discuss that later. And I think, part of the way I addressed that piece from a public perspective was, you know, basically saying, you know: The scheduled achievability for first power would be in 2017 – was what the public message was. That was just one manifestation of the understanding that it was aggressive, but achievable – no question about that.

MS. O'BRIEN: The – did you communicate to government that you were working with an aggressive schedule?

MR. E. MARTIN: Yes, I did. And I think a good example of that – and you know, once again, specific dates and times I can't recall, but processes and information I can. And I think one of the best examples of that – it'll come out in one of the mitigation scenarios, Mr. Commissioner – that weather windows on the schedule, it's just known it was obviously a key one.

And it was highly recommended to me that unless we do something to expedite some of the site work – and I can get into that later – prior to sanction, we were gonna get into a weather window slip. And as people may or may not know, a weather window slip is pretty critical, because missing a week could cost you a year – or eight months – because of the weather.

You know, so if you missed a September 15 – I'm just picking a day. If you miss a September the 15th date, which the engineers would tell you you can't continue to install or start something after, you'll probably have to wait until next spring to get into it. So a week or two could cost you many, many months on the schedule.

From that perspective, I did go to the government and the board and say: Look, we need to expend significant cash before sanction. That's one example. They approved that. And then in that type of discussion the obvious question would be: Why, what's up? And I would say: Time slipped me. The schedule is getting aggressive here. And we have to do something to relieve some of the pressure.

MS. O'BRIEN: Okay. So. I'm just going to go back to that.

So, in – when I questioned you in the interview I asked you – I said – okay, did you explain – we were talking about the schedule analysis – did you explain to government that you – what you were doing here was a – and you actually interrupted me and you said – a very aggressive schedule. Those were your words. And I said – did they – did government understand that? Did they understand they were using a P1 number according to your expert?

And you said – you're going to have to ask them about that.

But you went on to say: Yes. And in fact, it would very clear it would be a tight schedule to meet, absolutely. But let's balance again commercial reality, you know, versus changing something publicly. So what's your choice? We've got to mention a very aggressive schedule – very, very aggressive schedule to the public. We want to add on to that to the public is aware – we may want to give them a schedule where a really high probability of meeting for public reasons to say we met it. And that's okay. So, I know you mentioned very aggressive a few times there.

And I did ask you again whether you'd communicated that – this kind of information: Look, we're going with a P1 schedule according to our expert. Is that the type of information you would have made sure that the minister understood – that the premier understood that they were making this critical decision about sanctioning the project?

And your answer was: Well, look at, you know, I certainly would have translated into explaining that we have an aggressive schedule. Here's what the contractors are saying, you know, and be open about – this could change. There's risks attached to it.

So would you have communicated that clearly to government that this was an aggressive or a very aggressive schedule?

MR. E. MARTIN: A couple of points here, Commissioner.

First – you know, I heard in that dialogue very and I heard aggressive and then I heard very, very. But putting it in context, once again, if –

when I would speak – what would have spoken to the government about spending money before sanction – which is extra money before sanction – which is quite a, you know, which is quite a decision.

At that point, you know, I'm sure I would have said things like – it's an aggressive schedule or it's getting very aggressive. You know, or very, very aggressive as we move on. Unless we do things like this, you know, it's going to be very, very aggressive. Do some things. Get the mitigation under way. I could say it will still be aggressive. I can see myself explaining it that way.

The second thing is, obviously, very – I mean – very, very – not – it is not the, you know, a defined term so I'm reluctant to hang my hat on any of those points.

But I go back to my original point, though, is that – that was discussed and had to be discussed or else, I would not have received approval to spend early. And also, subsequent to all of that, from a public perspective, I mentioned that my recommendation then and it appeared to be, you know, adhered to – was to talk about the schedule in terms of 2017 publicly because that would provide, you know, the premier with the ability that if things did slip a couple of months, three months, two months, you know, I didn't want to put her in situation where someone was going to pin on a July whatever date and then, from an impact of that from, you know, a cost perspective would be, in context relatively speaking, minimal.

Carrying cost of two to three months would be – at the time, I think, it was in the $4 million range on a carrying cost. So you'd be looking at a 10 to 15 to $20 million potential exposure on a CPW. And I know that's a lot of money in one context but in the context of the billions of dollars that we were dealing with, I didn't say it was going to occur, but I felt comfortable in saying 2017 to give the premier in particular, you know, some potential date cover. And I thought was a reasonable approach overall in terms of maintaining the schedule at a – an aggressive level but also publicly, you know, being realistic so that we weren't seen as misleading on a date.

MS. O'BRIEN: So, none of the government officials who we've spoken to to date have any recall of you ever telling them that this was an aggressive schedule. So Mr. Kennedy – Minister Kennedy didn't, Mr. Marshall didn't, Charles Bown didn't – none of them have.

How do you explain that?

I mean, you're saying that you communicated clearly to them that it was aggressive or very aggressive. Yet, none of them have that understanding. They all thought that this was, you know, as you described it earlier in what you communicated, you know, a reasonable schedule. None which, you know, doesn't suggest aggressiveness.

MR. E. MARTIN: You know, once again we're talking scale here but you mentioned Minister Marshall. I can't speak on that. He was probably in Finance at the time.

But in any event, my point is this – and I'll come back to it – is that it was extremely – it was well known that we were spending money before sanction.

MS. O'BRIEN: Yes and that's one of the – some of the mitigations measures –

MR. E. MARTIN: Yeah.

MS. O'BRIEN: – that you had taken place to try to (inaudible) the schedule.

MR. E. MARTIN: But I was just about to finish my point that and we had to get approval from both the board and the government – we didn't have to get approval from the government but we did for obvious reasons. And frankly, I just can't fathom a perspective where we were going up to get approval to spend significant money prior to sanctioning the project, with the scrutiny we were under, and the reason for it was to alleviate pressure on the weather windows, because that was putting pressure on the schedule. I can't see how that would not be interpreted as, you know, as the schedule was getting aggressive as we moved along. I really can't put those two together, Commissioner.

MS. O'BRIEN: So I think these mitigation measures and getting approvals prior to sanction is exactly the kind of information Mr. Kean was bringing to Mr. Evans to have him reanalyse, because we know the sanction date was slipping at that time. But, you know, nowhere in Mr. Kennedy's notes does it indicate that he was ever told that the schedule was aggressive. We have found no documents that would show that you communicated that to the Government of Newfoundland and Labrador, none. So the only evidence that we have on this point is you saying you're sure you would have told them.

Is there anything in writing that you think we should be looking for?

MR. E. MARTIN: I wouldn't be the one to ask that; I'm usually not the one writing that stuff.

MS. O'BRIEN: Okay.

Now, also, we heard from the board of directors; none of them understood that at sanction that this was an aggressive schedule. Were you aware of that?

MR. E. MARTIN: I'm going to go back, you know.

The schedule was achievable, Mr. Commissioner. That was the message that I put out there. The second thing is, with the board in the same fashion, you know, they obviously had to approve early site works. They obviously had to approve, you know, the early work.

And I don't know what we're talking about here in terms of a terminology or something. I mean, you know, our board was on top of things. You know, they understood and were close to this. We were meeting much more frequently than normal as we approached sanction. They were very astute. So I'm not exactly sure of the words here that were used, frankly.

But, you know, to – you know, I'm comfortable, based upon the reasons that I've given with respect to particularly the early site work, that I was communicating, A, the schedule was achievable and, B, to keep it achievable, we need to do some things because it was getting more aggressive as we went, as time continued to slip, and we needed to do something about it.

So I'm quite comfortable that the board would have understood the two messages of achievable but aggressive and growing unless we do something. That's my view.

MS. O'BRIEN: Okay, well, their evidence is in, and certainly we've heard from Mr. – four of the board members, and they didn't – they – well, they've given their evidence to the Commissioner, and we can't find any documentation where this information that it was an aggressive schedule, that any analysis had been done on it – was communicated to the board of directors.

Is there any document that you feel that we should be looking for where this would've been communicated to the board, that we perhaps have just not yet found?

MR. E. MARTIN: I wouldn't be the document preparer, so I'm not the one to ask that.

MS. O'BRIEN: Okay. So who would you be relying on to prepare these documents and communicate to the board of directors?

MR. E. MARTIN: I was communicating. I'm just not sure of the document flow. I don't know if there's documents there or not is my point, Commissioner. I mean, that just wasn't something that I was organizing or looking after.

As far as speaking to the board, dialoguing, communicating at the board verbally, communicating outside of the board (inaudible) verbally, I've expressed what, you know, what I've said. And to me, it makes logical sense that, particularly in approving early expenditures, you know, we have those types dialogues and there's no question I expressed confidence in the schedule. I said it was achievable – that's the information I received from my team.

I'll go through their reasons for that in just a moment. I'm gonna have to make a summary because we've been going all over the map. But I got a list of things here I'd like to show the flow on.

MS. O'BRIEN: Mm-hmm.

MR. E. MARTIN: But you know, that schedule was done by SNC-Lavalin – very competent people. We had others benchmarking, looking at it, and we had lots of input. We had the stressed case from the time risk analysis, and we had a tremendous amount of information flowing in.

And my project team assessed that information, put together a mitigation plan, worked through it with me, and convinced me that the schedule was achievable and that's what we should communicate. And they also communicated to me that, unless we do some things, this thing is gonna get aggressive and more aggressive as we go.

MS. O'BRIEN: Okay, just for completeness I just – there was – I did interview you on this a second time, Mr. Martin, when we had heard from government and they were surprised at hearing about this schedule. And I had asked you, then, did you communicate to government that it was a very aggressive schedule, and you said – your answer to that was yes when we – when I put that question to you in the interview.

MR. E. MARTIN: And I would reply with my previous answer that I just made.

MS. O'BRIEN: Yeah, no – I just wanted – just for the completion that it was there another time in the transcript as well.

MR. E. MARTIN: And I wanted to follow that up as well.

MS. O'BRIEN: Okay, so –

MR. E. MARTIN: I did want to go back through a couple of comments. Can I – you know, on that previous question before that.

MS. O'BRIEN: What was the question?

MR. E. MARTIN: When we were – you know, before you started down the path that we just went down, remember at the outset I said I wanted to make a couple more points? So I would like to do that, and I can come back to it again after lunch, if that's helpful?

MS. O'BRIEN: Well, just – if you tell me what the topic is, then I can tell you if I'm planning to revisit it or not.

MR. E. MARTIN: It's the topic here with respect to, you know, what was communicated and what was said in this document, P-00130, and I had noted some points around how best to use a time risk analysis versus a schedule and the differences. It was that topic.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And I have some references in P-00130, not comprehensive, but a couple I remembered around that section that might be helpful to look at to support the idea that we were communicating that, you know, these were different things.

MS. O'BRIEN: You were communicating that what were different things?

MR. E. MARTIN: That the schedule was different from time risk. Communicated internal to – we saw a distinction between the schedule and this time risk work.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And that is on page 15 of P-00130. And there's – I believe there's other references, but this is the one that was closest to the point. And it's the last paragraph, and in that paragraph, which is describing, you know, some of the work around schedule time – or schedule risk exposure, it said: "In summary, the analysis indicates that based upon the identified unmitigated time risks" – unmitigated time risks – "there was a low probability of achieving a July 2017 First Power." So unmitigated time risk. Key point.

MS. O'BRIEN: Yeah. And then I think we had to risk adjust –

MR. E. MARTIN: And "rather" than "the risk-adjusted schedule suggests the potential of an 11 to 21 month delay …. However caution must be considered when attempting to directly interpret the probability that a given schedule date will be achieved as this is a simplified modeling of a very complex construction schedule, and does not consider the mitigations that may be implemented should a risk event be expected to occur in the near term."

There's other references throughout there. That's just one point I wanted to make that we were, you know, understanding the differences there, particularly amongst the project team, that the schedule is different than the time risk analysis that was undertaken.

MS. O'BRIEN: And that paragraph you just put to talked about a natural schedule reserve. Evidence that we've had from Jason Kean and Paul Harrington was that the project management team actually had requested or suggested to the executive that a schedule reserve be included at sanction but that the decision was from the executive – who I understand would be you and perhaps Mr. Bennett – that no, that you would not have a schedule reserve, you would go with the schedule date with no reserve. Do you – is that consistent with your memory?

MR. E. MARTIN: I can't remember whether they requested it or not. But I'll put it this way: if they did, based upon the information I had, they wouldn't have gotten it. And that's – I don't think is an unusual thing.

And the project team were very professional, very efficient, well experienced and been around. And, you know, were in the habit – as any project team would be – to ask for additional capital, ask for additional schedule time to put into their budget. And, you know, that was normal, and it would not be their decision in the final analysis who allowed that or not; that would be my decision.

MS. O'BRIEN: Okay but do you – the – well I can – over lunch I can put together the document for you but I understand they did – their evidence is they requested and you turned down the request.

MR. E. MARTIN: I'd see the documentation but –

MS. O'BRIEN: Okay, I'll get that for you over lunch.

MR. E. MARTIN: – that wouldn't surprise me.

MS. O'BRIEN: It wouldn't surprise you?

MR. E. MARTIN: No.

MS. O'BRIEN: No, okay.

MR. E. MARTIN: No, absolutely not. It's my call for that. The project team doesn't call what extra capital or extra schedule that they get, that's just not on.

MS. O'BRIEN: All right.

One question I just want to ask you is that, Jerome Kennedy seems to have been under the impression that there was an 8 or 9 per cent contingency at Decision Gate 3, but the information that we have is that it was a 7 per cent contingency. Is 7 per cent – you know, do you agree that it was 7 per cent?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

Do you know why Mr. Kennedy was under the impression that it was 8 or 9 per cent? Do you have any –?

MR. E. MARTIN: No.

MS. O'BRIEN: Okay.

And, one thing I just want to, maybe we'll come back to that after, that's fine. Okay, if we could – sorry, I just want to make a note here that I make sure I come back.

Okay, so let's go – I want to talk a little bit about the 497 now, so if you could go to page 287 of P-00130, that's before you.

MR. E. MARTIN: Could I just offer an additional information because I mentioned earlier I'd like to do a bit more of a summary on the P1 schedule piece. I was answering questions as we went.

MS. O'BRIEN: Oh, okay.

MR. E. MARTIN: And it is relevant, Commissioner, to the 497 as well because it's part of that.

MS. O'BRIEN: Mm-hmm.

MR. E. MARTIN: So, just in summary, from the schedule perspective, you know, I was fully aware that it was created by SNC-Lavalin and they had expertise doing that – and recent expertise, and relevant expertise from hydro dams. They advised us it was very achievable, and they actually put it together.

My understanding was – and I can't name the benchmarks that were put against it – but there was benchmarking done against that by the project team in terms of things such as, I believe, concrete pour rates and those types of things. So, there was some other independent views taken, within the project team, that they assured me was giving them further comfort that the schedule was achievable.

From my perspective, it was communicated to me that, you know, MHI, you know, for one had you know, given the thumbs up that the schedule was achievable, and I believe there was several other data points that was there.

So, the project team came to me with the message the schedule's achievable, and I accepted that, and they also indicated that, you know, they – as per normal process – they did – separate from the – you know, once again, not the schedule, but this time risk analysis – they performed the process we just talked about, stressed that so that they could identify the key areas; and the key areas they came up with that we needed to be conscious of and focusing our mitigation efforts on, was weather windows – missing weather windows; timely placement of concrete was an issue. There was an indication that, you know, you needed to watch that, that was some pretty aggressive rates in placement of concrete.

The third thing was, you know, we have to keep our eye on the ability to place cofferdams and RCC dams without flooding. That's to protect the dams, the work on the site; you miss that, you're missing, you know, you're missing a lot of time, and you're also putting the site at risk, and availability of labour.

So those were the four things that came up that we had to focus on. And my understanding is that – as explained to me – the mitigation that occurred for those was explained to me, and I agree that was – it was strong. On the weather windows, the primary thing was the approval to expend, prior to sanction, on key things, and what was recommended that I remember – I'm not sure if this is complete – but they wanted to progress, you know, the access roads; power installation; they wanted to put a 300-person temporary camp in early; and they wanted to award the bulk – you know, cut the bulk excavation out of one of the main contract packages and award that early so that they could get that awarded and potentially get that work started prior to sanction.

And all this was obviously driven to hit the – make sure, or maximize the probability we were gonna hit the key weather window points, which in my mind, it was around the cofferdam, the spillway getting in place, and those types of things. So we authorized that, we did that, and in hindsight, it was successful. We did hit the initial weather windows that we had expected, so that was a good thing.

On the timely placement of concrete, what was described to me that one of the key points was, we needed to check the ability to produce concrete. And in virtue of doing that, my recollection was the team ended up dual-streaming concrete plant production, adding additional capacity, in other words. They also were reviewing the chemical mix of the cement – is another one of the ones I remember, which would've resulted in, I believe, both faster setting and the ability to work in colder periods – is my recollection. They did additional benchmarking and also this is, you know, a portion of where some of the extra time availability could be an opportunity.

So I felt and they felt confident that that could happen and it was my understanding that in the final analysis when Astaldi did get ramped up that they achieve the placements rates that were there. Certainly, didn't do it initially, but they were achieved so therefore it's reasonable to assume mitigation activities that led to that would've been helpful.

On the availability of labour, that was a critical one and, you know, the team had initiated, frankly cross-country tours into, primarily, Western Canada, you know, to visit the camps, layout the project, explain to people the benefits of working on this project. Things such as the fact that the wages were competitive and where they were, the fact that they could get them home, you know, pretty quick, on their break; the fact that our camp was going to be first class and this is an opportunity to come home. And we also met with the unions, both local and I believe the international – I can't say that for sure – but a lot of work went into the unions; who assured us that they'd get us the labour. Once again, in retrospect, availability of labour was never an issue.

And then, with the ability to place the cofferdams and the RCC dams, that was an overlap with the weather window work, where basically you were looking at hitting critical path items, which we were successful in doing.

So from that perspective the situation I had was I had a project team who said – and was indicating that the schedule was achievable based on all those reasons, and that was really the main point. Then I received the information that they'd also done this work and had mitigated significantly to allow that to, you know, to be achievable. And the work had yielded, you know, some months of help, maybe two, maybe three, and then they explained to me that the six out of seven day issue could give us, you know, a seven to eight month, you know, pull back if that ever occurred, if that was needed, but it wasn't really the primary thing. They were telling me the schedule was achievable.

So I looked at the time-risk analysis and I looked at what those mitigation activities could do and the opportunities could do and it was comforting. It got me back into the mindset that, you know – or reinforce that the schedule was achievable. But the primary advice to me was that the schedule was achievable in the first place.

And that was just the summary on the schedule piece that I wanted to talk about. I'll have more to talk about on the overall 497.

MS. O'BRIEN: Thank you.

Commissioner, a lot of the schedule work that Mr. Martin has just addressed is addressed in P-00130, pages – between pages 321 through to the end of that document.

And I understand that a lot of this work that he's talked about was the work that Mr. Kean went back to Mr. Evans on when he asked him to rerun the time schedule. So there's talk here about getting that accommodation in place and various activities, such that their ranging – a lot of the schedule risks are like minus 10 days to plus 15 days, and whatnot.

So I think that those efforts are documented here in P-00130, for your benefit. But I do understand that that was – work was given to Westney and that's when they came back with their reanalysis on September 6.

MR. E. MARTIN: And Commissioner, there's also the point, I believe needs to be made, that the opportunities were not folded into that exercise.

MS. O'BRIEN: So I – you know, that evidence is there and I guess it speaks for itself.

Okay. Commissioner, I know it's 20 past 12. I can keep going – I would be going into another section now. I can continue on or we can break early for lunch.

THE COMMISSIONER: Okay, how are we doing on your schedule?

MS. O'BRIEN: I'm not – I'm doing, you know, fairly well. I think by midday tomorrow is still achievable for me.

THE COMMISSIONER: Okay. All right.

Well, we'll take our break now and come back at 2 o'clock then.

MS. O'BRIEN: Thank you.

CLERK: All rise.

Recess

CLERK: This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right, Ms. O'Brien.

MS. O'BRIEN: Thank you.

Request to enter two new exhibits, Commissioner, P-01651 and P-01652, please.

THE COMMISSIONER: All right. Those will be entered as marked.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: I understand they are in tab 6 – or binder 6.

MS. O'BRIEN: I'm going to ask you, I think on your table there, Mr. Martin, is Exhibit P-00894. Could you please go to page 19 of that?

THE COMMISSIONER: (Inaudible) four.

MS. O'BRIEN: I don't know – Commissioner, I don't think it's going to be in your binders. It's only one sentence. They – it's a very long document and hadn't previously been printed.

This is one of the papers that was put in by the project management team. This is the paper they did on the sanction decision. And if you go to page 19, please, Madam Clerk.

So I referenced this with you just before lunch. This is where this – these papers were prepared by Mr. Harrington, Mr. Kean, Mr. Power, Mr. Clarke – there was a number of them who were involved. Mr. Kean and Mr. Harrington have testified to them. But here it says: "The QRA indicated … there was a low probability that a mid-2017 First Power date would be met. As such, the PMT recommended to Nalcor Executive that a provisional schedule reserve allowance should be made to account for the difference between the target date and the probable date.

"Given the desire to achieve the best possible date, Nalcor Executive wanted to maintain the Target Milestone Schedule, and thus no schedule reserve allowance was made to accommodate the residual risk exposure identified in the QRA."

So I had put that to you earlier, that that was evidence that we had from the project management team. But I understand you to say you don't specifically remember it, but you acknowledge that even if they'd asked for the, a schedule reserve that it was your decision to say no and you would have said no.

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And based upon the information I had at the time.

MS. O'BRIEN: Okay. The information you had from them?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

So let's talk a bit about that – go to P-00130, please, Madam Clerk, page 287. So we're going to come back to this 497 million and –

MR. E. MARTIN: P-80 – so what binder, please.

MS. O'BRIEN: Yes, just one moment, please. That is – P-00130 is going to be in the common binders. And it's going to be common binder number 4, tab 16.

And it's page 2 – sorry – 287. Okay.

So this is the QRA work that was done by Westney on strategic reserve at DG2. And I understand that you – if I understood your evidence correctly this morning, Mr. Martin, you decided not to include any amount for strategic reserve at DG3. Did I understand that correctly?

MR. E. MARTIN: Include where?

MS. O'BRIEN: Did you have – did you account for any amount for strategic reserve at DG3?

MR. E. MARTIN: When you say account, I described earlier today that I was clear with the board and the government that something could happen greater than 6.2 and we needed to be able to ensure we could fund that. So from that perspective, yes, I did address it and, you know, and account for it; absolutely.

MS. O'BRIEN: Okay and now, I know you said you didn't give them any numbers. So you had this information here from the QRA work that had been done by the risk consultant and it analyzed the strategic risks that it did and that work was done and they – the – they actually give a range for strategic risk which is in the, you know, 300 to 600 million, but the – or a little bit more than that actually I think – but the mean value, the P50 value, came out at 497.

So why would you not have communicated this information to the government?

MR. E. MARTIN: This information was compiled from the work that Westney did earlier in the year. And as I mentioned previously, we put the project team to work to mitigate these things and when I assessed the mitigation activities, and based upon the advice from the project team, this particular amount of 497 ended up in my estimation based on their feedback as zero. And I'll just quickly go through that, Commissioner?

The first line is the potential schedule risk time extension; that's 184 million, and that is directly related to what I discussed before lunch with respect to the schedule situation. And my understanding based on feedback from the team, we had mitigated that. With the potential performance risk productivity, there's a series of things that went on there essentially driven by the labour agreement terms that were structured to improve productivity over what was being experienced from our information from other and previous projects, improvements made in the agreements. The IBEW agreement was made as a single union agreement from the transmission, which was – ended up being very helpful for us from a productivity perspective on the transmission.

The idea was and continued to be to shift responsibility to the contractors from the productivity perspective. We had information that O'Connell, one of the contractors who had done some initial work, you know, the – I was informed that the productivity framework there was acceptable, and also we – there was an element of having the extra day in the schedule that could assist us here was the feedback I received. I was comfortable based on their review that the productivity risk, at least at this stage, was mitigated.

With respect to the potential skilled labour completion bonus, we actually finalized the labour agreements; a completion bonus was never incorporated for the skilled workers. And in retrospect, we did get the numbers that we needed as I mentioned earlier, so that was zero, obviously.

And from the potential skilled labour wage rate, that discussion was around were we going to pay – consider paying Western Canadian – closer to Western Canadian rates or stick to what we had, which was closer to the Hebron rates, and we stuck to where we were so that extra 70 million wasn't required. So from my perspective, based on the advice I received, that had been mitigated. That's point A.

MS. O'BRIEN: Okay.

MR. E. MARTIN: Point B, I believe, that doesn't mean that there's not more unknown risk that could occur over and above the 6.2. And from that perspective I had no reason to discuss the 497, as such, with the board or the government, for that matter. This was ongoing risk work that we had essentially done overtime in other areas and again and again. But I did feel strongly compelled to talk to both parties, the government and the board, about the fact there could be additional unknown risk – by the very nature of unknown, there had – it had to be there.

And from that perspective my point to them was, obviously the question is how much? My answer is I don't know. However, why don't we – my recommendation was, let's approach this topic from what's available for funding. And that's where I spent my time with the government and the board – the government in particular on this, they had questions on it. As I mentioned earlier, Commissioner, that covered things like the ability to use excess sales, if required. The ability to use a portion of the return on equity, which –

MS. O'BRIEN: Mm-hmm.

MR. E. MARTIN: – was cash – or sorry, it was available cash that was over and above any other opportunity that was presented to itself. So it was, you know, cash that would be, you know, fresh into the governments hands. As well as the water rental that they were charging us.

And based on that and what type of upfront cash and/or financing could be arranged with that was the way we approached it to say this is the pool of available funding, and that's the way I approached that.

I did mention earlier and volunteered that, in dialogue, you know, I certainly would have left the impression that, you know, it would be in the hundreds – if anything happened, I was thinking hundreds of millions not billions, so – but that would be as close as I gave to a number because frankly, you know, I didn't have a number and did not feel comfortable just in creating one.

MS. O'BRIEN: Okay.

So let's go back to your first point there. I think what you're saying, you're – I understand you correctly that your advice from the project management team was that this $497 million had – of risk – had been fully mitigated and therefore there was no need to carry a strategic reserve?

MR. E. MARTIN: That was my understanding, yes.

MS. O'BRIEN: Okay, so –

MR. E. MARTIN: With the exception, I forgot to mention one thing I mentioned this morning that on the time-extension piece, I had in my mind a, you know, relatively low number of potential carrying costs of I think it was in the months, you know, several months that I thought that we could have an exposure on, but in my mind that amount wasn't material in the context of the comparative analysis.

MS. O'BRIEN: Okay, so you're saying that – you're understanding from the project management team that this 497 was fully mitigated and therefore there was no need to set aside any amount for strategic risk.

Who specifically would that have come from? Are we talking about Mr. Harrington?

MR. E. MARTIN: I can't remember frankly. It would – I expect we would have been in a group setting and talking through these things.

MS. O'BRIEN: Okay, so you have notes of this or no paper to support this. Is that fair to say?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay, so we have heard from – I take it you would have been dealing with someone fairly senior, and we're talking about Mr. Bennett, Mr. Harrington. I would presume it would be at least one or both of those who would be involved, would it not be?

MR. E. MARTIN: I presume that, yes.

MS. O'BRIEN: Okay.

MR. E. MARTIN: Mr. Kean would likely be there. I mean, it would be a – I can't name the people, but normally, in something like this, there's –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – you know, a small team would come in and walk through it with me.

MS. O'BRIEN: Okay. So, we've heard evidence from all of these people. None of them have said that they considered this full 497 to be mitigated. Are you aware of that?

MR. E. MARTIN: Not in particular, no.

MS. O'BRIEN: Okay. And the papers filed by the project management team, which Mr. Harrington and Mr. Kean have confirmed they are accurate to the best of their knowledge, information and belief, don't talk about this 497 being fully mitigated. Are you aware of that?

MR. E. MARTIN: Not particularly, no.

MS. O'BRIEN: Okay.

And Mr. Harrington was – Mr. Harrington did say that – with respect, I think, to the labour availability piece here, he did give evidence that he considered the labour availability piece had been mitigated prior to sanction. He did say that, but this was his evidence on that point. He talked about how it had been mitigated, and I pointed out to him in my questioning, well, sometime – you know, you attempt to mitigate it. Sometimes you're successful in mitigation attempts, and sometimes you're not. Sometimes you're right, sometimes you're wrong.

And he said – Mr. Harrington: And that is why, Ms. O'Brien, is that we don't – knowing that, right, which was the labour availability was probably of that 497 million that was identified as schedule. Yeah, the impact of the schedule resist, you know, probably 100 to 200 million of it – so I think he's referring to the two amounts there for availability – but we didn't take that out. We said no because something else will pop up to replace it. So 300 to 600 million. Let's remember, that's almost 10 per cent of the total project capital cost, so I think that's a reasonable amount to set aside for strategic risks.

So his evidence was that, look, we knew we mitigated some of this, but we fully expected other things to pop up, so 475 million – that's almost 10 per cent. I consider that to be a reasonable strategic reserve. So that's certainly not consistent, well, with your evidence that he had told you – or members of the project management team had told you that you only had to set aside zero dollars because this had been fully mitigated. It's inconsistent, isn't it?

MR. E. MARTIN: Let's dissect that a little bit. I think you mentioned, in your words there – I'm trying to just recall them – that other things could pop up, I think is the word you used.

MS. O'BRIEN: Mm-hmm. No, that was Mr. Harrington.

MR. E. MARTIN: Oh, okay. That's the word Mr. Harrington used –

MS. O'BRIEN: Yeah.

MR. E. MARTIN: – that you just repeated, and I think that piece there is consistent with what I discussed. I was looking at things in terms of – yes, even with this amounts, to my understanding, mitigated, I was also crystal clear that other things could pop up.

MS. O'BRIEN: No, that's not the inconsistency I'm pointing to, Mr. Martin.

MR. E. MARTIN: Well, I found –

MS. O'BRIEN: The inconsistency –

MR. E. MARTIN: – that inconsistent.

MS. O'BRIEN: – I'm pointing to is that Mr. Harrington's testimony is that, look, we kept a strategic risk reserve of 300 to 600 million – whether you take it in the middle – of 497; it's about 10 per cent. I considered that to be reasonable. That's his evidence. Your evidence is that: I was told we needed zero dollars because all these had been mitigated. So that's the inconsistency there

MR. E. MARTIN: So let's keep exploring it. So the – as I mentioned earlier today, the project management team would obviously want to have more available cash in the budget, whether it be strategic schedule or cost risk or what. I understood that, and I understood that they would like to have that. As I said this morning, I said the answer is no, and, you know – and for the reasons I talked about before.

So my understanding was that these amounts were mitigated; they thought that they would like to put some more in because other things could happen. I agreed with that, but I said, I'll take care of that. From a funding perspective, as far as the project management team receiving additional funds for strategic risk, the answer was no.

MS. O'BRIEN: But I thought you were never gonna put in any amount for strategic risk in the project management team's budget.

MR. E. MARTIN: I just – I think – I thought I just said that.

MS. O'BRIEN: Okay.

MR. E. MARTIN: I would prefer to clarify that, 'cause I thought I – that's just what I said, so maybe I missed some wording, Ms. O'Brien?

MS. O'BRIEN: So my understanding here –

MR. E. MARTIN: I just said that I would not – I mean, I can't gloss over that, because it sounds like I said something that you misheard.

MS. O'BRIEN: But – no, I don't think Mr. Harrington ever testified that he ever thought strategic risk was going into his project budget. My understanding from his evidence, Mr.

Kean's evidence, when you look – that they always knew that strategic risk was gonna be outside of their budget.

When he – what Mr. Harrington's evidence was, they did do an – and Mr. Kean's – they did do an analysis of strategic risk. They came up with this number of 497. Mr. Harrington thought it (inaudible) reasonable amount to carry and he did not tell you – he did not give any evidence that he told you that it should be zero dollars for strategic risk at Gate 3. That's not his evidence. Your counsel did not question him on that; your counsel did not put that question to him and ask him. That was his evidence. That's what the Commissioner heard from Mr. Harrington, and I'm pointing it out that that is inconsistent with the evidence that you are giving the Commissioner here today. And I've heard your explanation of it, Mr. – the Commissioner has heard your explanation of it, and I'm fine to move on.

I do wanna talk a bit about, though, what government was told. And I just want to bring you to – if we could please bring up P-00926, please?

THE COMMISSIONER: That's at tab 101, book 5.

MS. O'BRIEN: Yes, thank you.

Madam Clerk, I'm going to actually be going – excuse me. So first I'll get – Mr. Martin, do you recognize this slide deck, this DG3 Alignment slide deck, August 2012?

MR. E. MARTIN: Not in particular, no. I'm just skimming through it here now.

MS. O'BRIEN: Okay.

MR. E. MARTIN: But in any event, carry on.

MS. O'BRIEN: Okay, can we please go to – 5101 – can we please go to, Madam Clerk, page 4?

So the handwriting on this slide deck, Mr. Martin, is Jerome Kennedy's. He's testified to this and this was a slide deck that was – he says was presented to him by you. There was others present at the time. And this is when you were giving a presentation of the DG3 numbers and aligning them back or doing a comparison to where the numbers had been at DG2. Does that help refresh your memory?

MR. E. MARTIN: It helps.

MS. O'BRIEN: Okay.

So in this slide here – and so Mr. Kennedy has been very adamant in his testimony that he was very concerned about what the ratepayers would be paying, and that he says he questioned you hard on wanting to know what is the real – what are the real numbers for Muskrat Falls.

And he wanted to know, you know – and he was under the understanding that you had built in a contingency for risks, which he believed was 8 to 9 per cent. You can see on this slide here he's written 8 per cent. And that his understanding was that covered risks – all risks. He didn't know anything about, you know, differentiation between tactical risks and strategic risks. He understood it, kind of – as I understand the way Emera did, you know, just one amount to cover all risks.

And he was – said that he was assured that you had high confidence in this number and his understanding from you was that the contingency was there to cover all the risks that could occur – that could reasonably be considered to be occurring. And that he questioned – he said he questioned you on that because he was – had concern that it was low and that you assured him it wasn't low because of the – how far advanced that the engineering was.

Do you remember having discussions of that sort with Jerome Kennedy?

MR. E. MARTIN: I remember having discussions of that sort with Mr. Kennedy. I'm assuming if I was at that meeting, it would sound reasonable but –

MS. O'BRIEN: Okay.

And so consistent –

MR. E. MARTIN: Ah –

MS. O'BRIEN: – (inaudible) look at this slide and we see what's here – like, this is where you've put the numbers, okay? So you're showing what –

MR. E. MARTIN: Excuse me, I just wanted to add to the previous answer though. I remember having discussions of that nature, but not all of the things that you just stated that Mr. Kennedy said –

MS. O'BRIEN: Okay, so tell me what –

MR. E. MARTIN: – would be connected.

MS. O'BRIEN: Oh –

MR. E. MARTIN: So I'll just try to remember them now.

MS. O'BRIEN: Okay.

MR. E. MARTIN: I guess the best way to express it, Commissioner, would be that I'm, you know, I'm confident that I always, you know – and always refused to say the 6.2 was, you know, firmly locked down and guaranteed. I always was clear things could happen.

I did express confidence in the number, absolutely. I would've instilled confidence in the number. I had confidence in the number from that perspective. But I just wanted to make that point, probably, that I could not see myself not making that statement I just made about other things could happen that we – that I could not anticipate and we had to be able to understand that. Because I was consistently saying that when presenting numbers.

MS. O'BRIEN: So for you to have confidence in a number – so the number that you had confidence in at 6.2 billion, do you acknowledge that based on the analysis that was done, the chances of you coming in at that number or below were less than 50 per cent?

MR. E. MARTIN: No, that's not the information that I was presented with.

MS. O'BRIEN: Okay.

MR. E. MARTIN: The information I was presented with was – and I went forward on was base estimate, escalation, contingency at 7 per cent, you know, put together by the project team including SNC-Lavalin. I reviewed risk (inaudible) – analyzed and reviewed by other people in – you know, other folks come in and review that. So that's where I obtained my comfort.

With respect to strategic –

MS. O'BRIEN: Can I ask you a question, then, on that?

MR. E. MARTIN: With respect to strategic contingency, I've already mentioned how I've handled that.

MS. O'BRIEN: Okay.

MR. E. MARTIN: So – and I didn't have a number for strategic contingency, but I approached it from the ability to fund.

MS. O'BRIEN: Okay. So let me break it down for you, then, okay?

So you say you had the base estimate and you were given an escalation and you were told a contingency of 7 per cent, right?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: And that's how you got to your 6.2 billion, right?

MR. E. MARTIN: Right.

MS. O'BRIEN: Okay. And did you understand that to be a P50 number considering tactical risk?

MR. E. MARTIN: I guess it's the phraseology we have to be clear on. I believed and understood that the 7 per cent contingency was based upon a P50 analysis of tactical contingency.

MS. O'BRIEN: Okay. And so – then when you put that number together, if we just looked at tactical risks, there was a 50 per cent chance that you would come in less than that number and a 50 per cent chance that you would come in above that number.

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Right? And so that was – so you were at a P50 without considering, at all, any strategic risk, right?

MR. E. MARTIN: Well, I believe we also have to anchor back to the comparative analysis. You know, let's remember that. And you –

MS. O'BRIEN: Let's just stay here with this. I just want to get an –

MR. E. MARTIN: I will.

MS. O'BRIEN: – answer to this question.

MR. E. MARTIN: But once again, I just cannot delink those two and I don't think it's proper to go down a path of just looking at a single project analysis when we're doing a comparative analysis.

MS. O'BRIEN: Well I'm –

MR. E. MARTIN: So I'm –

MS. O'BRIEN: – I'm looking at the –

MR. E. MARTIN: – just wanted to put that on the table.

MS. O'BRIEN: I'm looking at the 6.2 billion that Mr. Jerome Kennedy said he announced to this province as a high-confidence number.

So that's the one number I'm really concerned about right now and that's what the questions are about.

So you understood that to be – just considering tactical risk to be 50 per cent likely you'd come in above, 50 per cent likely you'd come in below, right?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay. And that's before you considered any strategic risk –

MR. E. MARTIN: That's correct.

MS. O'BRIEN: – right?

So, you knew that – the – strategic risk – was likely some would materialize. You're saying now to the Commissioner you had been told that you obviously – we've gone through the evidence – your evidence versus the project management team – but even still you're saying you figured, you know, you had discussions with Kathy Dunderdale and you thought that it would be in the, you know, hundreds of millions of dollars.

MR. E. MARTIN: Potentially.

MS. O'BRIEN: Okay. So would you agree with me, then, right, if any amount – if any amount came in for strategic risk – any amount at all – then you would have – had been announcing a number that was gonna be coming in more likely to be less – more likely to be over 6.2 billion than under?

It was really lower than a P50 confidence number that was being announced to the public, wasn't it?

MR. E. MARTIN: Absolutely not.

MS. O'BRIEN: (Inaudible.)

MR. E. MARTIN: Absolutely not.

MS. O'BRIEN: How – just following that logic, the math –

MR. E. MARTIN: Yeah, once again, I get back, you know, there was a $2.4 billion buffer in CP – so you're gonna start in down that path, you got to start adding in some of these other factors, the funding factors. You know, we had a new pool of cash, we had excess sales, we had those things. So –

MS. O'BRIEN: I'm just talking about –

MR. E. MARTIN: – absolutely not.

MS. O'BRIEN: – the cost of the project that was announced to the people of the province at sanction. That's what – the number I'm talking about – the 6.2.

And I'm putting to you that you knew at that time that that number had –

MR. E. MARTIN: No.

MS. O'BRIEN: – less than a 50 –

MR. E. MARTIN: No, no, no.

MS. O'BRIEN: – per cent likelihood of being met. Well –

MR. E. MARTIN: I just explained and –

MS. O'BRIEN: – (inaudible) followed all the logic –

MR. E. MARTIN: – and I just explained why and the public was also aware that there was, you know, excess sales, those types of things. The – you know – it – you know – it was out there, what the elements were.

And as I said, when I handled strategic risk in the fashion that I did, from what was available to fund, I don't accept the fact that, you know, we're gonna be in a situation where this is less than the P50. You're gonna have to start adding in, you know, cash on this type of thing and go public with the strategic risk, which I didn't believe was the right thing to do for what I discussed before.

MS. O'BRIEN: I put it to you that was not your decision to make. That was the decision of the government's to make, what to go to the public with. Isn't that true?

MR. E. MARTIN: In the final analysis, the government would have, you know, would have the decision on everything, if you wanted to look at it that way, absolutely.

MS. O'BRIEN: But they'd have to be fully –

MR. E. MARTIN: But I –

MS. O'BRIEN: – informed.

MR. E. MARTIN: – I would've recommended (inaudible) –

MS. O'BRIEN: They would have to be fully informed, Mr. Martin, to be able to make that decision properly –

MR. E. MARTIN: They were –

MS. O'BRIEN: – wouldn't they?

MR. E. MARTIN: – fully informed. I just explained that, again and again.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And how I explained it, I've explained that again and again.

So I do not accept what you're suggesting there, and I do repeat that I explained to the government everything I just mentioned, constantly.

MS. O'BRIEN: Okay.

So, would you agree with me looking at this slide here, that this slide here, which is what we know with – this is what was communicated to government certainly in writing. It says – here's the notes: These numbers exclude interest during construction, it includes contingency and escalation. Nowhere here does it say: It excludes strategic risk.

Doesn't say that, does it?

MR. E. MARTIN: No, it doesn't.

MS. O'BRIEN: It doesn't say it –

MR. E. MARTIN: I mean it's obvious –

MS. O'BRIEN: – it excludes –

MR. E. MARTIN: – it doesn't say that.

MS. O'BRIEN: It's obvious that it excludes strategic risk?

MR. E. MARTIN: It's obvious that – you're reading off a page. I mean, you know, if you got a question – I mean, you're reading off the page. I have to say yes if the words are there. I can read English as well as the next person.

What's the question? It's gonna come around to I'm gonna explain again how I explained this to the province and to the board and that's gonna be my answer.

MS. O'BRIEN: Would you not agree with me that if you weren't including strategic risk, if you weren't including contingent equity, it would've been much clearer to communicate to that to the government, to put over their note: Excludes strategic risk.

Do you not agree with me that that would've been a clearer communication to the government?

MR. E. MARTIN: Don't agree. I was clear.

MS. O'BRIEN: Okay, can we go to page 17, too, please.

So this is again, what does this estimate not include, and again, here's another – where you're going in well – it doesn't include. Again, I'm just noting, it – you don't say anything here about strategic risk or anything about contingent equity.

Correct?

MR. E. MARTIN: I absolutely do.

MS. O'BRIEN: Okay.

MR. E. MARTIN: "Return on Equity to NL net of financing costs of" 700 to 800 million.

MS. O'BRIEN: (Inaudible.)

MR. E. MARTIN: "Incremental tax revenue of" 100 to 150 million. That's exactly what we would be talking about in terms of, you know, strategic risk and what ability you had to fund. These are the exact elements that we would be – some of the elements that we would be discussing.

We weren't – we were saying that these amounts, you know, would also – we had to be clear that these types of amounts were not being netted against the cost. They were available.

MS. O'BRIEN: Wouldn't it be with – if there was going to be return on equity to the province, that would be – from this, right? This doesn't say you're gonna get a return on equity, but by the way you're gonna have to spend it to fund cost overruns, right?

Doesn't say that.

MR. E. MARTIN: Doesn't say it here –

MS. O'BRIEN: No.

MR. E. MARTIN: – but I said it.

MS. O'BRIEN: You said it, and –

MR. E. MARTIN: Yeah.

MS. O'BRIEN: Okay, so, Mr. Kennedy, who had this presentation, he didn't give that evidence.

But you're saying that you told the government they'd have to take that 700 to 800 million and they'd have to put that back in to cover the cost overruns?

MR. E. MARTIN: I did not say it like that.

I said that: 6.2 billion is the number that I have confidence in, and I said: Over and above that 6.2 million – sorry – billion, we have to be aware that some things, something else could happed that could bring it higher than $6.2 billion.

And they would request: How much? And I would say: I don't know – by the nature of it, it's unknown. But I said: Let's look at it this way: that's step one – let's lay out the numbers that you would have available to fund that if it happened, if it happened.

And that's what this type of numbers look like, and some other things included as well, and as I mentioned to you, I didn't give a specific number, but I would not – I won't repeat the range again, but I, we were thinking in the lower end on what had happened in discussion.

But once again, that's where I am on this, and this demonstrates to me that we were talking about it again.

MS. O'BRIEN: Okay.

Mr. Kennedy's evidence is that he was aware that there was in the analysis – even with the 6.2 billion – there was going to be a bump in the electricity rates caused by the Muskrat Falls Project.

Do you recall that? The analysis showed an initial bump in rates?

MR. E. MARTIN: Are you asking: Do I recall Mr. Kennedy saying it or do I recall (inaudible)?

MS. O'BRIEN: Do you recall that there was initially – the analysis showed there was going to be a bump in rates when Muskrat Falls came online?

MR. E. MARTIN: Commissioner, yes, I do recall that. But, Commissioner, I will add is that that bump went away prior to sanction with respect to the final decision – is my – well, I'll take that back, 'cause I'm going from memory.

The bump was significantly reduced or almost not there at the time of sanction, but I'd have to see the numbers again to be able to verify exactly what the change was.

MS. O'BRIEN: So Mr. Kennedy was – that there was discussions that some of these benefits – the rate of return, et cetera, the return on equity could be used to help with that to rate smooth over that bump.

I'm going to just ask you one –

MR. E. MARTIN: If you – now just, Commissioner, if you do that, though, if you use this, these elements of funding to smooth the bump – it's exactly the same thing as reducing the cost of the project – okay – from a capital perspective.

MS. O'BRIEN: Yes, but they understood to have to do that on 6.2 billion.

Mr. Kennedy's evidence was not that – he understood that there was going to be significant cost overruns that this money would have to be used to fund as well.

MR. E. MARTIN: Well, I'm not going to repeat myself.

MS. O'BRIEN: Okay.

MR. E. MARTIN: I refer to my previous commentary – I would say the same thing.

MS. O'BRIEN: Okay.

One final question I'm going to put to you on this topic was – if you had members of government asking you: Look, how much – why didn't you, at the very least, say: Look, I can't tell you for sure how much? But look – we asked our risk consultant to do an analysis of the management reserve. That's one of the things we asked Westney Consulting to did – to do – and here's the work that they did. Now they said 497 million; I wanna show you that, I wanna be transparent here and I wanna talk to you about the puts and takes and whatever. Why not at least give them the information and have a discussion on it?

MR. E. MARTIN: Well, point number one from my information, the number – that number had been mitigated, A. B, it just wasn't the way we handled the risk process throughout the project. That was handled – the risk management process, the associated work, preparation, paperwork, reports, it was ongoing and it was handled within Nalcor, within the project team. And that's the way we did it all the way through.

And I was comfortable – again, repeating myself, but I was – I, you know, I addressed what could happen over 6.2, I was crystal clear on it and I was crystal clear on the funding elements of it and I did not feel – or I felt that they had the information, you know, to understand, you know, what was available to cover things that we weren't expecting and that things that were – that we could not expect, could happen. I was – made that crystal clear.

MS. O'BRIEN: So I'd like to go back to P-00130 now, and look at some of the risks that were not included in Westney's analysis. So these are risks that were not quantified by Westney, and if we go to page 145 of that document, please.

MR. E. MARTIN: What binder is that in again?

THE COMMISSIONER: That's the common exhibits again.

MR. E. MARTIN: Binder –

MS. O'BRIEN: And that would be –

MR. E. MARTIN: – 4?

MS. O'BRIEN: – binder 4, tab 16.

MR. E. MARTIN: I missed the page number as well, Ms. O'Brien.

MS. O'BRIEN: Page 145.

MR. E. MARTIN: And you're going to ask me about these risks here?

MS. O'BRIEN: Yes.

MR. E. MARTIN: If you – yes, let's do it. If you were interested in expediting I wouldn't be involved in the detail at this level so my responses will possibly be limited but it's up to you.

MS. O'BRIEN: Oh, that's fine.

So these are evidence we've heard that these risks were not – these are risks that were considered by your project management team to be fully mitigated. And so they were not included in Westney's analysis; and the first one here has to do with "Organizational experience and resources for a project of this size." And one of the ways that this risk was considered to be essentially retired. And this risk really had to do with SNC-Lavalin and one of the ways the risk had been mitigated was by, you know, SNC-Lavalin and other consultants bringing their A team.

So, I think they – the thinking went, we don't have experience on our team at – within Nalcor – a lot of hydroelectric experience; we are – bringing in an EPCM that has a lot of hydroelectric experience. We're going to, you know, round out our team that way. The EPCM is coming; they're gonna bring their A team and that's the way we're gonna mitigate this risk.

Does that generally sound familiar to you?

MR. E. MARTIN: Doesn't – not necessarily. Some of it. I will say, again, I wouldn't be into this level of detail in terms of risk, you know, discussions.

MS. O'BRIEN: We've had a lot of evidence as to – that the project management team was – considered there to be performance issues with SNC-Lavalin over the years of 2011 and 2012. Were you aware of that?

MR. E. MARTIN: Yes, I was aware of that.

MS. O'BRIEN: Okay, and were you aware that there was a decision taken to move from a pure EPCM arrangement contracting strategy to move to an integrated management team contracting strategy?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay, and are you aware that that decision was taken and started to be implemented prior to sanction?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

And was that a – who made that decision? Were you responsible for making that decision, or would it have been somebody else?

MR. E. MARTIN: I can't remember. It would depend upon the AFE approval limitation. If it came to me, I would have signed it based on the project team recommendation. That would be something I would see handled within the project team.

MS. O'BRIEN: Okay.

So, you're – you don't recall making that decision, do you?

MR. E. MARTIN: I can't recall if I had to sign for it or not. It comes down to a financial, you know, limitation, so I don't want to say I didn't sign it because I can't remember.

But I understood this was happening, but it's not something I would have, you know, become deeply involved in. That would have been handled within the project team.

MS. O'BRIEN: Okay.

When you say deeply involved in – would you have done any reach out to SNC-Lavalin, for example? Would you have spoken to anyone at SNC-Lavalin?

MR. E. MARTIN: I have spoken to people at SNC-Lavalin, but I wouldn't have initiated, you know, this arrangement with them. That would have been handled with the project team.

MS. O'BRIEN: Okay, so you didn't speak to anyone at SNC-Lavalin prior to sanction about performance issues?

MR. E. MARTIN: Yes, I would have had a discussion with some of their people. I know their – I had a discussion with their president regarding – from my recollection, not as much performance issues, but SNC-Lavalin was having some issues, you know, themselves –

MS. O'BRIEN: Okay –

MR. E. MARTIN: – internationally at the time –

MS. O'BRIEN: – who was that? Who was –?

MR. E. MARTIN: It was Bob Card.

MS. O'BRIEN: Okay.

MR. E. MARTIN: Mr. Card.

MS. O'BRIEN: Now, we know you met with Mr. Card in 2013; are you saying you spoke to him in 2012 as well?

MR. E. MARTIN: I can't remember now, to tell you the truth. I'd have to check calendars and everything else.

MS. O'BRIEN: Do you recall meeting him? I can tell you for sure you met with him in 2013.

MR. E. MARTIN: Yeah.

MS. O'BRIEN: Did you – how many times do you recall meeting with Mr. Card?

MR. E. MARTIN: Well, actually I – in my testimony, I think, I said once and then, I think, I followed up and I – either I've heard evidence or something had been produced that we had – we had met another time at a dinner, which I can't remember but I wouldn't dispute, because I (inaudible) was.

MS. O'BRIEN: But these are 2013 meetings, are they?

MR. E. MARTIN: I can't remember to tell you the truth.

MS. O'BRIEN: Okay. So, we'll get – we'll confirm that evidence. So you have no –

MR. E. MARTIN: Sorry. Actually, I'll have to take – well then, I'll have to adjust, because I'm just not good on the dates of those meetings but that's what I was thinking about. In 2012 when I had discussed that with – in the context that I did meet with them in 2012, I can't tell you if I did or not.

MS. O'BRIEN: Okay. So, here's the issue that I want to put to you, is that the project management team is having significant issues with SNC-Lavalin in 2012 and they're in the process of changing contracting strategies and their – one of their frustrations is that SNC-Lavalin is not bringing its A-team – that they don't have the right people on the ground – that the people who are on the ground aren't familiar with the tools they need to be and, you know, Mr. Harrington has gone over the evidence in detail but, you know, there was – they were having the – a lot of these issues.

So, the first question I put to you that – look, when you're – when you know these changes are happening – they're active – this is problems that are ongoing – 2011 all through 2012 prior to sanction – how reasonable is it to count zero for the strategic risk of something going wrong outside your control here, with the changing in contracting strategy, given the problems that were being had with SNC-Lavalin?

MR. E. MARTIN: I take my advice from Gilbert and his team on that.

MS. O'BRIEN: Okay. All right.

And prior to making a change – and this is, I would say – put to you, a significant change in contracting strategy, going from an EPCM strategy to an integrated management team strategy – prior to making that change, and understanding that it's the change that's been happening at the request of the project management team, would you not have expected

Gil Bennett, say as VP of the Lower Churchill Project or someone else in the executive level, to reach out to someone at SNC to discuss these issues prior to approving the change?

MR. E. MARTIN: Those are questions best directed to Mr. Bennett and his team. (Inaudible.)

MS. O'BRIEN: I don't know that Mr. Bennett would be able to testify as to your expectations, so that was my question to you.

Would you not have expected that your vice president or someone in your executive, would've made that reach out – sort of executive to executive level?

MR. E. MARTIN: I would've expected them to handle it however they did. That's why they were there.

MS. O'BRIEN: Okay.

Likewise, if we scroll down please Madam Clerk, we can look at –

MR. E. MARTIN: And Mr. Commissioner, just for context again, you know, I don't want to dismiss that as such. That's – once again, the way the company was organized and run. I was CEO of six divisions – vision, values, et cetera – as I mentioned before.

So that, in my mind, once the goals and objectives and such are set, that would be well within the belly work of Mr. Bennett and his team.

MS. O'BRIEN: Okay.

Likewise, the risks here – risk 18 and 19 please, Madam Clerk.

So these risks that have to do – you're at risk 11 there – there we go.

So these have to do with lack of support from Indigenous groups and non-governmental organizations. These are the risks here, and again, these are ones that we've questioned Mr. Bennett on as well and Mr. Harrington and Mr. Kean.

We understand these were assessed at zero. I just want – and maybe your answer is going to be the same that this is something you would've left solely to the project team.

But there is evidence before the Commissioner that prior to sanction, you know, the JRP report had come out. Its recommendations had not been fully accepted by Government of Newfoundland and Labrador.

Are you aware of that?

MR. E. MARTIN: Yes, I'm aware of that.

MS. O'BRIEN: Okay, and Nunatsiavut government and other organizations had expressed unhappiness that not all the recommendations have been accepted.

Were you aware of that?

MR. E. MARTIN: I can't recollect that from that time, but I've heard some evidence since.

MS. O'BRIEN: Okay.

And you know, you'd had your first site disruption on the site with someone going up on the North Spur.

Do you recall that?

MR. E. MARTIN: Not in particular, but I had been involved in some of those myself. So I just can't recall the timing.

MS. O'BRIEN: Okay.

And there was at least that one judicial review still before the courts, no decision yet and there was the possibility for more judicial review applications to be made because more were made in the future.

MR. E. MARTIN: I don't dispute that, but I just want to add – I mean, Mr. Bennett and his team would be handling this. I would not be into the day-to-day, you know, handling of these things.

So, I don't just want to dust it off and say: No. But I just would not be following that –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – that closely.

MS. O'BRIEN: And in light of all this, I – can you – and are you able to give any comment about your view on how reasonable it was to account for strategic risks – for these types of risks to be zero – in light of all those facts that I just reviewed that that were going on prior to sanction.

MR. E. MARTIN: So I would defer to Mr. Bennett and his team on that.

MS. O'BRIEN: Okay.

So you don't have any view?

MR. E. MARTIN: No, I have a view that – they would delegate it and I would trust their approach.

MS. O'BRIEN: So whatever they said would be fine with you?

MR. E. MARTIN: Yes. In this context, yes.

MS. O'BRIEN: Okay.

The other – if we go down – if we could go to risk 8 please, Madam Clerk.

So this is a risk about scope change – oh no, sorry, page 150. Okay.

So this is a project scope change. So I understand that a scope change was something that was covered, you know, by strategic risk.

Were you aware of that?

MR. E. MARTIN: I'd have to check the definitions. So I'm not gonna comment on that.

MS. O'BRIEN: Okay. So you have no – okay.

So I'll put it to you – the evidence that we've had – say from Mr. Kean – was that any changes that were outside the, you know, the current bounds of the project – so, you know, increases in scope – would have been accounted for by strategic risk, but the decision of the project team was that this – that there – that they didn't need to hold anything in a strategic reserve for scope changes at the time of sanction.

Were you aware of that?

MR. E. MARTIN: Not directly, no.

MS. O'BRIEN: Okay.

And are you aware that ultimately there were some scope changes that added to the cost of the project?

MR. E. MARTIN: Yes, I am.

MS. O'BRIEN: And were you aware at the time that scope changes are one of the leading causes for cost overruns on megaprojects?

MR. E. MARTIN: I knew scope was, you know, was always something that could drive it. And I was, you know, encouraged by the amount of engineering that had occurred, and had been assured by the project team that from – particularly from the – I think particularly from the – if I can remember – the Muskrat Falls generation site that they were comfortable that they had their hands around the scope there. That's just some background.

Frankly, once again, Mr. Bennett and his team would be handling this, and I'm just speaking from some dialogue I may have had with him at some particular time. But I would not be dipping into – be running this division any more than I would any other.

MS. O'BRIEN: So at the time of sanction, you said that you were, you know – you had considered that there still might be other risks out there that could materialize.

What types of things were you thinking about?

MR. E. MARTIN: Well they're unknown – so – by definition, I wouldn't know them.

MS. O'BRIEN: But would you turn your mind to think about what types of risks? Like, you just – I mean – would you have not given any thought to the types of risks that may arise and cause overruns on your project?

MR. E. MARTIN: Now, as I said, I approached it from, you know, the ability to fund such things. And speculating the unknowns really is just not something I find of value. It's – you know, the ability to fund is the critical part.

And I can't say I turned my mind to any detail about what unknowns could be. It just doesn't seem logical.

MS. O'BRIEN: So, you are recommending the government to go ahead and sanction a $6.2 billion project and you're the CEO of Nalcor who is undertaking that project, and it didn't seem logical to you to sit back and think about what types of risks may arise and cause your project to go over budget or over schedule?

MR. E. MARTIN: No, that's a going point. And, I mean, it would've been like – it could've been geotechnical events in terms of, you know, some form of earth movement in Labrador. It could be some form of general strike, you know, from a labour perspective, you know, driven across a region, more so than a spot that, you know, we could not anticipate or control.

In my mind, it would be things that, you know, we couldn't reach out and put our arms around, and we would have to be subject to it if it occurred.

MS. O'BRIEN: Okay. Any others that you considered?

MR. E. MARTIN: I just can't think of them right now.

MS. O'BRIEN: What about things like really bad weather events? Is that something you might've considered?

MR. E. MARTIN: It's reasonable to assume a really bad weather event. That's a possibility.

MS. O'BRIEN: What about your mitigation methods not working as expected? I mean, is that something you considered? Look, we're putting all this, you know, work into mitigation, but we might not be successful.

MR. E. MARTIN: Absolutely. That's the unknown. That's the definition of the unknown. So, I mean, we're headed down into the (inaudible) world here now that – yeah, absolutely.

MS. O'BRIEN: Okay. So, even for all the risks that you, you know, considered mitigated in your mind, you knew that there was the – there was a risk that the mitigation measures wouldn't work?

MR. E. MARTIN: Absolutely. I've said that a dozen times, at least, that something over 6.2 could happen. I know – I'd been – I continued to repeat that.

MS. O'BRIEN: Okay.

So, let's talk about the role that external reviewers played on the project.

MR. E. MARTIN: Are we finished with this binder?

MS. O'BRIEN: Yes.

MR. E. MARTIN: I'm ready.

MS. O'BRIEN: Okay.

External reviewers – is it fair to say that they played an important role in providing checks and balances on the decision-making?

MR. E. MARTIN: Yeah, I think they were helpful, and I think, you know, their input was considered and we found it useful.

MS. O'BRIEN: Okay, important role in providing checks and balances?

MR. E. MARTIN: As I mentioned earlier, it depends where we go with checks and balances. I don't believe consultants run the company: I believe the company runs the company. So as far as using them to check, you know, and balance decisions we were making – yes, they were helpful to do that. But they certainly were not making the decisions.

MS. O'BRIEN: Okay, no. Would they be good to provide a fresh eyes to the work that the project –

MR. E. MARTIN: Yes.

MS. O'BRIEN: – team was doing? Okay.

All right, so I'm gonna look – if we can please bring up – this is at tab 36 of the binders before you – and that's going to be volume 2. P-01183, please, Madam Clerk.

THE COMMISSIONER: That's going to be in the general binder (inaudible) –

MS. O'BRIEN: No, I believe it should be in Mr. Martin's own binders – P-01183, tab 36 is my note, Commissioner, volume 2.

MR. E. MARTIN: At tab 36 –

MS. O'BRIEN: Yes.

MR. E. MARTIN: – volume 2. I may be off a bit there. Volume 2 – I'm at the –

MS. O'BRIEN: Are you in the general binders or the Ed Martin binders?

MR. E. MARTIN: Ed Martin binders.

MS. O'BRIEN: Okay. My note is Ed Martin binder volume 2 should have tab 36.

MR. E. MARTIN: It has tab 36 and it's excess power capacity.

THE COMMISSIONER: Yeah, that's not the same one.

MS. O'BRIEN: No, it's definitely not the same one. Let me just look here. The one up on the screen is right. So let's just look.

THE COMMISSIONER: And it doesn't appear to be in the list.

MS. O'BRIEN: No, it doesn't seem to be in the list. So you'll – it's only one area we're going to.

This is a draft document, Mr. Martin. So this is not the final version. This is a draft of the Decision Gate 3 deliverables list. So you'll see here this was at B1, but it's not ultimately the document that was implemented.

But I'd like to go to page 14, please.

So in the initial draft of the DG3 deliverables, this is the list of third party reviews that was there. So we have an IPA review for DG3, an IPR review for Gate 3, the PUB review completed on the DG2 decision, a Navigant DG3 review, and a cold eyes review of the DG3 cost estimate.

So we've already discussed a little bit about IPA, and we're gonna come back to it in just a moment, but I just want you to look at this and I'm gonna take you now to the final version.

Or maybe I'm not going to do that right now, 'cause I don't have a hearing clerk. So –

THE COMMISSIONER: Where did she go?

UNIDENTIFIED MALE SPEAKER: Getting a glass of water.

THE COMMISSIONER: Oh, here she is coming back now.

MS. O'BRIEN: No problem.

If we could go, please, Madam Clerk, to 01185.

So here we see, you know, five reviews – Navigant DG3 among them, IPA among them. And this is the same document, final version, Mr. Martin, so you can see everyone has signed off.

And if we could go to page 12, please, Madam Clerk.

And here we're down to just two reviews. Here we have just the Independent Readiness Review, which I understand is the IPR, Independent Project Review – team review, and the MHI review that was ultimately done by the Government of Newfoundland and Labrador.

So first question for you is: Why were the number of third party reviews reduced?

MR. E. MARTIN: I don't know.

MS. O'BRIEN: Okay.

So, now, everybody else has testified that this would've been your decision and your choice. So this is – came from the project management team; they said clearly this would be for the Gatekeeper. Ed – or Gilbert Bennett has testified that this would've been your call.

And your answer is you don't know. So that leaves –

MR. E. MARTIN: (Inaudible.)

MS. O'BRIEN: – us hanging a bit.

MR. E. MARTIN: I just can't recall, you know, I didn't prepare these documents. It'd be very useful to talk to Gilbert and company about it to see –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – but I just can't recall.

MS. O'BRIEN: Okay. Well, we've already questioned them on it. Okay.

So I'm gonna put something to you that came from Richard Westney's testimony. He testified in terms of project assurance and due diligence, so he – I think he understood those – he was using those two words interchangeably a bit.

Is that, you know, consistent with your understanding of project assurance?

MR. E. MARTIN: "Assurance" and what was the other word again?

MS. O'BRIEN: Due diligence.

MR. E. MARTIN: They're certainly related.

MS. O'BRIEN: Okay.

So he said: Look, if you're an oil company about to sanction a project, he suggested, if you assume that the level of project assurance or due diligence would be a level 10, that an oil company would wanna make before it decided to go ahead with a Hebron or whatever. He said when you're looking at a Crown corporation, particularly when it's a utility, you know, utility decision – so it's gonna be borne by ratepayers and such – he said you would expect a higher level of project assurance and he put it up to a 15.

So I don't think there's any magic to the 15 and the 10. The point being is that you would expect a higher-level assurance for a Crown corporation, a hydro project – the type of project we had here with the Lower Churchill Project.

Do you agree with that?

MR. E. MARTIN: Do I agree with – no, I just don't know. I mean, what kind of scale are we talking about? Can you rephrase the question, maybe try it again? It just didn't seem to make sense to me.

MS. O'BRIEN: Okay.

MR. E. MARTIN: Do I – go ahead.

MS. O'BRIEN: Would you agree that the amount of project assurance, due diligence that should be done – that should've been done for the Lower Churchill Project is higher than what one would expect an oil company to do when it was – when it's sanctioning a project?

MR. E. MARTIN: No, I don't.

MS. O'BRIEN: Do you – would it be any less or would you put them at the same?

MR. E. MARTIN: Put them at the same. It's a professional arrangement. You do your same work in any event.

MS. O'BRIEN: Okay.

So can we please go to P-00807?

THE COMMISSIONER: Yeah, that one will be on the screen or, alternatively, in the (inaudible) binders. I'm not sure.

MS. O'BRIEN: Yes. And I'm just – I apologize, Commissioner, I can see here I'm missing a cite, which I'll probably get on the break, so I may – if this document doesn't come up as the one I'm expecting. Okay. So this is a decision note – no, this is not the document. I'll get that after the break. My apologies, Commissioner.

I'm gonna talk a bit about IPA now, because I can do that quickly. We did look at, initially, in the first DG3 deliverables document you were –

it was listed there that you'd be getting an IPA review for DG3. You had an IPA review done for DG2.

Why wasn't – why didn't you engage IPA to do the review at Gate 3?

MR. E. MARTIN: I have no recollection of that.

MS. O'BRIEN: Okay.

So Mr. Bennett and others have testified that it would've been your decision to make. So you're saying you have no recollection of it. Would you agree that it was your call to decide whether or not to bring in IPA to do a review of Gate 3?

MR. E. MARTIN: Generally, the project team moved ahead with that stuff, and I received the results as they happened, so …

MS. O'BRIEN: But you – okay.

Were you aware that the project management team had suggested edits to IPA's key findings in their DG2 report?

MR. E. MARTIN: Not at the time, but I've heard some testimony since.

MS. O'BRIEN: Okay.

So, would – I can bring up the document, but do you acknowledge these were edits that weren't just fact-checking edits, or providing additional information as – they were edits that, kind of, went beyond that to changing the messaging of the IPA opinion?

MR. E. MARTIN: Well, we better pull them up in that case.

MS. O'BRIEN: Okay.

Let's go to P-01174, page 5. And it will just come up on your screen here 'cause it's not in your book.

MR. E. MARTIN: (Inaudible) –

MS. O'BRIEN: These edits were not, ultimately, accepted.

MR. E. MARTIN: Okay –

MS. O'BRIEN: They were rejected by IPA.

MR. E. MARTIN: So – okay.

MS. O'BRIEN: But the – but when we look at – these are the suggestions that were being made, and you can – I'll just give you a moment to look at them here. So, this was the wording that IPA had used –

MR. E. MARTIN: But if they weren't accepted, was there any rationale to look at them?

MS. O'BRIEN: Well, the –

MR. E. MARTIN: I wouldn't – you know, if they weren't accepted, okay, they weren't accepted.

MS. O'BRIEN: Okay.

Is – what are your thoughts on your project management team suggesting edits to third-party review, independent reviewer-type consultants – suggesting edits that would change or massage, shall we say, the message of their opinion?

MR. E. MARTIN: That would be within the project team's purview. And my experience over the course of my career is – it's, you know, reviewing reports that come in between the folks that commission the report and the folks who did the report – it's a well-known process.

I know that the project team members that I dealt with had been through that many times before and, you know, my initial reaction would be, I would support them on what they were doing. They knew the business, and I wouldn't dip into the middle of that.

MS. O'BRIEN: Okay.

Do you see any distinction between, you know, suggesting edits that go to, you know, factual – you've got the facts wrong here, or look, you might not have considered, you know – changes – or, look, have you considered this other information, or were you aware of that – those types of changes.

Do you see any distinction between that type of change and the type of change that is just to change the messaging of the finding or the conclusion?

MR. E. MARTIN: I don't see a big difference. You know, the contractor comes in, or the consultant comes in; they have a discussion, things are proposed, the consultant can accept them or not, and move on.

MS. O'BRIEN: Okay.

MR. E. MARTIN: It's an ongoing process. Keep moving.

MS. O'BRIEN: And do you see any distinction between consultants who were hired to work along with the project management team to do some substantive work on the project, versus consultants who were hired to come in and give a, you know, third-party independent review of the project management team's work?

MR. E. MARTIN: I guess my answer's not particularly; I mean, this would be a project team undertaking. They've been through the processes before and, you know, I would think that, you know, what they're proposing would have a rationale and a reason and if the consultant accepted it, fine, if they didn't, fine, as I said, keep moving.

MS. O'BRIEN: If the rationale or the reason was to take a message that was negative or slightly critical of the project management's teamwork and the suggestion was to lessen the negative impact of that finding or recommendation, does that give you any concern?

MR. E. MARTIN: Not at all. There would be a reason for it; so, just handle it.

MS. O'BRIEN: I guess the reason would be that the project management team felt that the work that they did was correct and wasn't – didn't merit the criticism?

MR. E. MARTIN: That's one option.

MS. O'BRIEN: Okay.

And so I take it you put a lot of – you know, put a lot of weight on the integrity of the consultant, so that if they don't agree with the change, they wouldn't make it; like IPA did.

MR. E. MARTIN: Sure.

MS. O'BRIEN: Okay.

Any concern – I mean, we're talking about consultants who very often do multiple engagements for the same client – give you any concern that there's pressure on consultants that if they get these kinds of suggestions from their client, if they don't go along and make the change that they'll risk not being hired back to do further work?

MR. E. MARTIN: I don't. I mean, I've listened to some of the testimonies and what's happened over the last couple of months and frankly, I think, you know, this issue is someone's trying to make a mountain out of a molehill. It just doesn't fuss me. It's, you know, it's the way things happen and it's part of the process and as I said, I wouldn't get involved with the project on that they're – they know what they're doing.

MS. O'BRIEN: Can you see that there could be any – that the – there could be integrity added to the process that – you know, the integrity could be increased if the people who's work is being reviewed don't make suggestions that would, you know, water down or spin criticisms of their work. If they didn't make those kinds of recommendations to what was given to them as the findings or conclusions of the reviewer.

MR. E. MARTIN: I think the integrity's improved by the interaction.

MS. O'BRIEN: Okay.

So, ultimately, IPA was not brought back for Gate 3, and you don't know the reason why, and you would have left this to the project management team, is that fair to say?

MR. E. MARTIN: That's fair to say.

MS. O'BRIEN: Okay and the project management team's evidence is that it would have been up to you. So, that's where that one, I guess, is. Okay let's look at Navigant. Now, I understand that Navigant was initially responded for an – to an RFP and that was to do a scope of work – to do a – review work at Gate 2 as well as review work at Gate 3. Were you aware of that?

MR. E. MARTIN: No. Once again I wouldn't have been heavily involved in the – contracting the Navigant situation. I would have obviously known it was going on. I would – I was – I would have fully supported it. Thought it was a great idea, but I wouldn't be involved in the day to day, you know, RFP and selection and preparation of that report.

MS. O'BRIEN: Okay. The – I won't bring up their scope of work, we've already reviewed it before; but I will bring up the report itself. P-00042, please, Madam Clerk. And it's just one paragraph I'm going to take you to in this report and I don't believe it's in your binders.

THE COMMISSIONER: It's not.

MS. O'BRIEN: But it'll come up on the screen and it's not – it's only one small part. Page – so this is the report that they did for Gate – they did it after Decision Gate 2 had passed but they did it, as I understand it, a work to go before the PUB.

So, if we go to page 7 there. So the second paragraph here of their report does reference that they will be back. "Navigant will provide a second report using DG3 project costs and schedule information as input to the DG3 decision."

So, they contemplated that in their report, and we looked at that – the first list of the DG3 deliverables and Navigant was on that list. Do you know why you – the decision was ultimately made that Nalcor didn't have Navigant back to look at the DG3 process?

MR. E. MARTIN: No. I don't, specifically. I don't specifically. I was going to make – I can't say. I know that with MHI coming in, you know, on the PUB review and the MHI following review – I guess I'm speculating a bit, but there comes a point when you got to stop reviewing and start doing. And I would like to think that probably had been enough reporting of this nature at the time. I am speculating a little bit.

MS. O'BRIEN: So, when you say enough reporting of this nature at this time – just – can you explain to us what you're referring to?

MR. E. MARTIN: What – if we had – you know, if we had an MHI looking at, you know, these types of things once or twice. If we had other folks in the PUB process looking at things once or twice I would, you know, I would – I know I would begin to believe we got to – you know, we got to start moving and stop evaluating because we have a lot of stuff happening from the evaluation perspective.

So I would think that would probably be it, but I really can't fully remember.

MS. O'BRIEN: Okay.

So you just mentioned MHI. So we do know that the PUB report was submitted on Friday, March 30, 2012. It's in evidence. And we know that government ultimately retained then – MHI had been retained by the PUB to do work at Gate 2. And we know that government ultimately retained MHI to do an analysis of the DG3 numbers. So I'm going to bring you to – I think it's at tab 91 of your – which should be volume 5 – P-01237 please.

MR. E. MARTIN: Tab number again please?

MS. O'BRIEN: Ninety-one.

MR. E. MARTIN: (Inaudible) series of notes here?

MS. O'BRIEN: Yes. So these are Jerome Kennedy's notes. And this is a meeting April 1, 2012. And he records you as being at this meeting. And this would have been a weekend. I believe it would have been a Sunday. And the PUB report would have been filed late that – the previous Friday night.

Do you recall attending this meeting? I'll tell you Robert Thompson is there, Kathy Dunderdale is there, Brian Taylor is there, Glenda Power is there, you are there, Charles Bown is there and Jerome Kennedy is there.

MR. E. MARTIN: I don't remember, but I'm sure I was.

MS. O'BRIEN: Okay. Now, this – the evidence is that at this meeting it was decided to hire MHI to – it was decided the government would hire MHI to do the DG3 review. And this is the note here: "We decided to hire same expert as" – I think – "same expert PUB went to." That's Mr. Kennedy's note there at the side.

MR. E. MARTIN: We decided to – difficult to read, isn't it?

MS. O'BRIEN: Yeah. "We decided to hire same expert PUB went to." Just want to – do you recall this discussion? Do you recall this decision being made? Did you have any involvement in the decision?

MR. E. MARTIN: I can't recall the meeting. Obviously it happened, so from that perspective it's obvious, yes. MHI was hired to do –

MS. O'BRIEN: So you don't recall –

MR. E. MARTIN: – (inaudible).

MS. O'BRIEN: – having any input into this decision or who made the decision or what the discussion was at the time?

MR. E. MARTIN: Not necessarily. I was at the meeting, and, you know, I participate in meetings. But I just can't speculate on what I said.

MS. O'BRIEN: Sure.

MR. E. MARTIN: But I would have supported the decision or else I would have definitely – well, I assume, according to these notes, it would've been recorded. But, generally speaking, I would've supported the decision on behalf of the province.

MS. O'BRIEN: Okay. Did – and you may have already addressed this when we were talking about Navigant a few minutes ago, but did the Government of Newfoundland and Labrador's decision here to retain MHI influence that your – Nalcor's decision not to hire back Navigant?

MR. E. MARTIN: Can't remember.

MS. O'BRIEN: Okay. That's fine.

MR. E. MARTIN: But it probably did just for the reasons I mentioned

MS. O'BRIEN: Okay. So we've had lots of evidence around MHI's scope of work. First of all, I'll just ask you straight up: Were you aware that MHI did not do any assessment of strategic risk or schedule risk?

MR. E. MARTIN: I couldn't recall that, but I've heard the evidence, since, at this Commission.

MS. O'BRIEN: Okay.

MR. E. MARTIN: So I'm mixing a few things here, Commissioner. You know, I'm not sure if it was then or now, but my understanding from what is – happened and – recently and what happened then is that there were discussions on that. I did participate in them. I was bringing forward, I expect, the project team's view about the timing issues and what could be accomplished within the time frame. And I would've, you know, suggested, you know, if you – if we don't want the, you know, schedule to be totally adversely impacted, something had to give, and I would have been representing the project team's viewpoint on that.

And my understanding is that yielded the risk analysis not being part of the MHI review because it wasn't ready to go. It was my – is what I recollect or have heard over the past testimony, and that's what happened.

MS. O'BRIEN: Okay. So I'll just go to the notes on that. If we could just go to page 10 of this exhibit, please, Madam Clerk?

So the evidence we have today is – this is the meeting, according to Mr. Bown – Charles Bown – where the decision was made. The discussion was that MHI would not be able to review the risk analysis work. Again, you're recorded as being at this meeting with Brian Taylor, Robert Thompson, Glenda Power, Charles Bown and Jerome Kennedy.

Now, the notes here are pretty sparse. It just says June 7 cut-off. May 18 for group. Risk analysis, contingent backup. So there's not much there. You may have already given your best recollection of this meeting, but in the event that these notes have sparked further memories for you, I'll give you an opportunity to advise the Commissioner of those.

MR. E. MARTIN: It hasn't necessarily, no.

MS. O'BRIEN: Okay.

So now, ultimately we know that the strategic risk work and the schedule work was ready and available prior to MHI finalizing their report. What was – you know, but it wasn't provided to MHI. What was your expectation with respect the information that the project management team would provide to MHI?

MR. E. MARTIN: Well, during the process review when it was happening, you know, I would have – my view, my principal would be give them whatever we got, help them out. You know, sit down with them, you know, get through this as fast as you can, and I think I would have said don't – what would the words be – don't let them, you know, flounder around, you know, direct them, help them with the information and give them whatever we have.

As far as this leading down to the risk analysis, my recollection, coupled with what's happened over the past several weeks, I would have – I would be thinking that it wasn't available when they did the review and, you know, they weren't called back in near the end to take a look at it from that perspective. I would not necessarily be aware of that, but I could understand and see and, you know, and support that if that's what happened, because I would have also been thinking about getting the report done and out, and we also had Westney and others who were working through the risk piece with us.

So that's sort of a combination of my past recollection, what I've heard over the past few weeks and my thinking about it.

MS. O'BRIEN: Okay.

So I just want to put something to you because, you know, we have talked about this before, and I'm not suggesting that this is an inconsistency –

MR. E. MARTIN: Mm-hmm.

MS. O'BRIEN: – in your evidence today, but I do want to put something to you because, you know, we talked about it before, and you had said, you know, your instructions were to give MHI unfettered access to everything. Is that fair to say?

MR. E. MARTIN: That's fair to say, yeah.

MS. O'BRIEN: Okay.

And you said, you know, that's the mandate I gave them, meaning the project team, you know, total open book.

MR. E. MARTIN: Yes, you're right I did say – that's right – you know, that was in the context of basically, you know, I was leaving the – giving them the idea of be open –

MS. O'BRIEN: Yeah.

MR. E. MARTIN: – you know, participate.

MS. O'BRIEN: And I'm not saying that what you've just said then that I necessarily see as inconsistent with that, but Mr. Harrington has testified, essentially, that he didn't provide the work to Westney and that he would not have provided it, he wouldn't have volunteered it, he wouldn't have provided it unless they specifically came looking for it, and he just said, you know, that's not my place to volunteer things.

And I'm wondering do you, you know, do you see any inconsistency in Mr. Harrington's view of: I wouldn't give it if they didn't specifically ask for it and your mandate and direction to them – unfettered access, total open book?

MR. E. MARTIN: My answer is: I don't think so. My thinking, Commissioner, is that – probably linked more to the fact that it had decided not to include it. You know, the process unfolded, in which I was preparing to issue a report.

Westney was coming in, we were moving on and, you know, to stop all proceedings to introduce another review into a piece of work that was already going on with respect to time pressures that we were under and the fact it was being covered in any event. I could see where

Mr. – my good friend, his name jumped out of my mind – unbelievably –

THE COMMISSIONER: Mr. Harrington?

MR. E. MARTIN: – Mr. Harrington would be coming from. And I wouldn't say that's totally inconsistent. I wouldn't feel, knowing him, that he would be, you know, not being open or anything else. I think it would be more, you know, more time-driven, rather than introducing something and – extra at that point.

That would be my feeling.

MS. O'BRIEN: The result of this is that nobody – there was no independent review of the work that Nalcor did with respect to its evaluation of strategic risk or schedule risk.

Is that correct?

MR. E. MARTIN: Other than Westney was involved.

MS. O'BRIEN: Westney was involved in actually – in developing the work.

MR. E. MARTIN: Right.

MS. O'BRIEN: But in terms of an independent, you know, a third party review, an independent, fresh-eyes review – there was nobody who did that work.

Is that not right?

MR. E. MARTIN: Not to my knowledge (inaudible).

MS. O'BRIEN: And I wonder do you have any concerns with that because when we're talking about megaprojects and how megaprojects deal with strategic risk is – when we look at the history of megaprojects and why megaprojects go over budget – it's typically because that risks are not properly anticipated or accounted for.

And here we have a case where of all the things that were reviewed, this really, really – I put it to you – really key piece of work as to how you were managing strategic risk, and how you were managing schedule risk – there was nobody who gave an independent review of that.

Does that cause you any concern?

MR. E. MARTIN: No, it doesn't.

MS. O'BRIEN: And can you explain that?

MR. E. MARTIN: I think in the context again of, you know, when you boil it down to one thing the – you know – this project, from a review perspective, it was a constant series of reviews, constant series of, you know, consultant reports. And that was good, that was the right thing to do. It was certainly more reviewed than any other project that I had been involved in by a huge margin.

And, you know, there had been various work done on everything, including risk, over the course of several years. We had a team who was in the middle of understanding each of those things.

And from that perspective, I was comfortable with the work that was done, the advice I was receiving, and the depth and breadth of all the reports that we had.

And that's my answer.

MS. O'BRIEN: Okay.

Commissioner, that might be a good place to take the afternoon break?

THE COMMISSIONER: Yes, okay. We'll take our break here now.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. Ms. O'Brien, when you're ready.

MS. O'BRIEN: Thank you. Mr. Martin, when we left I put questions to you whether it caused you any concern that – of what I say is some of the most critical work of this project in terms of how risk – strategic risk in particular – and schedule were being managed by the project was the one piece of work that didn't get a independent review. And I understand your evidence is you had no concern.

I'd like to talk to – because there is really – one reviewer did look at least at Nalcor's procedures as to how it was dealing with strategic risk and looked at it at least on a qualitative basis, and that person was John Hollmann. And I'm just going to bring up his report please. P-00610.

THE COMMISSIONER: Again, that's not in your –

MS. O'BRIEN: No, it's not. It'll come up on the screen.

So this is a Validation Estimating report that was done for Jason Kean.

Have you heard any of the evidence on this report so far?

MR. E. MARTIN: I heard some of his evidence, yes.

MS. O'BRIEN: Okay. So are you aware that he was asked to do a qualitative review?

MR. E. MARTIN: I – frankly – could I scan the letter first if I can't get a copy of it just to catch up a little bit here?

MS. O'BRIEN: Sure.

MR. E. MARTIN: Oh, and his report attached to it. I'm not sure what this one is. Is there –

MS. O'BRIEN: It's just the one report on – from him on the estimate.

MR. E. MARTIN: I thought this individual or Validation – I thought they did one for escalation and then this one, which – if this is the other one that he did for Jason – and I – just for openers, Commissioner, I won't have much knowledge of this. I – this would have been something that would have been way outside of my, you know, purview. And when I heard the evidence expressed by Mr. Kean, it appeared that he had commissioned this himself to get some work done with respect to looking at the base estimate.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And that's as much as I really know about it.

MS. O'BRIEN: Okay. We'll just look at some of the findings there. So page 4, please, Madam Clerk?

So these are – sorry, I'm having a little trouble reading here. So here he has – he does raise some concern as to – well, this is actually his first quote, so this is where he says that: "First, it should be noted that while not perfect, the LCP Gate 3 estimate in its current state is one of the best mega-project 'base' estimates that this reviewer has seen in some time." So I'm going to come back to this quote, Mr. Martin, I just want to draw it to your attention here. And this is – he's talking about the base estimate.

Can we then go to page 11, please? Because page 11 of this draft report is where he does make some comments at least quantitatively with respect to the risk management strategy. And he does talk about how the project was dealing with strategic risks, and so he does say things here like: "Weak Logic in Treatment of Risk Cost: What message is sent when no reserves are included for 100% probable risks (e.g. shortages of labor)? If they are 'balanced by opportunities,' then include that in the method; what are those opportunities?"

He refers to "Ambiguous or Confusing Terminology" being used "'Tactical' and 'Strategic' are mistakenly defined as synonymous with contingency and reserves" and he goes on. He makes a number of comments here.

So this is the only third party, independent review we've found that addresses at all how Nalcor was dealing with its risk strategy for strategic risk at least. The evidence is that this report was not circulated by Mr. Kean to anyone else other than Mark Turpin, who worked below him, and to whom he gave the instructions not to circulate it or to leave it lying around.

So I take it you would never have seen this report, is that fair to say?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

Any concern that Mr. Kean is getting this kind of feedback from an independent reviewer and he is making a very conscious decision not to circulate it or leave it lying around?

MR. E. MARTIN: Mr. Commissioner, I'm going from what I heard in testimony now, not from what I would have known at the time.

My understanding of listening to the testimony of Mr. Kean is that this gentlemen was – he was engaged to look at the base estimate. He did that. He offered some comments here that – my understanding he was not given a mandate to do that, he wasn't given a scope to do that, and I would expect, if that was the case, you know, I wouldn't know where he was getting his information, and my understanding was – is Mr. Kean told him: stick to your knitting, and if we want you to do something else, in essence, we'll get you to do it.

And from that perspective I think Mr. Kean is correct in how he would handle it if that's actually the case because something of this nature – he hires someone for a certain scope of work, you're prepared for that scope of work, you give him the information that he needs, you work through it, you take what you can out of it and move on.

But for someone to dip in outside – a consultant to dip in outside of the scope – who knows what the information is and such, I wouldn't – I – if that's the way it unfolded, which I understood it did from his testimony only, then I would think that it made sense to me.

MS. O'BRIEN: He didn't go back to get a final draft done of this. This only ever stayed in draft. No concern to you that Mr. Hollmann – and we'll go over his credentials in just a moment – but he was fairly well-known in the field and still is when it comes to estimating and when it comes to risk in estimations.

You have no concern that someone, as you've said, three or four rungs down on your project team gets this sort of feedback from an independent reviewer – and it's negative feedback that he's getting as to how risk is being managed – no concern to you that Mr. Kean chose to deep-six the report and not even report it to Mr. Harrington?

MR. E. MARTIN: So let's just stop before deep-six. I mean, you know, that's a –

MS. O'BRIEN: That was Mr. Coffey's words at one point.

MR. E. MARTIN: Well, it's your words now.

MS. O'BRIEN: Mm-hmm.

MR. E. MARTIN: So I'm saying let's stop right there. So I have to say absolutely not – I'm not gonna address it in that context, but I will offer some comments in a more sensible fashion that relate to that.

And as I said before, consultants do not run the business. Mr. Kean brought somebody in for a particular purpose, from what I understand; that purpose was fulfilled. You know, apart from that, you do not give consultants free rein to do whatever they want to and expand their scope. These are expensive people. There's a lot going on, on the project. There's a lot of things happening day to day.

My understanding from Mr. Kean's testimony is that he received the information on what he was looking for and, as I said earlier, if someone went outside their scope, you don't know what it's based on; you don't know who's feeding the information in; you don't know what's happening. You know, I would support what Mr. Kean did there. He took the information that he needed, and he moved on.

He also indicated – my understanding, when I heard his testimony of this, was sort of an individual initiative to give him, you know, some assurance, personally, from someone that he knew, you know – have a look at the base estimate, give me some feedback.

So, from that perspective, no, I have no concerns with it, and I would go on the record to say I take exception to terms such as deep-six in that context. I think it's a negative connotation for a situation that was nowhere near that, from my understanding of the testimony.

MS. O'BRIEN: What – when you have the email where it says: don't circulate it or leave it lying around.

MR. E. MARTIN: I'm sure Mr. Kean –

MS. O'BRIEN: Well, what's the concern?

MR. E. MARTIN: I'm sure Mr. Kean had a good reason. And I'm telling you in the project, you know, you got to retain tight control. And, so, from that perspective, I don't know, Mr. Commissioner, more than what I've said because I got – I'm taking it from this testimony.

So, at this point, I will stop, you know, going any further on that and, basically, suggest whatever Mr. Kean and anyone who also was involved in that – you'd have to go on what they said.

MS. O'BRIEN: Why wouldn't – if, you know, there's – in the core values of Nalcor – transparency – open – honesty. These are all core values of Nalcor.

Correct?

MR. E. MARTIN: Absolutely.

MS. O'BRIEN: Okay.

So, you have a member of your project management team and he gets a report – a draft report – that is critical in some respects – it was sort of positive in some – but very critical in some key aspects.

And he takes that report. He doesn't advise his superiors that he's received it. He tells his junior not to circulate it or leave it lying around. And he doesn't follow up with the consultant to get a final report.

And your evidence, to be clear, is – you're fully supportive of that and it doesn't cause you any concern?

MR. E. MARTIN: Absolutely.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And I would add to that, Mr. Commissioner, that Mr. Kean, himself – talking values – personal and Nalcor – is one of the – is one of the top people I've ever met from a values perspective.

And that alone would give me comfort to know that whatever transpired there, there would be a good and fruitful reason for it that was in the best interests of the company.

MS. O'BRIEN: So, now Mr.

MR. E. MARTIN: I have no qualms about that.

MS. O'BRIEN: Mr. Kean did make some use of this report, although he didn't allow anyone to see the full report.

He took a quote from it. Now, he didn't take the full quote. That was the quote I showed to you originally, which is here, on page 4.

He took – he did take this draft report. He didn't get it finalized. Didn't let anyone else see it but he took a quote from it that says that – let's see – sorry.

He takes off this part: "First, it should be noted that while not perfect …" So, he removes that and then, he takes the rest of the sentence as a quote.

And can we, please, bring up P-01008, please?

This is only one of a number of examples in Nalcor's documents. This was a presentation that was being made to Canada – the financers. And if we can – but this quote appears many times.

Page 37, please.

So this is what Mr. Kean, presumably, included in this slide deck that was circulated – not just internally to Nalcor – but to other people who were relying on this presentation in their evaluation of the project and the work that Nalcor was doing. And he's left off the part of the sentence that suggests that there could be any problems with the work. And he's just used the positive part of the sentence. And he's attributed it to Mr. Hollmann and put on Mr. Hollmann's credentials here, including that he – his honours with the AACE and his award of merit and such.

You don't have any concern with Mr. Kean's use of the draft report in this respect?

MR. E. MARTIN: Not one.

MS. O'BRIEN: Okay.

MR. E. MARTIN: There's been so much made of this and (inaudible) listen to the testimony. I just shake my head.

You know, nothing's perfect. That's not the point. This was a good quote – it happened and I don't know – I just can't – personally I can't understand why it's been coming up again and again. That's just my view.

So, no, I don't have a concern.

MS. O'BRIEN: Okay.

No – I mean, the – did you ever have any thought about the – that there was – we talked a bit about it with Mr. Bennett – that there was an inherent conflict of interest in the people working on the project management team – in the project getting sanctioned – in that, you know, if the project got sanctioned, they would have a continued job on the project for the duration; if the project didn't get sanctioned, they would presumably have to move on and find other work.

So, I'm not suggesting that this is a conflict that can be avoided. I'm suggesting it's a conflict just inherent in the nature of the thing.

Do you understand or agree with that?

MR. E. MARTIN: Commissioner, you know, my issue is how to hang onto their asses. You know, these are very experienced people, you know, in demand worldwide.

I believe we did a good job in recruiting them and holding onto them for the purpose of they felt they were – you know – they were involved in something that was important – making a difference in the province and wanted to be part of it.

I think we were lucky to – that we had that – and I think other than that –we probably would have lost them a lot earlier to more lucrative opportunities elsewhere that certainly wouldn't have had the same level of – from their perspective – what would the word be – strong combination of views – maybe I'll put it that way.

MS. O'BRIEN: Pardon? I didn't hear your last (inaudible) –

MR. E. MARTIN: A strong combination of views coming at them – where it would be a lot less, you know, different views coming at them in other international projects.

So, I just think we were lucky to have them.

MS. O'BRIEN: What do you mean by – sorry, just – on the project – I'm not understanding what you're saying – a strong combination of views on the project?

MR. E. MARTIN: I think the – from their perspective, you know, the ongoing negative onslaught from certain, you know, parties that ever came up in the press and elsewhere, you know, on blogs and those types of things, I found people at, you know, at that level, you know, they weren't very fond of that kind of thing. And they often are more comfortable in a private-sector role where a lot of that stuff, for some reason, doesn't catch the same level of attention. That's the point I was making.

And then moving on from there – not to dwell on that – I'm saying is that: We were lucky to keep them and I believe they stayed for the, you know, for what they were achieving and I'm glad we have them.

So in answer – initially to your question – I don't think there was a conflict of interest at all. I think our bigger issue – with respect to sanctioning the project – I think our bigger issue was making sure we held on to them.

MS. O'BRIEN: Okay.

We have had evidence that when – certainly when Mr. Kean was looking for this job, that there weren't many megaproject opportunities on the east coast of Canada. So I think – I have no doubt that people with these types of skills would find work, but would you acknowledge it might mean they have to relocate?

MR. E. MARTIN: Kean's a big boy, you know. Relocating, like, isn't that what we do? I mean that's the job, that's these roles. I mean, these people are global folks, and I guess you'd have to ask him. I wouldn't see that as a reason or a local thing to have any bearing on it.

MS. O'BRIEN: Did you – do you not recognize that people who are particularly from Newfoundland and Labrador who have family here might have a preference to work here in the province?

MR. E. MARTIN: I think anyone in any place in the world would have a preference to work where they grew up.

MS. O'BRIEN: Okay.

MR. E. MARTIN: But I also know – what's the phrase – a boatload full of people who work away who are Newfoundlanders and Labradoreans – so – duh. I guess it goes to follow that most people would do that – particularly if they're following this type of work – and they enjoy it.

MS. O'BRIEN: Okay.

Do you think there was adequate oversight given by Nalcor executive – and by executive, I mean you, Gil Bennett, Derrick Sturge, or anyone else in the executive.

Do you believe there was adequate oversight given to the work that the retained consultants on the project management team were doing?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

And Mr. Bennett has testified, you know, he's outlined just how busy most of his time was taken up with things like the environmental assessment, Indigenous consultation, the Emera deal, the PUB. So that was really taking up the vast majority of his time.

In many cases, he – well, he has – I wont review his evidence, but he's already testified the level of oversight that he was able to give.

Did it ever occur to you at the time that perhaps Mr. Bennett was so involved in the details on particular aspects of the project, that he didn't have enough time to provide that oversight and supervisory role to the contractor or project management team?

MR. E. MARTIN: No, absolutely not.

Let's go back to the framework, you know – and, Commissioner, you know, I'll just skim it quickly. Going back to the framework of an organization that you set your vision, values, goals, objective, performance measures. You set the ground work and the rules. You lay out what has to be achieved. You find the right people and put them in the chair, and particularly, with the use of values of that perspective.

The whole purpose of that is to be able to delegate and let the corporation run within our framework. And you have a chance to evaluate and correct if you see fit. And that's an ongoing process. It's designed for that.

You know – terminology – it's difficult sometimes because everyone has a different view of certain terms. From my perspective, the word supervisory would not enter into Mr. Bennett's role. I hear supervisor, I think you're down into, you know, much deeper in the organization with some frontline employees who, you know, five or six employees doing some frontline work and might have a supervisor.

But Mr. Bennett was in a leadership role, as were, you know, many of the other senior people at the Lower Churchill Project, and throughout the organization of Nalcor.

And that was the framework. And I can say that I was comfortable with that because that process was in place. That's what it was designed to do.

MS. O'BRIEN: Can we go to P-01070? This is only going to come up on your screen, Mr. Martin.

Now, I'm going to have to get another exhibit put into evidence, but this is – what it is is a Briefing Note, April 26, 2011, draft.

If we could just – sorry – stop there, Madam Clerk? Please, sorry. If we just – it does say here – I think – I believe it references that this was drafted by Derrick Sturge. No, it's there somewhere. We will get it. But it will come into evidence.

For right now, Mr. Martin, I'll just ask you to accept that this was a draft that was done by Derrick Sturge and provided over to government, and they were reviewing it in draft.

And the title is: "Muskrat Falls Decision Gate 3 Process and the Necessary Regulatory/Shareholder Undertakings Required to Progress the Lower Churchill Project." It addresses the purpose of the note. And one of the purposes is the DG3 process and how independent reviews will comprise a key component of project sanction.

And then if we could just go down – might not find the right reference here.

Okay. I'm going to have to come back to this again because it doesn't seem to have the reference that I need in it. So I will come back to that.

I'm going to now go – sorry. I want to talk about the Independent Project Review.

Have you heard evidence on the Independent Project Review team's report at DG3?

MR. E. MARTIN: Some evidence.

MS. O'BRIEN: Okay.

Can we bring up – and this should be at tab 33, I believe, of your book. P-00508 please.

MR. E. MARTIN: Which book, Ms. O'Brien? Oh, I think I asked you that earlier – sorry about that.

MS. O'BRIEN: Oh no, it's not showing here in the book. It'll have to just come up on the screen. I think some of these references are off.

So did you hear the evidence – this is where Mr. Harrington asked Derek Owen to make changes to the IPR's final report on DG3? And this is – Mr. Owen forwarded on the suggestions to Mr. Westney and he ultimately – Mr. Westney said: No, that to do so would violate "our obligation to the Gatekeeper … our IPR charter, not to mention our professional ethics."

Did you hear any of the evidence on that?

MR. E. MARTIN: Not all of it, some of it.

MS. O'BRIEN: Okay.

So (inaudible) just accept that for the moment that that was – it's up on your screen – but that was Mr. Westney's reaction. And Mr. Owen has given his testimony as well.

This is after the – what the IPR team have all testified – Mr. Mallam at least, Mr. Owen, Mr. Westney testified they submitted this to you as the final report. As their final report, they gave you a presentation on it.

And then after they'd done that, the project director, Mr. Harrington, is coming back and he is suggesting changes to their conclusions, recommendations.

Does that cause you any concern?

MR. E. MARTIN: None at all.

MS. O'BRIEN: Okay.

Well, why not?

MR. E. MARTIN: I didn't follow all of the testimony. I generally moved on after I understood changes weren't made and that kind of stuff. So I, frankly, found it somewhat irrelevant.

But I just go back to the point that Mr. Harrington, in his particular case, I cannot think of a situation where some of the suggestions and work and things that he made that I was involved with didn't make sense.

So I just believe that, you know, there would be reasons for it that he had and my opening thought would be, you know: It's up to you, handle it.

MS. O'BRIEN: Okay.

We know the IPR report at DG2 was provided to the board of directors and I just want to – there's one in particular, one recommendation here, if we go down on this slide we'll see it here, and this is the one I want to talk to you about here.

This is the recommendation that the team had made – that I'll come back to.

But we know that IPA report was included in the Decision Gate 2 package and it went to the board and they saw it.

The IPR report for DG3, and it's this report that included a recommendation by the project – independent project review team – that adequate provisions for management reserve and schedule reserve be included in the project sanction cost and schedule. So that recommendation was there that it didn't get provided to the board of directors and it wasn't included in the decision support package.

Do you have – do you know why that's the case?

MR. E. MARTIN: No, I don't.

MS. O'BRIEN: Okay.

Ultimately, if we look at the IPR charter document, and I can bring it up, but it does say in that document that the IPR team report would be included in the decision support package.

Does it cause you any concern that ultimately, despite the fact that Nalcor's processes or own document, shall we say, said that it would be provided in the decision support package, it wasn't?

MR. E. MARTIN: It really doesn't raise much concern in my mind.

You know, I guess from the – I don't know what the theme is here, I'm beginning to seek a theme so I can answer the questions more broadly. But, you know, at some point, and maybe it's the next couple of days, I think it would be worthwhile to talk about what was included in the board package and what was provided to the government.

I think it would be important to talk about, you know, the comparative analysis, the depth and breadth of how Muskrat Falls was the right project and the more we stressed it, the better it got. That from an overall perspective, it was $7 billion CPW (inaudible) with all in, and all of the things around that that we were asked about.

So there's a huge amount of information, a huge amount of effort and a huge amount of document changed hands. And I'd just like to, you know, note that it would be useful to, you know, maybe talk about that over the next couple of days as well.

THE COMMISSIONER: See, that –

MR. E. MARTIN: That's what (inaudible).

THE COMMISSIONER: – that might be a good position to take if you were running a business and you were the one who was actually conducting the project.

But this is information – while you were the decision-maker, so to speak, you were the Gatekeeper, you were decision-maker – there were other people that needed to approve your decisions, such as the board of directors, such as the government.

So I guess the rationale behind these questions is that wouldn't it have been better for their true decision-makers –the ultimate decision-makers – to have full information, including references to what might have been stated in the IPR report because the very thing that we're talking about now – whether or not the government, for instance, was told about strategic risk – could well have been quite evident based upon the fact that these other things were provided to government.

Like, I think, there's a distinction to be made here with regard to who was ultimately making the decision and what right they had to full information.

So I think that's the rationale behind these questions.

I don't dote your point about the fact that there are other benefits and I've heard about those many times.

But the issue that's really the foundation of much of what we've been talking about this afternoon goes to providing full information to the ultimate decision-makers. And I guess that's the point.

MR. E. MARTIN: And I appreciate that and that's, I guess, where I get a bit confused because I, you know, I keep repeating the information that was provided, and in the context of how it was provided, and the fact that I summarized that information and made sure they understood the, you know, the risk inherent in the project – both from a tactical and strategic respective using different terminology – and how it would be funded.

So when I – so, Commissioner, I don't want to – I'm going to stop there, I guess, and turn back to the counsel to make my point that that's where I'm – you know, where I come from or why I bring that up is that I feel I'm answering the same question many, many times. And if we want to continue to do that, I will.

But that's my cents, because a lot of what we're coming at here is the fact that I believe that I did share the information with the board and the shareholder and I considered my job to put that information in a manner that enabled those people to focus like a rifle shot on the key issues.

MS. O'BRIEN: Okay.

So, here the IPR team has identified as a key issue for them that the project sanction cost and schedule should include adequate provision for management reserve, i.e. strategic risk, and schedule reserve. So that was their evidence, what their recommendation was.

And this recommendation that they made was not provided to the board of directors. That's despite the fact that Nalcor's own documentation said that this very work would be provided to the board of directors. And so they didn't have the benefit of this recommendation.

Do you see that?

MR. E. MARTIN: Let's translate that. Board of directors – we need to be able fund things that we don't know are gonna happen. We need to be able to make sure – before we start this project, we need to be sure that if it goes over 6.2, for reasons that we can't adhere to right now, Mr. Board Member and Ms. Board Member and government we – you have – we have to assure ourselves you can fund that.

That's the translation that I would bring to those parties to discuss that topic. And then we would get down to discuss that topic.

I see that as the same. It appears – you do not. I don't know if I can do anything about that.

MS. O'BRIEN: No, it's really about what information they – were provided. And I'm putting to you that they weren't provided this key piece of information they were suppose to.

Mr. Harrington tried to get this key report edited. He wasn't successful. Okay? That's the evidence before here. He wasn't successful in getting it edited and it ultimately didn't go to the board of directors.

Do you not see that there's some concern here that information that should have gone to the board of directors didn't?

MR. E. MARTIN: No. At the risk of repeating myself, again, it's, you know, it's a difference of opinion on – it appears, on how that information would be brought forward. And those are decisions that, you know, I would be responsible for constantly. There's a huge amount of information and data flowing. These processes were regular throughout the course of it.

And as I stated, you know, I ensured that when I went to the board or the government, I explained these concepts and the key element about what had to be achieved, which was the ability – as they say here, I think you just read: "… the appropriate use of Management Reserve and Schedule Reserve for this purpose."

And as I said earlier, that would be: We are at a certain point, you know, the 6.2 billion includes this, this and this and this – other things can happen that we cannot anticipate at this point. We need to be able to ensure we fund that before we proceed, or we cannot proceed.

Now, I see that one and the same. You obviously don't. I'm gonna answer it the same time the next time.

But, please, proceed.

MS. O'BRIEN: Okay.

I wanna talk to you about – a little bit about some evidence that Dick Westney has given with respect to this IPR.

Have you ever been involved in an IPR review before?

MR. E. MARTIN: No, I haven't.

MS. O'BRIEN: Okay.

Did companies you work for use independent project reviews as part of their sanctioning process?

MR. E. MARTIN: Yes.

MS. O'BRIEN: Okay.

So Mr. Westney testified that he has been involved in a large number of IPRs over the years.

Is that, you know, consistent with your understanding of Mr. Westney's experience?

MR. E. MARTIN: If he said it, I have no reason to doubt it.

MS. O'BRIEN: Okay.

Now, his comment was that this was a very tightly restricted IPR compared to others that he had done. There was a very short timeframe; a very pointed list of questions that did not permit general feedback. He said on a – he gave a scale of project assurance, I think from 1-15. If you did a scale that way, he said this level of review was about a one on that scale.

And he said that he made these comments because he had also been watching the Commission – the evidence coming forward at the Inquiry and he'd been surprised at the level of reliance or focus that have been put on the IPR view.

The hon. the Minister of So obviously, given that evidence, I would like to give you an opportunity to respond to it.

Do you have any concerns about the level of assurance that this particular IPR was giving?

MR. E. MARTIN: I do not.

MS. O'BRIEN: And do you want to elaborate on that at all or just leave it with that – you have no concern?

MR. E. MARTIN: Hmm – I'm gonna leave it at that for now.

MS. O'BRIEN: Okay, so there's been a fair bit of evidence presented –

MR. E. MARTIN: I might come back to it.

MS. O'BRIEN: There's been a fair bit of evidence presented regarding the board of directors, and in particular, a request to have further appointments to the board with specific areas of expertise. I don't know that it's gonna be necessary to go through all the exhibits in detail.

Have you heard any of the testimony on that?

MR. E. MARTIN: Yes, I've heard some.

MS. O'BRIEN: Okay.

So we have, you know, repeated request that we've already gone through in the evidence coming from the board of directors. A lot coming from Tom Clift, where they're requesting members with experience in large-scale engineering projects, international project experience, labour relations experience, additional finance experience, et cetera.

Do you recall those concerns being raised at the board of directors' level prior to sanction?

MR. E. MARTIN: Yes, I do. I remember those discussion and the, you know, efforts working with the government to assist us with that.

MS. O'BRIEN: Okay.

And did you share the concerns?

MR. E. MARTIN: Concerns is a strong word for me. I just thought, as I've mentioned before, that it would be useful to have as much – reasonably as much – expertise on the board from a myriad of things that could be helpful. I will say that the, you know, very quickly – the people we had on the board were extremely high quality.

And I think some of the key things that were covered after extremely well. One was governance, with Mr. Clift. Also, Gerry covered off from the audit committee perspective – highly skilled and was very, very useful from a controls perspective. And Ken, you know, from a leadership perspective, and just having big company experience was very, very helpful. And then we had representatives – one from Labrador and one from the west coast – and their experience in some of those areas were somewhat less, but the perspectives they provided from – their perspective – particularly in other areas of the province, were extremely helpful.

So I just wanted to say that – Mr. Commissioner – that I highly respected the board and as a smaller board, they were quite effective.

MS. O'BRIEN: So in terms of the request to have additional, you know, experience, qualifications on the board, it was – was that a – was that something that was a priority for you?

MR. E. MARTIN: A priority, I believe, for the board and I would've left that to the board and the governance committee. I, obviously, was part of the board and supported that, and I believe the government did as well.

MS. O'BRIEN: So I just want to put to you – when I talked to you about this in your – in the interview, you talked about the qualifications of the people you had and then you said: Now, that being said, I had also – you know, it's no – there's no question – it's noted there, I mean I've been after additional competence and experience, so I was consistently – that was a consistent theme. So I think we could've used more of that and that would've been probably my first priority.

Do you recall giving that evidence?

MR. E. MARTIN: I don't recall that, but I don't dispute it.

MS. O'BRIEN: Okay.

So what actions did you take –?

MR. E. MARTIN: And first priority – I'd have to put that in the context as well, you know, probably from a – I believe I was thinking there from a board governance perspective, Commissioner. And, in addition to that, there would be other board responsibilities and certainly the responsibilities of running the corporation.

I think that's where my head was on that one.

And in the governance side of it – we had done a review of governance and there were a myriad of things that were listed that we were trying to improve on. So I would've – in that context, I would've seen that as a priority, where I was answering the other question with respect to general priority all across the board.

MS. O'BRIEN: Okay.

So I mean the evidence is clear that you had no authority to appoint people to the board, but what steps, if any, did you take to try to get people with this – these types of qualifications, expertise appointed to the board?

MR. E. MARTIN: I was in support of, obviously, the work that Mr. Clift and Mr. Sturge were doing. And once or twice, you know, I had my secretary pull a list of names together from correspondence and such that, you know, I thought that might be useful to send over to the government to give them some suggestions of people that they might consider.

MS. O'BRIEN: Okay.

MR. E. MARTIN: Yeah.

MS. O'BRIEN: And do you know – and we ultimately know that people with a lot of these areas weren't appointed to the board prior to sanction.

Do you know why it didn't happen?

MR. E. MARTIN: No, I don't.

MS. O'BRIEN: Any link towards this – and we also – one of the other issues that was being raised by the board was compensation.

Do you recall that being an issue for the board?

MR. E. MARTIN: Yes, I do.

MS. O'BRIEN: Do you see these as related items at all, in terms of the people you can get appointed to the board and the – and compensation that you're paying to your board members?

MR. E. MARTIN: I think there's a direct relationship, yes.

MS. O'BRIEN: Okay.

So, can you expand on that a bit?

MR. E. MARTIN: Just that, you know, from watching other boards in action and seeing what compensation is lined up there, I was grateful but somewhat surprised over time to see the effort that the current board members put in for, I think, almost next to nothing in compensation, and knowing the types of people that, you know, we were looking for, it was constantly in my mind that it was going to be very difficult to get those people without significant compensation – and not because there's not good people out there, but some of the folks that we were looking for, I expect, would have more experience outside of the Province of Newfoundland and Labrador, and it would probably be more difficult to motivate them entirely on, you know, doing something for the province, potentially.

That was my thinking.

MS. O'BRIEN: Okay.

Would have having people with, you know, experience in some of these areas – high – you know– high-profile experience – would that have given you more challenge to your decision-making?

MR. E. MARTIN: Well, that would be the intent.

MS. O'BRIEN: Okay.

And would you see that as a good thing?

MR. E. MARTIN: Oh, very much so.

MS. O'BRIEN: Okay, and also would that be a source of advice for you, I would suppose – would that be fair –

MR. E. MARTIN: I think –

MS. O'BRIEN: – to say?

MR. E. MARTIN: – yeah, once again, it's – not to be rude, but it's the type of thing, I think, is rather obvious, right?

MS. O'BRIEN: Sure.

MR. E. MARTIN: You know.

MS. O'BRIEN: And what did you see as the optimal size of the board?

MR. E. MARTIN: I was following the recommendations that were put together by, you know, our governance committee, with external consultants, and I would be thinking – I can't remember what I said in my testimony, but probably seven to 10 – eight to 10 – maybe, you know, a little bit over that would be fine.

But I think my principle, and I'm (inaudible) – I may not be exact to my testimony, but that's my gut, in terms of where I was –

MS. O'BRIEN: Eight to 10, I think, is –

MR. E. MARTIN: – eight to 10.

MS. O'BRIEN: – what you said before, yeah.

MR. E. MARTIN: I would offer advice that, you know, going much north of 10, 11 – I would see as unwieldy. I wouldn't be in favour of that.

MS. O'BRIEN: Okay.

MR. E. MARTIN: And I thought, as we – and I think we were very clear on this – I mean, it's no surprise, but with five – not only, you know, could we use a bit more expertise, but they were pretty – you know, they got stretched with the committees and things like that. So that's where you, sort of, push up into the seven, eight kind of number.

MS. O'BRIEN: Okay. Thank you.

Just been handed the exhibit I was looking for. Now, I only seem to have one, and a one-page copy of it. It's P-01384, please. Could we, please, bring that up?

THE COMMISSIONER: It's not in your book.

MS. O'BRIEN: No, it will come up on the screen.

So, this is a draft Briefing Note that I was referring to and I might have had the right one earlier. But I understand this was drafted by Derrick Sturge and it was provided to government and so – if we go – if we scroll down, Madam Clerk, to page 2, please.

I think it is the – it is the note I was looking at earlier – same note. This is showing where it came from Mr. Sturge.

And could we please look at page 5.

MR. E. MARTIN: Just before we go there, because I stopped listening a little bit and I apologize for that because my mind is taking on something else, so I apologize, Ms. O'Brien. But, I wanna go back – just a little bit more flavour on the board situation.

I'm volunteering this but, you know, I believe, particularly from Premier Dunderdale's perspective, she was – she was very open to this and – more than open, you know, fully supportive. I know we talked about it – she – we both struggled with, you know, a lot of the compensation (inaudible) bringing people in – how we're gonna do that.

The thought of appointing more members, you know, other than the extra (inaudible) we were looking for, we didn't see a lot, you know, tremendous value in just numbers. And I would like to point out that, you know, I wouldn't want to leave it out there that this was falling on deaf ears. You know, the premier and the premier's office, you know, were engaged in this. It was just a difficult thing to do and get the people that we were seeking at the time.

I just wanted to add that. I apologize for interrupting.

MS. O'BRIEN: Okay.

So were you involved in the deliberations with government as to how to get people on the board?

MR. E. MARTIN: Just as I mentioned – with the premier, obviously, if, you know, I would mention it in passing, you know, we would say, you know, the letter's come over if it were, you know, it'd be a conversation – any questions, you know, what are you thinking. And we would have a conversation like that and –

MS. O'BRIEN: So do you know why it didn't happen?

MR. E. MARTIN: No, I don't. I think it's – you know, once again, I couldn't speak for the government on this. I just wanted to make the point that they were engaged and, you know, and understood it and it, you know, as far as asking why, I think it would be better left to be discussed with either the premier or the minister or those folks.

MS. O'BRIEN: Okay. So this is the document I want to take you – earlier – so this is information – this is information that's coming over from Nalcor to Government of Newfoundland and Labrador to put into a Briefing Note. But this was drafted by Nalcor, anyway, I think it came over through Derrick Sturge and the issues that are being covered, as I pointed to earlier, included the Decision Gate process and how independent reviews will comprise a key component of project sanction.

So here we see: "Standard Nalcor practice for the successful achievement of DG3 includes the following independent reviews." So this refers to the IPA review and it also – looks to a – another consultant review. The IPA, the IPR and an independent consultant review.

So here we have Nalcor telling government that the IPA review would be done, and I believe this independent review might have been what was anticipated by Navigant. Or if it's something else you can certainly tell me that.

But I wanted to put it to you earlier – you don't recall why the decision not to engage IPA, or you don't specifically recall the decision not – why the decision was made not to bring back Navigant. But can you make some comment on why you would have been advising government that you were going to do those things?

MR. E. MARTIN: I can't at this moment. Could I see the top of the letter again? Who it's been sent from and who it's been sent to, and that kind of thing? It's a memo isn't it?

MS. O'BRIEN: Yeah. It was – this was – it was a draft briefing note that was sent over, I think – it was drafted by Derrick Sturge is the evidence.

MR. E. MARTIN: Right.

MS. O'BRIEN: And we see this in a couple of different government documents where they're talking about, you know, in addition, Nalcor's going to do the following reviews prior to DG3 and they talk about the IPA – other documents as well. So it seems the government –

MR. E. MARTIN: Mm-hmm.

MS. O'BRIEN: – was being told by Nalcor that these reviews were being done. And no one from government has said that, you know, that they weren't really even aware that ultimately – like the IPA review was not done. And they weren't, you know – so I wanted to get your – you know, given that you're communicating this to government, you obviously changed your mind and didn't go through with these independent reviews. Did you communicate that to government?

MR. E. MARTIN: Could you scroll down a bit more please? I just want to make sure I'm looking at …

First I'd like to read this, and it's going to take a minute I think. Could you – you don't have a hard copy, do you?

MS. O'BRIEN: I have – they only brought me in one hard copy. I'll maybe ask them to bring me in a second copy. But I can certainly give you this one.

MR. E. MARTIN: I might get some context out of this if I read it.

MS. O'BRIEN: Yeah. There we go.

MR. E. MARTIN: Thanks. It's big print.

MS. O'BRIEN: I think there's comments here that Nalcor was putting forward a position why they did – why not have the project reviewed by the PUB was one of the topics here, I think.

MR. E. MARTIN: This has been helpful. Commissioner, I can't entirely recall, but I am recalling, you know – partially recalling now, that the PUB was a new thing for us at that time. I remember that we had been through a, you know, a series of ongoing, you know, sub-reviews at the project level. Everyone was extremely busy.

The PUB review came upon us, which was fine – including MHI. And then we had the second MHI and I begin to think that, possibly, it – you know, we felt that the – what could have been covered in the IPR or IPA was likely giving us enough information covered off in those reviews.

I am speculating a bit but I am remembering now as I read this, in around this time, you know, the workload – the review workload – was very, very intense for the project and we were trying to get it off the ground and my partial recollection – that would have an element of rationale for that.

MS. O'BRIEN: Do you recall communicating to government that you'd decided to cut back on the number of reviews that you were going to have done?

MR. E. MARTIN: I can't remember telling them that or not.

MS. O'BRIEN: Okay. Do you think that that's information that they might have had if they had indeed been relying on your initial assertion that – look, we're gonna have an IPA and we're gonna have a Navigant and we're gonna have the IPR. If they'd been putting any reliance on that, don't you think that they might want to know if you'd changed your mind with respect to the level of review that you were going to give it?

MR. E. MARTIN: I can't speak for them. Better to ask them. From my perspective – all I can say is that there was tremendous dialogue around the PUB review because it was just so much work. I'm not saying it was right or wrong. It was just so much work coming in – coming over on to Nalcor for all the right reasons but it wasn't something that we had initially planned into the schedule, and it was consuming so many resources. Maybe could have mentioned that to the – what you're saying – to the government but I would also have to say that the government would be well aware of the fact that from a report perspective we were deeply busy –

MS. O'BRIEN: Thank you.

MR. E. MARTIN: – and I don't think it would be a surprise to them to think that we were rolling some of the intent of one report into another. Bit of speculation, again, but – so two sides of that. It wouldn't have bothered me to tell them. And if I didn't, I think, they would have had a pretty good idea of what we were up to in terms of – wow, resource constraints – with respect to reviews.

MS. O'BRIEN: Okay. I'm gonna just go through a couple of areas that I think that we can probably move through a little more quickly. With respect to Aboriginal consultation, can you please bring up P-00271, Madam Clerk?

And – no, this one is also – I'm sorry, I thought you had all the same documents that Gil Bennett did but apparently not. If you could just bring up P-00271.

This is a paper on Indigenous consultation that was prepared by Nalcor. And it was – so here it is. It was prepared for the Commission and it was submitted in August. We have covered the details of this paper with Gil Bennett and we have also been advised that Gil Bennett was Nalcor's lead, shall we say, on the Indigenous consultation file. So the papers been prepared, it's been submitted by Nalcor, we understand that it sets out Nalcor's position with respect to Indigenous consultation.

Did you have an opportunity to read it or hear Mr. Bennett's evidence on it?

MR. E. MARTIN: I did not.

MS. O'BRIEN: Okay.

Well, I'll just give you the opportunity because obviously you were in the CEO chair at the time. Is there anything that you would – any particular evidence you'd like to highlight with respect to Nalcor's consultation with the Indigenous groups?

MR. E. MARTIN: Commissioner, maybe I'll give you a brief summary of my involvement and that – probably set the scene for it.

And first off, utmost respect, you know, with respect to the Indigenous people, you know, that is critical. That's point A. Point B, my involvement was primarily limited to being the lead negotiator in conjunction with Mr. Don Burrage on the Innu New Dawn Agreement. And from that perspective, I'll use older terms with no intention to be disrespectful, but I don't want to mix up terms either here. But the Innu had a recognized land claim, the Inuit had a signed land claim, and the Metis were, I believe, working with the federal government on establishing their situation.

And from that perspective Nalcor could not engage, you know, with the Metis; it was a federal government issue. But that being said, there was consultation that was required. And when I say engage, I meant engage from a land claim perspective or anything like that; we could go nowhere near that, it wasn't our responsibility. And – so from that perspective, I handled the negotiation with the Innu, we completed that and then from the broader consultation effort for all of those groups, including the Quebec Innu and others, I did turn all of that over to Mr. Bennett. And once again, not because it wasn't important, it was just the volume of work attached to that. The knowledge base that was required for it and the effort that we were going to pour into it, I knew I wouldn't be able to do justice to it.

So from that perspective I can answer some – many questions, likely on the Innu arrangements to a certain point, but on the consultations, I'm going to sound like – you know, I didn't have much involvement there, and I didn't, and I won't be able to give you much detail.

MS. O'BRIEN: Okay, that's fine. Thank you. I don't have any particular questions for you. I want to give you an opportunity to address it; others, obviously, may.

I'm going to ask you, similarly, about the JRP, because, again, we have had a fair bit of evidence on the JRP process from Nalcor's point of view from Gil Bennett, and again, we – our understanding was he was the – primarily the Nalcor lead on that file. And he's gone through a number of the recommendations with us.

So I only have a few questions for you on that, and I'm going to bring up the Government of Newfoundland and Labrador's response to the JRP recommendations. That's P-00051. And that's just going to have to come up on your screen there, Mr. Martin.

So there's just two – you know, we've already discussed a number of them, as I said, with Mr. Bennett. There was just two that I wanted to get your thoughts on, and these are Recommendations 4.1 and 4.2. And I know we've already, in some ways, discussed the one on clearing when I was asking you about the risk of protests or loss of support from Indigenous and grassroots groups.

So – but on the two I wanted to talk to you about now: Recommendation 4.1 is really government – and this is one that was accepted, in principle, by the Government of Newfoundland and Labrador, and this is the review of the project's financial viability being required prior to sanction.

So this is what the recommendation was of the JRP. They recommended that "… if the Project is approved, before making the sanction decision for each of Muskrat Falls and Gull Island, the Government of Newfoundland and Labrador undertake a separate and formal review of the projected cash flow of the Project component being considered for sanctioning (either Muskrat Falls or Gull Island) to confirm whether that component would in fact provide significant long-term financial returns to Government for the benefit of the people of the Province."

Did you have any involvement with – we know that it was government who, ultimately, responded to this, but did you – were involved in consulting with government with respect to their response?

MR. E. MARTIN: No, not to my recollection.

MS. O'BRIEN: And the other one that I just wanted to ask you about is Recommendation 4.2, and the JRP here, essentially, was looking for an independent analysis of the alternatives to meet the domestic power demand. And what they're looking for here is, essentially, an independent review broader than was ultimately proposed to the PUB, which was just limited to the two options.

Now, this – it's a longer recommendation, but this recommendation was not accepted by the Government of Newfoundland and Labrador. And I should note that the recommendation was made to government and Nalcor to conduct the review – "Newfoundland and Labrador and Nalcor commission an independent analysis."

Did you have any communications or did you consult with government with respect to their response to this recommendation of the JRP?

MR. E. MARTIN: Not to my knowledge. I'm not saying it didn't happen at Nalcor, Commissioner. I just – I didn't.

MS. O'BRIEN: Okay.

MR. E. MARTIN: That I recall.

MS. O'BRIEN: And do you recall having a view of – your own independent view of these recommendations from the JRP?

MR. E. MARTIN: Not that I could recall or summarize, and I think you mentioned earlier, I'd have a similar description about – Mr. Bennett was taking care of this piece of the business for me. So I would have let him run with that.

MS. O'BRIEN: Okay, thank you.

Commissioner, we're now at 4:30, and it's a good time for me to stop my questioning for the day.

THE COMMISSIONER: Okay.

MS. O'BRIEN: I do expect that I should be able to finish by lunchtime tomorrow.

THE COMMISSIONER: Okay, so having said that, that keeps us on schedule. I will make this point: I've been advised that there are parties here who are concerned about the fact that one of your partners, or fellow lawyer, is being sworn in on Friday morning. So I'd like to try to accommodate that if I can do that.

But what I'd like to do is try to get a feel, first, for how long everybody thinks they're going to be on cross-examination, and then if we can make it work, I will do my best to make sure that you are able to get to that. You may not be there for the whole – you may not get to the reception, but you'll at least get to the swearing in.

So if you – I'm just wondering, maybe, Ms. O'Brien or Mr. Learmonth, if you could just sort of begin a discussion now about – or think about how long you think you're going to be. And this is not for the purpose of sort of, limiting your time, unless it's really gargantuan; I don't think that's gonna happen.

But if I can get a feel for how long everybody's going to be, I can then look at Friday morning and see if we can take some time Friday morning to accommodate those that want to go to the swearing in of Justice Boone. So I'll just leave it at that, and maybe some discussion can be had with Commission counsel.

All right, thank you. We'll see you tomorrow morning, and I guess we'll start at 9:30 tomorrow morning? Yeah.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.