



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 1

Volume 57

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*Commissioner: Honourable Justice Richard LeBlanc*

Wednesday

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

The Honourable Justice Richard LeBlanc  
presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** All right, good morning.

**MS. O'BRIEN:** Good morning.

**MR. E. MARTIN:** Good morning.

**THE COMMISSIONER:** Ms. O'Brien?

**MS. O'BRIEN:** Thank you.

**THE COMMISSIONER:** And Sir, you remain under oath at this time.

**MR. E. MARTIN:** Thank you.

**MS. O'BRIEN:** Thank you, Commissioner.

Before we begin, I'm seeking to enter three new exhibits: P-01653, 01654 and 01655.

**THE COMMISSIONER:** All right, those exhibits will be marked as entered.

**MS. O'BRIEN:** Thank you.

Good morning, Mr. Martin.

I'd like to talk to you a little bit about some evidence that we heard from Derrick Sturge with respect to the sanctioning, and particularly the sanctioning of the Maritime Link.

So the evidence that we've had already from Mr. Sturge was that when Emera and Nalcor entered the sanction agreement in December 2012 – so around about the time the project was formally sanctioned in this province by both the board and the government. But at that time, Mr. Sturge testified that Nalcor believed that the conditions precedent to the FLG for both provinces to sanction had been met.

Do you agree with that evidence from Mr. Sturge?

**MR. E. MARTIN:** What is the timing again, Ms. O'Brien?

**MS. O'BRIEN:** December 2012, when the sanction agreement had been signed by both provinces.

**MR. E. MARTIN:** Yes.

**MS. O'BRIEN:** Or by Emera and Nalcor.

**MR. E. MARTIN:** Yeah.

**MS. O'BRIEN:** So – and essentially – Mr. Sturge testified that at that time you knew that the UARB still – there was still – the sanction agreement addressed the UARB ultimately approving the Maritime Link. But at that point, he said the understanding at Nalcor was that that condition precedent had been met and that regardless of what happened at the UARB, that we would have the benefit of the FLG – of the federal loan guarantee.

And he testified that it wasn't until March of 2013, when he received a call from his counterpart – I think it was Scott Balfour at Emera. And he got the news at that time that Canada did not consider that the condition precedent for both provinces to sanction had been met.

And so, that was when he learned, and ultimately Nalcor learned, that to – for that condition precedent to be met and to ensure that the FLG – the federal loan guarantee was received, would require the UARB's approval.

Is that consistent with your memory of events?

**MR. E. MARTIN:** Generally, yes.

**MS. O'BRIEN:** Okay, I'm just gonna bring it up because it – I think it will explain.

This is a note – Jerome Kennedy, it's one of his handwritten notes – 01301. And it will come up on your screen, but if you do want to look at it, it's in volume 5, tab 108.

So, I believe this would explain this note of Mr. Kennedy's, but I'm just gonna see if you can confirm that.

This is notes of his of December 17, 2012, and it's a meeting in the premier's office, and you're there is Ed M, Ed Martin, and various other people are there, and it – and it's – so it's around this time, it's talking about the conditions precedent, and it says, even if Maritime Link did not proceed, we would pay 30 million and FLG would still apply.

So is that consistent with that understanding at Nalcor at the time?

**MR. E. MARTIN:** Yes, it is.

**MS. O'BRIEN:** Okay, thank you.

So, from December 2012 until March of 2013 you believed that you had the benefit of the federal loan guarantee and it wasn't 'til March that you learned that the UARB approval would be necessary.

How did that affect – so, when the Maritime Link goes before the UARB, and ultimately the UARB, or initially, I should say, the UARB did not approve the Maritime Link, you had to re-enter negotiations with Emera.

How was Nalcor's negotiation position affected at that time?

**MR. E. MARTIN:** I don't believe it was impacted. I believe it was the same, and I think it's important, Commissioner, to understand that the benefits of the Maritime Link, you know, were substantial to us and substantial to Emera. And Emera was very keen on building the Maritime Link for all of their reasons. And we were keen on doing the Maritime Link, you know, for our reasons, provided it worked for both of us.

So when we sat back to negotiations, I felt comfortable that we were in an equivalent place.

**MS. O'BRIEN:** Okay.

Fair to say at this point you – it was – there was a time pressure on the negotiations, given where you were?

Mr. Sturge has gone through it where you were with going out to the market to look for financing and he's discussed it was very tight

timelines awaiting to – having to get the excess energy agreement negotiated and then back before the UARB for approval.

Do you remember that being a sort of a tense period with a lot of activity going on?

**MR. E. MARTIN:** Oh, absolutely. But I think I could describe most periods over the past four years in exactly the same way. That's the nature of business and the nature of projects.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** I will add one other point to, Mr. Commissioner, that underlying the development of Muskrat Falls excluding the Maritime Link, we were always in the position that we could proceed without the Maritime Link. And that did not change.

We had, you know – on our own and as part of some of the pre-federal government funding – we had gone to market in the financial markets to rate the project from a financial, you know, viability perspective without the Maritime Link. That was a federal government requirement that that it had stand it its own two legs, without a federal loan guarantee, which meant without a Maritime Link. We agreed with that, and those ratings came back with an A-rating.

So, you know, whether or not the province would decide to go ahead without the Maritime Link, without the federal loan guarantee – that was a Newfoundland and Labrador provincial decision. But from Emera's perspective – and for whatever reasons Nova Scotia had to be involved – we were always clear with them. And they knew it because it was public record that the project stood on its own without the Maritime Link.

So, that was another piece of data with respect to a negotiation, in addition to what I just said about both of us had a keen interest to proceed.

**MS. O'BRIEN:** Okay.

And we've had some evidence, actually, from Mr. Sturge on that. What I take from what you're just saying there, that is, ultimately, the federal loan guarantee had not come through, that the decision of whether or not – it would've

meant the project would've cost more if it had proceeded because you wouldn't have the benefit of the lower interest rates.

Whether or not it would've gone ahead without the federal loan guarantee, I understand you'd be saying that would be a decision of the provincial government to make?

**MR. E. MARTIN:** Now that's correct.

And once again – just more information for the Commissioner – the difference in the CPW – between both (inaudible) still strongly favour Muskrat Falls.

**MS. O'BRIEN:** Okay. And –

**MR. E. MARTIN:** Yeah, I forget the exact numbers, but in – put it in context: Instead of 2.4 billion at that time, I believe it would've – I shouldn't say the number, but it was substantial. It wasn't – as if it went down to, you know, 100 million or something like that in the difference. I just can't remember the exact number.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** But, once again, yes, it would be a provincial decision.

But from a negotiating perspective, it was an important point because we had been clearly indicated to Emera and others that we were moving ahead.

**MS. O'BRIEN:** Okay.

Now, as a result of needing to have the UARB approval, there was a series of negotiations. And we know it ultimately ended up in the excess energy agreement.

I have covered this already with Mr. Sturge to some extent, but I – or to a considerable extent, actually, so I'm going to do it much more briefly with you. But I do want to put some questions to you about that agreement.

I understand Nalcor's position, including yours, has been that the excess energy agreement was really a win-win agreement.

Is that fair to say?

**MR. E. MARTIN:** That's correct.

**MS. O'BRIEN:** Okay.

And so, the – I certainly have always understood that – as you learned in March of 2013, that if you didn't come to terms – or if the UARB didn't sanction the Maritime Link, then you weren't gonna get the federal loan guarantee. And I – certainly I think there's lots of evidence here about the benefits of the federal loan guarantee. So I don't think there's much question that a win for Nalcor and for this province would be, you know, getting the federal loan guarantee. That was a definite upside of signing the excess energy agreement.

But –

**MR. E. MARTIN:** And – but – and I want to add to that, Ms. O'Brien. That's correct.

In the sanction agreement, though we had made provisions as well, because both parties wanted to see the benefits of the Maritime Link. We had also agreed in that letter, you know, for an extended period of time to move ahead together without the UARB approval because we, you know, the economics we looked at and we felt it could still work without UARB approval – potentially – and I just wanted to add that as an example of – Emera also saw, from their side, the benefits of, you know, moving ahead even without the UARB and we had put provisions in to strongly encourage ourselves to do that deal in any event.

**MS. O'BRIEN:** So one of the questions that I put to Mr. Sturge is that did you see – and I'll also put it to you – did you see any win or benefit, shall we say, to the excess energy agreement for Nalcor, for this province, other than the fact that we would get the benefit of the FLG?

**MR. E. MARTIN:** Absolutely, I did. Yes.

**MS. O'BRIEN:** Okay.

So I'm gonna ask you to explain that because one of – I'll put the position to you and I'm looking here at P-00876, which is in volume 6, tab 44.

This is an analysis of the excess energy agreement –

**MR. E. MARTIN:** (Inaudible.)

**MS. O'BRIEN:** – that Morrison Park –

**MR. E. MARTIN:** Ms. O'Brien, I just need to get that out, please.

**MS. O'BRIEN:** Okay. Volume 6.

**MR. E. MARTIN:** Volume 6.

**MS. O'BRIEN:** Yeah. Tab – it'll be 44, but it's really tab 144.

**MR. E. MARTIN:** I have it.

**MS. O'BRIEN:** Okay.

So this is a – this is an analysis of the Energy Access Agreement. I was – I think misspeaking earlier – the Energy Access Agreement that was done by Morrison Park and was filed with the UARB. So they had been an expert retained to review the agreement.

And that in this agreement they make a couple of points. They certainly come out and say: This is – this agreement has benefits in it for Emera. But they suggest that there are – the opposite of benefits – so detriments, shall we say, to Nalcor.

And there's two points that they make. One –

**MR. E. MARTIN:** What page are we on?

**MS. O'BRIEN:** I can – well it's the decision, generally, it's there. I can bring you to specific sites but maybe because it is there in a number of cases or a number of areas but one of the –

**MR. E. MARTIN:** I'd like to read it, please.

**MS. O'BRIEN:** Okay.

Well, you can look, for example, look at page 8 – line 19 to 24.

So, it's making – it's noting, here that: "Regardless of the amount of energy requested by NSPI" – which is Emera's sub – "in its solicitation, Nalcor has made the critical

commitment that it will not contract its surplus energy to any other potential buyer on a multiyear basis."

So, in other words, that they're making a point here – while there's no obligation on NSPI to purchase any energy under this agreement, there is an obligation on Nalcor to offer the energy.

**MR. E. MARTIN:** But –

**MS. O'BRIEN:** That's one point.

**MR. E. MARTIN:** Commissioner, do you want to take them one at a time or do you –

**MS. O'BRIEN:** Sure, you can talk about that one, of course.

**MR. E. MARTIN:** So, this is a good thing, you know, the way this is presented.

So, a couple of clarification points and I have never spoken to Morrison Park about this and I'm not sure how much they spoke to Nalcor people about this. But let me give you some facts that are not reflected in that comment.

The surplus energy that was available to Nalcor after servicing the people of Newfoundland and Labrador and after servicing the base block for Nova Scotia – that's what's left was what we were dealing with. You need to consider – not consider – you break those – that remaining energy into two different, distinct blocks.

One block is what I call firm and the second block is what I call – we'll say – non-firm.

For starters, the firm piece of that remaining energy was never part of this agreement with Emera. We did not contract away to anybody, including Emera, in this arrangement the firm portion of the excess energy. But the firm portion, basically, what that means is that we understood – you record the flow of the Churchill River for 50 or 60 years and you know the ups and downs of – we know the ups and downs of the various years – when the water flows a lot and when water doesn't flow that much – all depends on snow, rain and that kind of thing.

But you can, very accurately reflect over 50 years what you're comfortable – very comfortable – with knowing that that's going to happen for sure at a minimum. And that means that, you know, you can produce a certain amount of electricity from that, at a minimum, for sure, and that's the firm energy, and that's the piece that you would use to do a PPA or a long-term arrangement or a contract with, you know, a manufacturer, with another jurisdiction, who needed firm energy, and those types of things. That's the piece that you would have to keep free to contract long-term. That was never part of this agreement, and we never gave that away to anybody, and to my knowledge, it's still retained today.

The non-firm energy is what you cannot – or very difficult – well, you cannot contract it as firm energy, obviously, if it's non-firm. And that block of energy, we had always intended to sell into the spot market because the spot market will and can absorb non-firm energy. And at some points it can be very lucrative; at some points it can be low, but with our storage, we can time that. That's the piece that we were contracting here.

So when this company, Morrison Park, says "Nalcor has made the critical commitment that it will not contract its surplus energy to any other potential buyer on a multiyear basis," we were never planning to do that, 'cause no one would contract with us on a long-term basis with respect to that.

That was the benefit of the Emera arrangements, is that they were willing to put a contract in place with us that would give us access to Mass Hub pricing, which is, you know, the highest pricing we could dream of, from a spot market perspective, and that gave us access to that pricing. And we didn't have to give – they could ask for it; we had to give them a chance to buy it. If they didn't buy it at those prices, we could sell it elsewhere. We'd rather sell it to them at Mass Hub prices, there's no question about that. And if there was higher prices available than Mass Hub, we could go out and get that, and they – or they would give it to us.

So from our perspective, point A is that we did not contract the firm energy, which is all we could contract. What was left, we did an

arrangement with Emera to get the highest possible price we could get and gave us access to that highest possible price, which was very lucrative to us.

And the third point, and I've heard this expressed before about a – so that's the most important point, none of this win-win business. You know, the concept has been presented, I've heard, that every deal has to be a win-lose. If somebody gets something, somebody has to lose something. Well, for starters, I don't believe that. But from another perspective, if people are forced or they don't want to change their minds on that, well, I have another viewpoint I'd like to add to the mix as well, because there's three or four parties involved in this arrangement with Emera of getting Mass Hub prices.

And those – and I'll call it three for now – those are Emera, Nalcor and the transmission provider. And by transmission provider, I mean the jurisdictions that we would flow through to get to the spot market. So that's why I said it could be more than one: Nova Scotia, New Brunswick, New England and such. But we could call that, you know, a third party in total, because to get to those markets you have to pay a tariff. That's business.

The deal we did with Emera gave us access to Mass Hub pricing, which is the best pricing we could hope for, but we also agreed that, because we were dropping off that power to them at Cape Breton, neither of us would account for the transmission charges that we would have either had to pay to get or sell the energy.

So in Emera's case, if they had to – instead of buying from us, if they had to go into the market and spend \$50 for a megawatt hour, they would have to pay \$6 to \$7 to get it to Nova Scotia through the transmission, and it would cost them \$56. If we wanted to sell into the market, we would get \$50, but we would have to pay \$6 or \$7 to get there. So we would net 43. That's just an example, Commissioner. The prices obviously fluctuate.

So in addition to what I've already said, the deal we struck was that we would sell at Mass Hub prices and Nova Scotia – Emera would give us \$50, so we didn't have to pay the transmission. So that was a huge benefit for us. And if you

want to look at it in terms of a win-lose, win-lose, well, we were both winning, and the transmission provider, in that case, was losing. And that, in a nutshell, is the framework of the arrangement.

**MS. O'BRIEN:** So just putting to you, one – a few questions out of that. So what Morrison Park makes clear, and if you want to just look at page 7, lines 13 to 19, where it – another area where it's addressed. And it points out here that "NSPI could have chosen to follow this exact procedure ... even without the Agreement in place." In other words, NSPI – even without the Energy Access Agreement, NSPI could have offered to buy power from Nalcor, Nalcor could have offered energy to NSPI. And I think that's the point that was made that if you had two people – two parties, and it is a win-win for them. In other words, one has a product to sell, the other has a product they want to buy. They can always do that. And this agreement wasn't necessary for that. And this –

**MR. E. MARTIN:** That's incorrect though.

**MS. O'BRIEN:** Why couldn't you have sold –?

**MR. E. MARTIN:** Because there – you know, once again partial information is not going to help us here, Commissioner.

You know, in New England – that's the – and that's the market we were eyeing. It's broken into several zones, and it's broken into several pricing nodes. And by that, I mean different zones in different areas, you get different prices. In a nutshell, you get into the Boston Mass Hub area, I mean, that is a huge demand, and, you know, compared to what we would have looked at, potentially would be a Salisbury node as well, which would be closer to New Brunswick.

Without the arrangements here giving us, you know, reference to Mass Hub, it would have been much less, you know, potentially lucrative for us, because knowing – not knowing what was coming day-to-day, we could have been offered Salisbury pricing; we could have been offered pricing lower than that; we could have chosen not to go there and take our power elsewhere, but the benefit here was the actual reference to Mass Hub. On an arrangement like this, we found that highly valuable.

**MS. O'BRIEN:** But Mr. Martin, regardless of this agreement – okay, even under this agreement, there's no guarantee that Emera's going to buy energy from us at the Mass Hub price, right, there's no guarantee here? No guaranteed sales for Nalcor under this agreement?

**MR. E. MARTIN:** Absolutely not.

**MS. O'BRIEN:** Right, there's none. There is an obligation for us to offer at the Mass Hub price?

**MR. E. MARTIN:** And that's an obligation that we love to have.

**MS. O'BRIEN:** Okay, but you could have always made offers to Emera at the Mass Hub price. You don't need this agreement to make offers to Emera at the Mass Hub price, do you?

**MR. E. MARTIN:** Absolutely not.

**MS. O'BRIEN:** Okay.

And even with this agreement in place, you might make an offer to Emera at the Mass Hub price, they may not accept it because that – they don't have to accept any offer under this agreement, correct?

**MR. E. MARTIN:** Absolutely –

**MS. O'BRIEN:** And –

**MR. E. MARTIN:** – as we said before these are, you know, obvious facts.

**MS. O'BRIEN:** Right. And obviously they could make a counter-offer at a lower price, and ultimately, we may still end up selling energy to Emera at less than the Mass Hub price, correct?

**MR. E. MARTIN:** The possibility exists.

**MS. O'BRIEN:** Right.

So under this agreement, we have two obligations: one, we have to provide them our forecasts. So we have to give them additional information about how much energy we – how much excess energy we expect to have.

**MR. E. MARTIN:** That's right.

**MS. O'BRIEN:** That's an obligation we have. And we have an obligation to make offers to them. They, on the other side of that equation, have no obligations; they get to see our information, and they can decide whether or not they wanna take us up on our offer, or make us a counter-offer.

**MR. E. MARTIN:** Nothing –

**MS. O'BRIEN:** That's all correct, right?

**MR. E. MARTIN:** – nothing different there, either.

**MS. O'BRIEN:** Okay.

So, in light of all this could have gone on without the Energy Access Agreement – this all could still take place without the Energy Access Agreement – we could make offers at Mass Hub price, they could accept, they could counter-offer. The only thing – difference to us, having this agreement in place, is that we have to make the offer and we have to give them our forecasts. Right?

**MR. E. MARTIN:** In the – that's correct –

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** – but the additional piece, which I continue to, you know, to denote is that that's huge value for us to offer into a market, which we're going to do anyway, and offer it at Mass Hub prices with the agreement that we won't pay transmission if they accept it.

I don't see a downside there. I see that as a tremendous – if they don't take it, great; we'll go somewhere else. And we have access elsewhere to do that; we have storage that we can use if we wanna sell high and – you know, elsewhere – and save it and sell high elsewhere.

The ability to access the Mass Hub prices without transmission – and, actually, in our minds, create, you know, a willing market, you know, that, you know, would be – have ties to us with a frequent ongoing dialogue in terms of, you know, a willing buyer and a willing seller – to us, that was, once again, a benefit.

And on top of all of that, with the transmission benefit, to us it was absolutely, you know, something that we saw high value on. We saw we were better off – totally better off with this arrangement than without this arrangement.

**MS. O'BRIEN:** Okay.

I'm not really seeing what particular – what benefit that we have under this agreement that we couldn't have all – had without the agreement. I just – I'm not seeing that – I see that the – I'm not saying that, other than the FLG, I don't see how this agreement gives us any benefit that we could not have already taken advantage of, just simply because of the facts.

Because what I'm hearing you say is that, when you have someone who has energy to sell, and you have somebody who wants to buy energy, it is a – it's a good deal for them both, particularly if they're adjacent jurisdictions and there's – you don't have to transmit the energy through other jurisdictions to get it from the seller to the buyer, correct?

**MR. E. MARTIN:** When you say, particularly you don't have to pay transmission, I don't think it's particularly; I think there's huge value in that –

**MS. O'BRIEN:** Sure.

**MR. E. MARTIN:** – Commissioner, huge value – in terms of not having to pay tariff costs, you know, when you land.

**MS. O'BRIEN:** (Inaudible) –

**MR. E. MARTIN:** I wouldn't just call that particularly; I would see that as huge value – and I would just repeat what I said previously in terms of, you know, how this is a good thing for us.

**MS. O'BRIEN:** And would the –

**MR. E. MARTIN:** We haven't lost anything, from our perspective, and we've gained a market; we've gained a pricing reference to Mass Hub that is jointly understood; and we've gained the perspective – we wouldn't have to pay transmission and we can net that in our own pockets.

So yeah, we – it, you know, we started off at a certain point, and we improved our position.

**MS. O'BRIEN:** The – I won't – I'm not gonna –

**MR. E. MARTIN:** Substantially.

**MS. O'BRIEN:** – I'm not gonna belabour that any longer, but one question I do wanna ask you, the huge benefits of having neighbouring jurisdictions – I know you're saying the tariffs. I would assume it would also be, you had – you – fewer transmission losses – fair to say, if you're transmitting the power over a shorter distance?

**MR. E. MARTIN:** That's something that I'd like to check technically. I think it depends on HVDC, you know, versus AC. I just – I'd have to check that.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** It would depend on a combination of transmission lines, Commissioner, and those things are generally laid out and recognized by the technical people on the sales.

**MS. O'BRIEN:** Okay.

Mr. Martin, you're finished with that binder.

Okay.

Can we bring up P-01384? This is a document we looked at yesterday, Mr. Martin, and –

**MR. E. MARTIN:** (Inaudible.)

**MS. O'BRIEN:** – I'm just gonna bring it up for just one moment to reference it, then I'm gonna bring up another document.

So, 01384, this is the one I just want – you can just look at on the screen here. So this is a note that we talked about yesterday where there was the draft briefing note, and we talked about it – I had said to you that this was a note that was initially drafted by Derrick Sturge.

Do you recall that yesterday?

**MR. E. MARTIN:** Thirty seconds – I'll just scan it here.

**MS. O'BRIEN:** Yup.

**MR. E. MARTIN:** Yes I do.

**MS. O'BRIEN:** Okay.

And here – and I'm gonna bring up the email in just a second where Derrick Sturge forwarded that draft note that's attached, but this here is Mr. Thompson, Robert Thompson, was getting back to Derrick Sturge and summarizing some of the information that Mr. Sturge had put in the briefing note, and it was – he had titled it: "Why not have the project reviewed by PUB?" And he sets out here arguments as to – coming from Mr. Sturge's work as to –

**MR. E. MARTIN:** Ms. O'Brien, excuse me for interrupting.

**MS. O'BRIEN:** Mm-hmm.

**MR. E. MARTIN:** May be useful that – and perhaps, I'm just thinking, I'm trying to read this and reflecting – and Ms. O'Brien's laying a lot of groundwork, which I understand – but maybe, if we do this: maybe you could ask the question first and when I get into it – I'm concerned that I'm not catching the data here and I'm not sure where the question is going, so I'm feeling compelled to read it, but I'm not sure if I need to. It might delay things.

**MS. O'BRIEN:** Okay, well let me continue on and if we need to go back and read it, you can.

So I had said to you yesterday, I'll get the exhibit where Mr. Sturge created that document, okay?

**MR. E. MARTIN:** But, Commissioner, maybe this – and I want to raise this because I'm trying to expedite things as well. I don't know how you think, but my mind is moving back and forth trying to see where this is going and trying to read at the same time. So it would benefit me – unless we read it and go, another option would be to get the question out. If I know that it's a simple question then I'm not too fussed by reading this.

**THE COMMISSIONER:** Right.

I guess the best thing I can say to you is that you and I are in a position where we're not able to dictate to counsel how they ask their questions. So, I think basically I'll let Ms. O'Brien ask her questions; she's got a right to do that as does every other lawyer here. I can't prevent them from asking the questions the way they want to ask their questions, unless it's something that I need to get involved in. Right now I don't think I can, nor should I.

So, let's just see how this goes and if you need to read it, just let me know and we'll read it; it's simple as that.

**MS. O'BRIEN:** Okay.

So, I was just bringing it up, Mr. Martin, to give you context as to what we discussed yesterday. I'm now gonna bring up a new exhibit that's been put in –

**MR. E. MARTIN:** Well, I would like to read that then, Commissioner. I apologize for that but I –

**MS. O'BRIEN:** Certainly, you can read it; there you go.

**MR. E. MARTIN:** Can I get a hard copy please?

**THE COMMISSIONER:** Maybe you could just try to read it on your screen, if you could first, because I don't know if we have a hard copy here for you.

**MR. E. MARTIN:** Okay.

It's just it's flicking back and forth so much, I lose concentration.

So, I have the first part, it's the – it's the one that starts right there, why not have a project review by PUB.

**THE COMMISSIONER:** And when you get to the edge of the page I'll ask the Clerk to move that down a little further, just let us know.

**MR. E. MARTIN:** I'm ready to move – on the next section.

I'm good.

**MS. O'BRIEN:** Okay.

So, P-001653 that should be at tab 141 for you and that should be in volume 6.

**MR. E. MARTIN:** Volume 6, tab?

**THE COMMISSIONER:** Forty-one

**MR. E. MARTIN:** Forty-one.

I have a minor mishap here, Ms. O'Brien. Get the question out, and I'll fix that after.

But I am at the right tab, I believe.

**MS. O'BRIEN:** Okay.

So this is the briefing note that Mr. Thompson was addressing in the email you just reviewed, and this was the one that had come from Derrick Sturge. So this was the document, yesterday, that I said I'd find to put in evidence, so here's the briefing note, and it's there in front of you, and it was yesterday that we addressed – it talked about the independent reviews, and that's the purpose for which we reviewed it yesterday. I'm just scanning through it. Okay?

So –

**MR. E. MARTIN:** Just one second, please?

**MS. O'BRIEN:** Okay.

I'll put up on the screen. This is the part yesterday that we were looking at right there.

**MR. E. MARTIN:** This is the briefing note to – I'm just trying to see who the briefing note is to. Is this from Nalcor to the government, or is this from – an internal government document?

**MS. O'BRIEN:** No.

**MR. E. MARTIN:** Do you know?

**MS. O'BRIEN:** This is a – yes, this is a document that Derrick Sturge drafted – did the initial draft on – and forwarded it to government, and that's what you'll see there on the front page.

**MR. E. MARTIN:** Right.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** I understand.

**MS. O'BRIEN:** Okay. So I understand what this note is when we read it in full, and as Mr. Thompson had summarized it in the email you just looked at, Nalcor was putting forward a position, in this briefing note, as to why it would – you know, why the project should not be reviewed by the PUB, and it sets out, in this briefing note, as summarized in the email you just looked at, Nalcor's positions with respect to how it could delay the project at additional cost, et cetera.

Do you recall this – I'm going to say Nalcor's position, at the time when the PUB review was being considered, that Nalcor's position was that: You did not want to have the PUB do a review of the project?

**MR. E. MARTIN:** I do recall that, Commissioner, and, just to put in a frame around that, we had no problem with the PUB review, you know, as a review and the rationale for it, and obviously, from a Newfoundland and Labrador Hydro perspective – well versed in PUB reviews – it's part of the culture. And we see value in the PUB reviewing things, so I want to put that perspective aside that that wasn't an issue.

From Nalcor's perspective, we were looking at resource constraints, time constraints, you know, impacts on the project, and the fact that, you know, this was – you know, I'm sure for good reason, from the province's perspective, which we understood this was a change, though, from Nalcor's perspective, in terms of project management executing something and an introduction of a significant, you know, resource – heavily resourced piece of work in the middle of us trying to achieve something.

So we came at it from a commercial business perspective, project perspective, thought it was important to, you know, present those perspectives to the province and the premier and the minister. And so that's the context of, you know, we had a problem with it – that was the context, it was more giving the information.

But make no mistake, you know, from the premier's perspective and the minister's perspective, you know, there's reasons well outside of Nalcor that they would have to do something like this. And as I said, particularly to the premier, is that these are my concerns – was the theme. But that being said, you know, you make the call obviously, and whatever you make the call on, I'll back you a hundred per cent, and we'll move on.

**MS. O'BRIEN:** Okay, we – when the – obviously the terms of reference were drafted, and I can – if you want to look at them they're at P-00038, Madam Clerk. And for you, Mr. Martin, that would be volume 4, tab 72.

I don't know if you're gonna need them for this question, but I know you like to have documents in front of you, so –

**MR. E. MARTIN:** I just like – and I'd just like to serve notice, I did have a bit of a mishap here, and, possibly, we could have one of the folks help us out because I might be at that for four or five minutes, cleaning that up.

**THE COMMISSIONER:** Okay.

**MR. E. MARTIN:** Please?

**THE COMMISSIONER:** Just if – if you could just pass that over – Marcella, could you come over and get that, and maybe while we're referring to the next book, you might be able to put this one back together?

**MR. E. MARTIN:** I apologize, Ma'am, I just broke it open right here.

**THE COMMISSIONER:** All right, P-00038, book 4 – volume 4, tab 72.

**MR. E. MARTIN:** That's the terms of reference and reference questions?

**MS. O'BRIEN:** Yes.

**MR. E. MARTIN:** I have it.

**MS. O'BRIEN:** Okay, so we've covered this a fair bit already with Gil Bennett and others, so I'm not gonna spend a lot of time on the PUB processes with you, because I understand – and

I'll get you to confirm now – that it was Mr. Bennett who was more heavily involved in this file than you. Is that fair to say?

**MR. E. MARTIN:** That is fair to say.

**MS. O'BRIEN:** Okay, do you recall whether or not you were consulted as to timelines prior to the formal reference being made?

**MR. E. MARTIN:** Yes, I was consulted – discussed – it was a pretty frequent discussion.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** And by timelines, I mean the timelines of, obviously, how long it's going to take, and how it's gonna impact the timing of the project, and those types of things.

**MS. O'BRIEN:** And how long it would take Nalcor to put – I mean, when we look at this terms of reference, it does – it anticipates Nalcor making a submission. How long it would take Nalcor to put that submission together and get its documentation over to the PUB. Were you consulted in that respect?

**MR. E. MARTIN:** Much less. Much less than what I was thinking, in terms of that. But I certainly would have, you know, had been – I would have asked what's our timing looking like here.

**MS. O'BRIEN:** Okay.

Any – do you recall any concerns at Nalcor that this is a very tight timeline, I don't believe we're gonna be able to make it?

**MR. E. MARTIN:** I recall concerns over very tight timelines and resourcing. I think as far as making it, I believe, you know, rightly or wrongly at the time, they're a pretty motivated group. I mean, they said, you know, about – you know, here it is now, let's put it in the mix and make it happen. And they were of that mindset, throughout the company, both project and on the Hydro and other sides that would have been involved in this, they would have put their shoulder to it and, you know, said okay we're going and, you know, we're gonna get it done. That would be their thinking.

In retrospect, you know, obviously it took – it took us longer than anticipated. There was underestimated, you know, guidelines and timelines. And I don't exactly know where you're going, Ms. O'Brien, but I know I wrote a letter and I think as I reviewed it here recently – and I think it was in a January time frame of 2013 possibly – but that was a good summary – and I signed it – that was a summary of what I think I felt had transpired, you know, where it was going and what had happened in terms of missing those guidelines. And I believe I wrote that to the Public Utilities Board.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** It was – you know, that was a good summary of my thinking there, and if you were asking – if that's where it's going, I'd like to get that letter and refer to that.

**MS. O'BRIEN:** No, that's fine that you've referred to it. It's already been reviewed in –

**MR. E. MARTIN:** Yes, okay.

**MS. O'BRIEN:** – the hearing room, and so that's fine.

One – we've had evidence from Minister Kennedy – or Minister Kennedy as he then was – that one of the reasons that he did not grant an extension to the PUB and – was because he – his – the information that he had from Nalcor was that there was very tight timelines. So as you are aware, the – you know, the PUB did grant – ask for an extension of time. They were granted a limited extension but not the full amount of the extension they wanted, and ultimately, they filed a report that essentially – to summarize it – they didn't have enough time and they didn't have enough information to answer the questions.

I take it you're aware of all that?

**MR. E. MARTIN:** Yes, I am.

**MS. O'BRIEN:** Okay.

So when Mr. Kennedy was being questioned about this – you know, why wouldn't you have given the, you know, the PUB the extension it needed to do this, you know, this work – one of, you know, his – he had two reasons. One there

was some pressure to get it, the debate, into the House of Assembly, but also that the – there was – the information coming from Nalcor was that if they didn't move this forward, if they didn't meet their schedule that this could, you know, put the project at risk, a lot of costs and that type of thing.

Mr. Kennedy also suggested that the timelines that Nalcor were providing him, and on which he – used to make his decision, ultimately proved to be artificial, were his words. So he gave similar evidence with respect to why he limited the Consumer – he put some limits on the Consumer Advocate's participation in the reference question – we covered that evidence.

But again, he said a large part of that reason was information he had from Nalcor, we had to move this along, and he again said, you know, the timelines that Nalcor provided him, Nalcor would say, look, we need to, you know, we will have the DG3 numbers ready by this time, we need to get it sanctioned by this time. But ultimately, Nalcor wasn't meeting its own milestones or dates when it said it would have its numbers ready and be ready to go.

And as I said a couple of minutes ago, Mr. Kennedy referred to those timelines that Nalcor was putting forward, you were putting forward, as artificial. Obviously, I wanted to give you a chance to respond to Mr. Kennedy's evidence in that regard.

**MR. E. MARTIN:** I didn't hear Mr. Kennedy's evidence – I think from Mr. Kennedy's perspective, you know, there's no question he would consult with Nalcor on that, and he was very – you know, very attuned to the needs of the project, in terms of the needs of the province, in context. We would give him information as requested; it would be the best information that we would have at the time.

And, you know, if you're looking at – over all the things that were happening at that time, with, you know – attempting, or making a reference to get the project off the ground in conjunction with the PUB review – and all of the resourcing that goes with that and I think as I expressed in my letter, you know, some, you know, deadlines and things were missed. Some things changed.

And I make no excuses for that, Commissioner. I mean, it happened – but I can assure you that in the midst of all of that happening, we were providing the best information we could when requested at the time. And had the interests of the project primarily in mind, but I will say again that that was our job to do that, and you know, the elected officials were driving this process, and we would have indicated to them that: whatever you decide, we'll be there, but these are the impacts. But we would have given the best information we could have at the time, but there was a lot happening, and things were missed.

**MS. O'BRIEN:** I think – it seems to me one of the key pieces was having these DG3 numbers ready. There was the risk work, but it was also the DG3 numbers themselves. Do you – what was the – do you recall now what was causing the delays in getting the DG3 numbers out? What was causing the delays in getting the risk information out, the things that needed to be reviewed?

**MR. E. MARTIN:** Commissioner – and I've heard this question, or theme, you know, several times. And I would just like to make a couple points. The first point is, and I believe this – I understand this, but – the understanding that the people who I've heard asking the questions and giving some answers in some cases, or wondering what happened – the understanding of the depth and breadth of what is required to build, you know, an estimate of that magnitude – I sense very clearly it's misunderstood. You know, the volume of people involved starting, you know, at the basis of the engineering, you know, design perspectives and the things that, you know, are changing at the design level, which drives costs.

You know, they have the engineering expertise involved there to redesign, incorporate, you know, new thoughts, new information – is massive. It has to be checked and rechecked. That's obviously the basis of the technology to keep the dam safe and the transmission safe over the course of many, many years. And then to translate and move that into the costing group to actually, you know, get substantiated costs around that, do some benchmarking again. And do the various tests on that.

So massive amount of engineering information coming in and, you know, tremendous amount of people costing that, rolling that up into – you know, the computer exercise of rolling that up into an estimate, doing the checks and rechecks – and I'll stop there. I'm just trying to create a bit of a picture that it is a massive undertaking and it can't, you know – it can't be rushed. In terms of where it's going, primarily because of the engineering thoroughness that's required, but on top of that, the numbers are obviously critical. So – I'll stop there, Ms. O'Brien, but it's more of the depth and breadth of understanding what's happening there. It just takes a tremendous amount of effort.

**MS. O'BRIEN:** Okay.

And at the time, fair to say that even within Nalcor you were underestimating how much time it would take you to do all of that work.

**MR. E. MARTIN:** I don't think on the costing, you know, side we were underestimating but once again the, you know, the responsibilities and resourcing for, you know, other things that were happening, you know, other things that were being responded to and such, I believe that there was just not as much as on the costing side but on – you know, some of the other interactions that we were having were taking more time than we would have expected.

**MS. O'BRIEN:** But wouldn't that – wasn't that true even for the DG3 base estimate numbers? Were they not – or the DG3 estimate numbers that you were using? Wasn't that one of your own deadlines? You know, you thought you'd get the numbers out much sooner than you ultimately did?

**MR. E. MARTIN:** It sounds right but I just – I can't really recall that at this moment exactly, but you know – don't know. Can't answer that unless I check some more data.

**MS. O'BRIEN:** Okay.

And, similar – I mean we've heard from Mr. Bennett that initially – you know, that the amount of work that was going to be put in to presenting the numbers to the PUB – he had thought initially that there'd be a truckload of documents, I think by June. It turned out the –

essentially the work had been underestimated and it took more time to get all that together and it wasn't ultimately delivered, the full submission wasn't ultimately delivered 'til November.

Is that consistent with your memory?

**MR. E. MARTIN:** Yeah, that appears correct.

**MS. O'BRIEN:** Okay.

So really, I mean, I guess one of the results of this is that –

**MR. E. MARTIN:** One other thing we did though, Commissioner, I remember this discussion, that I think some of our people approached the Public Utilities Board as well and discussed with them that, you know, the undertaking had come quickly and we had – we had agreed – my understanding was that we had agreed with the Public Utilities Board that instead of a more traditional – let's give them, you know, a submission and all the documents in one fell swoop and then let the process unfold – my understanding is that we had come to an arrangement with the PUB that we would commence document – feeding them documents without the complete package so that we could give them a head start.

**MS. O'BRIEN:** Yes, so you mean to suggest that some documents didn't come earlier, I mean, the Commissioner has heard a lot of evidence on when documents came –

**MR. E. MARTIN:** So I just wanted to reiterate that because we were working hard to try to expedite the process and I just wanted to make that point because we did respect the process, contrary to some, you know, suggestions I may have read elsewhere and we were doing our best to expedite things to the extent possible as well.

**MS. O'BRIEN:** So looking back now – so initially, as I understand the evidence to date was that you hoped to have the project sanctioned in September very, you know – September 2012 or even earlier. Is that – do you recall that?

**MR. E. MARTIN:** Yes, early as possible.

**MS. O'BRIEN:** Early as possible. And, initially it was thought that you'd go to – the debate would happen in the House of Assembly over the summer of 2012. Ultimately that didn't happen and we know the project ultimately didn't get sanction to December. And what I'm understanding was what was – one of the reasons why we didn't move through to sanction faster – in the House of Assembly debate – faster, was because Nalcor didn't have its numbers ready. Is that fair to say?

**MR. E. MARTIN:** That would be part of it, absolutely.

**MS. O'BRIEN:** Part of it.

So what really happened here is, so, it was kind of a bit of a – in very compressed time frames, a lot of pressure in that last quarter of 2012 to, you know, get this project sanctioned, because I understand Nalcor, at least, was expressing concerns that if we don't get it sanctioned, we don't get things going here, it's gonna cost us a lot of money and we're putting the – could be putting the project at risk.

Is that fair to say?

**MR. E. MARTIN:** That's correct.

**MS. O'BRIEN:** Okay.

And in the midst of that sort of compressed time, pressure frame, what ultimately happened was that some of the detailed reviews that had initially been anticipated, didn't get done.

**MR. E. MARTIN:** And where we went through that yesterday.

**MS. O'BRIEN:** All right.

And the PUB, I guess, is another example of that, fair to say?

The full PUB review is another example of that.

**MR. E. MARTIN:** Is another example of what?

**MS. O'BRIEN:** A review that, ultimately because of the compressed time frame, didn't get done in as full a manner as had initially been anticipated.

**MR. E. MARTIN:** You have to ask the government that. That was their –

**MS. O'BRIEN:** Okay. Fair enough.

**MR. E. MARTIN:** We were in support of that. And, as I mentioned earlier, I took the premier's lead in particular on that, and the minister, and, you know, we were fully part of that and any delays or whatever I think Nalcor had some contribution to that and we'd take responsibility for it. But we were in support of the government and what they told us to do.

**MS. O'BRIEN:** Okay.

I'm just gonna ask you, moving on now to another topic, just a – very brief questions on water management.

It's – I'm not – only going to be asking you about one public document, and we have had an in camera session on that, and I don't intend to cover any confidential commercially sensitive information here in these questions

Mr. Martin, it's a very simple set of questions.

Can we bring up P-01475, please?

And this will be in volume 6, tab 145 for you, and this is Justice Castonguay's decision.

**MR. E. MARTIN:** I believe that's in the – I think it's –

**MS. O'BRIEN:** Volume 6? Oh that could be in the one our hearing Clerk has just put back together for you. And it's tab 145.

**MR. E. MARTIN:** In six?

**THE COMMISSIONER:** Forty-five.

**MR. E. MARTIN:** In 606?

**THE COMMISSIONER:** Yes, and in tab 45; really 145, but 45 in your book.

**MR. E. MARTIN:** I don't have 45 here.

**MS. O'BRIEN:** Oh, I've just been told it's tab 7 now, it was moved.

**UNIDENTIFIED MALE SPEAKER:** Binder 7.

**MS. O'BRIEN:** Oh, binder 7 –

**MR. E. MARTIN:** Oh, binder 7, oh yeah.

**MS. O'BRIEN:** – apparently, okay, sorry. That's – I – that was done after I was given my sheet obviously.

**MR. E. MARTIN:** Yeah, tab 42. Forty –

**MS. O'BRIEN:** Forty-five?

**MR. E. MARTIN:** Forty-five. I have it.

**MS. O'BRIEN:** Okay.

So, I'm just going to give you a little context here. So this –

**MR. COFFEY:** Ms. O'Brien, is it 01475 or 76?

**MS. O'BRIEN:** Seventy-six.

**MR. COFFEY:** Seventy-six? 'Cause that's the brief

**THE COMMISSIONER:** 01475.

**MR. COFFEY:** Yeah. That's the decision as opposed to the brief.

**THE COMMISSIONER:** Is that the one you're referring to – the decision?

**MS. O'BRIEN:** Oh. No.

I think it's in this brief. Sorry. This is – sorry – it is the brief. I misunderstood my note here but it is the brief that I want to bring him to.

**THE COMMISSIONER:** Okay. So it's 01476 then.

**MS. O'BRIEN:** Oh, no. I apologize, Commissioner, 01475. It should be 01475.

**THE COMMISSIONER:** Okay.

**MS. O'BRIEN:** Bring that one up.

**THE COMMISSIONER:** So, are you at 01475 there now?

**MR. E. MARTIN:** I'm in tab – I'm in 77.

**THE COMMISSIONER:** What's the red number in the top?

**MS. O'BRIEN:** It's Castonguay's decision.

**MR. E. MARTIN:** 01475.

**MS. O'BRIEN:** Yeah. Okay. Thank you Mr. Coffey.

We know that the – there was a renewal – that there was a renewal contract from the initial power contract for the Upper Churchill with Hydro-Québec that was renewed and it's currently the renewal contract that we're working under and it's the renewal contract that will expire in 2041.

Are you with me so far?

**MR. E. MARTIN:** I'm with you so far.

**MS. O'BRIEN:** Okay.

And as a matter of public record, there was – there has been – a disagreement, shall we say, between Nalcor and Hydro-Québec as to the interpretation of some of the terms of the renewal contract.

Fair to say?

**MR. E. MARTIN:** Fair to say.

**MS. O'BRIEN:** Okay.

And Nalcor's taken a view that the – the meaning of the wording in the renewal contract is different than was in the original contract. And Hydro-Québec's view is that essentially the wording means the same thing in the renewal contract.

Fair summary?

**MR. E. MARTIN:** I'm not exactly sure of that. I'm not sure – I've got to think about what Quebec is actually doing. I think I know but I don't know if I want to talk about it.

**MS. O'BRIEN:** No, I'm just really dealing with things, Sir, of a public nature – that I'm not asking any opinion from you. I think this is clear what was going on in the motion that went before Castonguay in the Québec Superior Court.

**MR. E. MARTIN:** It's your characterization of what Hydro-Québec thinks is that I don't want to agree or disagree with.

**MS. O'BRIEN:** No, I 'm not asking you whether you agree with them or not – just that that's what their position is.

**MR. E. MARTIN:** Well, I won't comment on their position.

**MS. O'BRIEN:** Okay.

Well, the decision is here and what I wanted – the question I want to put to you was – when did Nalcor first become aware that Hydro-Québec was interpreting the renewal contract differently from what – how – Nalcor was interpreting it?

**MR. E. MARTIN:** Mr. Commissioner, I'm – I don't wanna answer that.

You know, I spent a lot of time in court in Quebec and that was the topic. And I'm just being very careful here and try to understand, you know, what I say now. I'd like to check the records, you know, and make sure I'm not introducing something new.

And I did have a lot of experience in being highly surprised about the level and quantity of documents that the Quebec, you know, group brought forward from, you know, public commentary and such that occurred over the years.

So I would like to check what I said in court before I went from memory here.

**THE COMMISSIONER:** Maybe the best way we do this, because I think it, you know, first of all, let me assure you, Mr. Martin, one of the main themes that I've had throughout this inquiry is that I don't want anything to be stated publicly that could in any way be a negative for the Province of Newfoundland and Labrador in it's present litigation.

That's why we actually did something which is unusual, which is have an in-camera hearing on water management. And it took a lot of work to even get that in place. So I've had that.

There is – there are documents that are public, for instance, Castonguay's decisions, the briefing note, or the brief of Nalcor of Hydro-Québec on the appeal – these are public documents. So Ms. O'Brien can take you to those to see whether or not you agree with them or you don't agree with them.

If you don't agree with them, then I may have to consider the possibility that I will go in camera for the purposes of getting that answer. But I'm hoping to avoid to do that.

So maybe, if I could, Ms. O'Brien, is it possible to bring him to the areas of (inaudible)?

**MS. O'BRIEN:** Absolutely. Page 96, please, Madam Clerk. It's paragraph 60.

And I'll put the question to you, Mr. Martin, so you'll understand what the question is.

So I understand that Hydro-Québec essentially filed their motion that ultimately went before Justice Castonguay in June of 2013. So certainly Nalcor would have known when you had that motion that Hydro-Québec was taking that position in June of 2013. I think that that would be obvious.

The question is: Did you know about it prior to sanction?

And in this decision here you'll see at paragraph 600 – if you just look at that paragraph there, where it says in June of 2012, "HQ sent CF(L)Co a five-year plan for the period of June 2012 to May" 2016. So that would have covered the period moving – when the renewal contract would have come into effect.

And I understand, from that forecast, it – the question to you is were you aware of that forecast, did that forecast – I'll put out the questions for you.

Were you aware of it? Would that forecast have led you to understand that Hydro-Québec was interpreting the renewal contract in the same

way that they had interpreted the original contract? And – so were you aware of that back in June of 2012, that that was gonna be Hydro-Québec's position – that the renewal contract was gonna have the same interpretation as the original contract?

So that's the question I wanted to put to you –

**MR. E. MARTIN:** I understand your question –

**MS. O'BRIEN:** – and then the follow-up would be did you advise government? So those are the questions, just so we get them out there, and then you can give consideration of that, and I've – you know, I understand the Commissioner's concern, and we can – he can make a call whether he wants to ultimately deal with this in camera or not.

**MR. SIMMONS:** Commissioner, if I might, we do need to tread fairly carefully because this decision is currently under appeal.

**THE COMMISSIONER:** (Inaudible.)

**MR. SIMMONS:** The appeal has been argued; it's under reserve, so we have to exercise some caution about inviting any evidence that addresses whether this decision – the decision is correct or not, 'cause that's an issue that is –

**THE COMMISSIONER:** Yeah.

**MR. SIMMONS:** – under appeal, so –

**THE COMMISSIONER:** I don't think that's the question. The question really relates to when did Nalcor get notice of the possibility that CF(L)Co – or that Hydro-Québec was not seeing it the same as they were seeing it. I don't believe, having read the pleadings and having read the brief of the parties, that that is in contention on the appeal.

So again, I want to be careful here, but – so I'm thinking that this is not an area that we need to go in camera. This is a finding of fact that was made by the – by Justice Castonguay at the time, and, as we know, the purpose of an appeal, well, so ...

**MR. SIMMONS:** It's a caution at this point, really, so that Mr. Martin – so that the question

is clearly understood, that it's purely a factual question, and that the answer –

**THE COMMISSIONER:** Yeah.

**MR. SIMMONS:** – shouldn't stray in any way into –

**THE COMMISSIONER:** I wanna make it –

**MR. SIMMONS:** – an analysis of the decision.

**THE COMMISSIONER:** – very clear, Mr. Martin, and to everyone here.

**MR. SIMMONS:** Mm-hmm.

**THE COMMISSIONER:** I don't want any sort of airing of your views or anybody else's views about whether Nalcor is right or Hydro-Québec is right, at least for the purposes of evidence before this Inquiry, other than what I've already heard in camera.

The point of this question seems to me to be was – were you aware that Hydro-Québec was taking a position, perhaps contrary to Nalcor's position, on the renewal contract interpretation in June of 2012 when this forecast document was sent to Nalcor – or to CF(L)Co. I think that's a fair question, and –

**MR. E. MARTIN:** And I think the fact that that was sent would be – that would be an indication that that's what they were thinking. But my – where my head is, is first off, you know, as a principle and you know, when I was there I established the point that we do nothing without Stikeman and Mr. Hickman, you know, on any kind of reply until I get the lawyers back in because they had every iota of detail and had tracked it all the way in. And I was – in my particular situation, I was obviously doing a lot of other things.

So that's where my head is right now. I'd like to – you know, I'd go in and see Mr. Hickman, and we'd get Stikeman on the phone, and my thinking would be what did we know before that. And that's where I don't want to thread into now, and I'm going from memory, so normally I would check that out and say what can I say. So that's my hesitation here, because that's – that was the principle that I operated under, and I'm

really concerned about doing any freelancing here.

**THE COMMISSIONER:** Right, okay.

**MR. E. MARTIN:** But the fact that this is here like that, obviously that would be a point that I would've seen it.

**THE COMMISSIONER:** All right, okay.

**MS. O'BRIEN:** So you recall seeing it; do you recall having any communications with government at the time? I mean, it's – this is a pre-sanction notice, shall we say. You know, you're getting this notice in June of 2012, so it's prior to sanction. Do you recall whether you advised government that you had noticed that Hydro-Québec was taking this view?

**MR. E. MARTIN:** I believe we did, and once again, I'm thinking through the interactions with all of the lawyers and such. We were pretty, you know, we were – you know, I can't say that either.

**THE COMMISSIONER:** Don't get into what the lawyer said. It's just a – question, again, is simply one: did you relay this, or did you provide this information to anybody in government? I think – is that your question?

**MS. O'BRIEN:** That's the question, as simple as that. And if (inaudible) –

**THE COMMISSIONER:** So don't go into what you discussed with lawyers. That's not of any consequence.

**MR. E. MARTIN:** Right, I understand. I understand.

Yes, but I can't remember the exact time and where it was – it was a topic that was ongoing.

**MS. O'BRIEN:** Okay. Do you recall who you would've had the discussions with?

**MR. E. MARTIN:** I just can't recall at the moment, no.

**MS. O'BRIEN:** Would it have been at the premier-minister level, or would it have been –?

**MR. E. MARTIN:** Yeah, it would've been at the premier-minister level. We would've –

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** Yeah, we would've – I would've made sure that that was out there.

**MS. O'BRIEN:** Okay, thank you.

Okay, I'm going to bring up, please, P-00254. This is in volume 6, tab 143.

Oh, apparently it's in volume 7, tab 143.

**CLERK:** 00254?

**MS. O'BRIEN:** Yes.

**THE COMMISSIONER:** So I'm assuming you've just broken up the binder?

**MS. O'BRIEN:** I'm assuming that's what –

**THE COMMISSIONER:** (Inaudible.)

**MS. O'BRIEN:** – was done. I – my notice doesn't have – my concordance table doesn't have a volume 7 on it, so I'm assuming they did that at the last minute.

**THE COMMISSIONER:** All right.

**MS. O'BRIEN:** Okay.

So, Mr. Martin, do you recognize this document?

**MR. E. MARTIN:** Yes, I do.

**MS. O'BRIEN:** Okay.

So this is a document that, I think, you provided to the Commission. I mean, it was there in Nalcor's documents anyway, but I – you've addressed some of the content on this document a number of times already in your evidence, but this is a table that was done – I understand this was work that was done at your request. Is that fair to say?

**MR. E. MARTIN:** That's correct.

**MS. O'BRIEN:** Okay. And I believe your counsel had asked Mr. Auburn Warren some questions on it back in September. So can you please explain, for the Commissioner, why you asked to have this document done and what it shows?

**MR. E. MARTIN:** Now, I asked to have this document done because it was obvious to me that there was benefits to the people of the Province of Newfoundland and Labrador in both the Isolated and Interconnected case that were far and above the simple CPW we did, and I wanted to understand that, you know, to make sure that I had a full picture in my head as to what each of those alternatives totally brought to the table in reality.

What was your second part of your question?

**MS. O'BRIEN:** So explain what it shows – explain the document to the Commissioner what you – why you – you said why you got it together; do you want to go over the information on it?

**MR. E. MARTIN:** Yes. But first in summary – because there's a lot of detail on a lot of numbers here. But for folks and people, you know – and I'm not saying you, Commissioner, I'm just speaking to others who may be listening that, at the highest level, what this shows is that if you put all of the true benefits of each project – of each alternative on paper, we talk about this \$2.4-billion difference of CPW. It's a different concept for most people, but, basically, it's a large amount of money that Muskrat Falls, at that time, was preferred over the Isolated case, very significant amount.

When you add in all the other benefits that range from export sales that were not included in the original economics, a pretty lucrative amount of money.

If you look at things like the dividends that we pay ourselves as people when you pay your rates, so you're paying yourself – very substantial – when you look at the cost of carbon we believe that we will not have to pay, for instance; when you look at the benefits of all of the wives, and sons, and husbands and daughters who we may know who have worked on the Muskrat Falls site over the past four or five

years and, you know, the reasonableness of the compensation they were receiving and what that did for their skill development as well as their financial situation, and how that kind of injection into the economy helped businesses over the past seven to eight years – when you add all that up with respect to Muskrat Falls versus the Isolated Island Option, Muskrat Falls is favoured over 50 years by \$61 billion.

Now it's a big number. But over 50 years, Muskrat Falls will return more than the Isolated Option to the people of the province – whether it be directly or through employment and induced benefits – \$61 billion. If you bring that to what we call a CPW, or present value, that number is \$7 billion. So, if you do the comparison – we've been talking about a difference between the two of \$2.4 billion in favour of Muskrat – I think it's important for the people to realize that from an overall economy we're paying ourselves, circulating money back to ourselves in rates – that 2.4 needs to be understood in the context; that's one element of an overall \$7 billion preference.

And I've often said that mathematically I cannot see an option to Muskrat Falls that doesn't win. And I look at it from this perspective, that's what drives my thinking on that. And unfortunately we've had, you know, cost overruns on Muskrat Falls – substantial. But what this information is telling us is that there is significant value that Muskrat Falls provides to the people – cash value – that can be used to adjust the rates, particularly in the shorter term, so that the burden on the people will be handled, while at the same time allowing the project to unfold and have us reap the tens of billions of dollars of benefit over the next 50 years.

All that's in the framework of – so, just to repeat, we can deal with the overrun, as unfortunate as it is, because the resources are there to help the people most impacted and most important, which are the ratepayers. Once we've established that and we've – and we have done that, that gives us an opportunity to then take a look at some additional factors and points, such as the fact we are buying a house here, not renting.

Over a 35- to 40-year period we will pay off in full the financing attached to this project, and at

that point the cost of the project to the ratepayers, provided how the government of the day wants to do it, could be just operating costs for another 50 years after that.

We're hooked up both ways for the first time in history to the mainland, which gives us increased reliability; we've covered ourselves with respect to carbon costs from generation, which could impact us; and I think, most importantly – I think the first most important is the ratepayer as I said, the second most important are the things I just mentioned for the future generations – so ratepayers we can cover off today and help them; in the future generations will have the best rates, or at least be in the category of the best rates in North America as we move to paying this off – two most important things.

But as equally as important, over and above that, you look at our situation with respect to what we've done with Nalcor, what we've done in the oil business, what we've done with the Muskrat Falls Project, we have enough electricity to suit ourselves for the next 50 year – or next 30 to 50 years – we have oil access, you know, to the – to water, to – you know, unlike the pipeline constraints. And we are well positioned for the first time – in my estimation – in history, for the future.

And in that context, I do overlay the Upper Churchill. And I believe for the first time in history, we are in the right place, we are – control our own electricity, the oil is expanding, the future is bright, we're hooked up both ways reliably, we can sit back now from a reasonable leverage perspective and say to Hydro-Québec: when you're ready to talk, let's chat.

And I think that puts us in the best possible position for the Upper Churchill negotiation and I think when you add that benefit in to the fact that we get a reasonable deal there based upon the fact that we are eye-to-eye for the first time. That the returns become even more substantial and for my money, fooling with that right now – because we are well positioned – would be absolutely crazy.

We should hold the course, get the ratepayers taken care of, take advantage of the position we put ourselves in and keep moving. And do not

acquiesce to making any rash decisions right now with the Upper Churchill.

**MS. O'BRIEN:** So, Mr. Martin, we've had some evidence already with this also from respect to Wade Locke. And I just want to cover a few points there. I understand although this document is entitled "Net Benefits"; it doesn't take into account opportunity costs, is that fair to say?

**MR. E. MARTIN:** Could you describe as, you know, an example, for instance?

**MS. O'BRIEN:** Sure, so here for example, if we went – you know, the Interconnected Island required a large equity investment by the Province of Newfoundland and Labrador, correct?

**MR. E. MARTIN:** Correct.

**MS. O'BRIEN:** Okay. So – much larger than the Isolated Island?

**MR. E. MARTIN:** Yes, that's correct.

**MS. O'BRIEN:** So, if we had gone with the Isolated Island and the province had this equity it could have invested in something else that would also have – you know, some other investment, that would have given it a rate of return.

**MR. E. MARTIN:** That's correct.

**MS. O'BRIEN:** Okay.

And that rate of return that the government could have received from that money, under the Isolated Island scenario, is not captured in this table, is that correct?

**MR. E. MARTIN:** That's correct.

**MS. O'BRIEN:** Okay.

And another example would be – so I know a lot of the CPW induced – you know, you're looking at: this is the value of, you know, people having jobs, you know, working on the Muskrat Falls Project – you just talked about husbands and wives and daughters and sons and such.

But if the Muskrat Falls Project had not gone ahead and we were under the Isolated Island, you know, certainly some – many of those people would have had jobs – you know, would have taken their time and still been working, and would have had other jobs such that they were paying taxes and consuming in the population and such.

**MR. E. MARTIN:** I disagree with that.

**MS. O'BRIEN:** You don't –

**MR. E. MARTIN:** I can't agree with that at all. From an employment perspective, the employment that was generated by Muskrat Falls, I don't think that could be replaced by any of the other options that would have been on the table.

**MS. O'BRIEN:** But I'm not saying it would be equal employment but certainly not all – some of the people who worked at Muskrat Falls and who have worked at Muskrat Falls, if it wasn't for Muskrat Falls they'd still be working somewhere.

**MR. E. MARTIN:** Two points there: there's a downturn in Alberta occurred as well and most of the people I know who are travelling – when I say most of the people, I guess, I know most of the younger people through my four sons who, you know, and their friends were away a lot in Alberta. I saw that dry up substantially over the course of time and many of them went with Muskrat Falls.

So I'm not – I can't say that, you know, they would have just received jobs, I can't say that, no.

**MS. O'BRIEN:** Okay well the point – I think the point that Mr. – the point about not accounting for opportunity cost was that if even one person who worked at Muskrat Falls on the – under the Isolated Island scenario was still employed and paying taxes and spending their paycheck in our economy – that benefit is not captured in this analysis of the Isolated Island –

**MR. E. MARTIN:** No, it's not –

**MS. O'BRIEN:** – correct? Okay.

**MR. E. MARTIN:** – but I will make the point as well is that as we go through these items, the significance of what you're talking about is miniscule.

**MS. O'BRIEN:** Well, we don't know that because that analysis wasn't done.

**MR. E. MARTIN:** You know, it's minuscule when you compare it to the fact that on the Isolated Island portion, make no mistake, 60 per cent of the expenditures in this analysis on the Isolated side goes to oil, which means it goes directly outside of our province and goes to an oil company and to their shareholder, 60 per cent.

And that 60 per cent, on the Isolated side at the nominal amount for Isolated over 50 years – in other words, the total expenditures over 50 years – is estimated here and it's done – and it's a good estimate – it's estimated to be \$74 billion over 50 years. Up in the top left-hand corner, CPW you see Isolated Island nominal, 74 billion over 50 years. 74 billion up in that column, 60 per cent of that is going to oil.

And if you look on the other side of the equation Muskrat Falls over 50 years is 46 billion that the ratepayers will pay and the vast majority of that is going to debt servicing and paying off a – paying off the investment.

That to me – in essence – most other things pale in comparison other than – other than – if you go down to dividends, which is the fourth row on this chart, so you'll see: CPW, CPW Induced, Income (Direct, Indirect and Induced) and you see Dividends.

And if you go across the table on Dividends on the Isolated side, we would be paying ourselves 4 billion over 50 years. And what that is – is put the oil aside. As we said, you're building small hydro; you're building some wind; you're replacing Holyrood over time. And to do those things you have to put some equity in. The province would have to put equity in.

And on that equity we built in an 8.4 per cent return. So, on Isolated – if we went Isolated – well you wrote your power bill for, you know, I don't know, pick a number \$300, \$250 a month – a portion of that would be going to a dividend

return to Nalcor and Nalcor would be able to give that dividend return to the government. And the government, if they so choose, could give that dividend return back to the people. You're paying yourself \$4 billion.

On the Interconnected Muskrat side – because the investment is up front – over the same period of time – instead of 4 billion we're paying ourselves \$22 billion in returns. So, over 50 years, when we write our power bill cheque, 22 billion of that is going to Nalcor. Nalcor gives it to the government and the government has the choice to give it back to the people who own it in the first place.

That's the other significant piece here and if you go down to the final significant piece – it's the export value where as you can see under the Isolated Island. So we come down the table again – CPW, CPW Induced, Income, Dividends, Treasury, Export. You come across the Export side and, obviously, on Isolated – by the very nature of it – there's not excess energy being created there and if we – even if it was, we have no way to get it out. And currently what happens in those cases – periodically – we spill water in the current system on the Island.

But on the Interconnected side – if you look at the fact there are excess sales we have – we're connected both ways and routes to markets and we have the benefit of agreements like the Energy Access Agreement which, as I mentioned earlier, is a tremendous benefit to us. That's giving us \$3 billion over 50 years in terms of available cash to be able to give the government to give the people.

**MS. O'BRIEN:** That would be assuming that Nova Scotia buys the power.

**MR. E. MARTIN:** No, that would be – we have routes through Nova Scotia, Commissioner. If they don't buy it, we still have access through Nova Scotia, through New Brunswick and into New England that we can sell without Emera. And –

**MS. O'BRIEN:** That's not the excess energy agreement that gives us that access, though, is it?

**MR. E. MARTIN:** No, it's another wonderful agreement –

**MS. O'BRIEN:** It's another agreement that we had prior to –

**MR. E. MARTIN:** – wonderful – and so that's two agreements –

**MS. O'BRIEN:** – the excess energy agreement.

**MR. E. MARTIN:** – we had. We had an agreement where we can go through ourselves, point A – so we have options.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** We can go through ourselves; we have that built in. We can use the EAA to sell to Nova Scotia with a reference price to Mass Hub; and we can also go through Quebec.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** So, my point is, is that if you look at the benefit in Muskrat Falls available in cash over 50 years for rate mitigation – which is the key point – you look at the \$22 billion in dividends we're paying ourselves; that can go to rate reduction.

But I will come back to say, I'd like to take about half of that, in all reality, because the fact that the government has to put in more equity, they will likely – they will have to borrow for it. So let's just take half of that so that they can fund the borrowing costs of increased equity and let's use 11 billion. Add to that the 3 billion and add to that the 1 billion in terms of water rentals, and you're well north of, you know, \$12 to \$15 billion of available cash that we're paying ourselves to help adjust for the rates, which I think is critical.

**MS. O'BRIEN:** Okay.

So, Mr. Martin –

**MR. E. MARTIN:** So, once that's done, then the additional benefits are available to Muskrat Falls, which is why I personally, you know, cannot see a rational alternative. And I'll stop there.

**MS. O'BRIEN:** Okay. Thank you.

So, what – the point I was trying to make is that this analysis doesn't include opportunity cost; it wasn't done at the time. Fair to say?

**MR. E. MARTIN:** No, but opportunity cost – you're right, but, you know –

**MS. O'BRIEN:** That's good.

**MR. E. MARTIN:** – let's look at the opportunity cost. If you're looking at the Isolated –

**MS. O'BRIEN:** Well, sorry, I'm just –

**MR. E. MARTIN:** – the opportunity cost of 4 billion, and there's 22 billion potential –

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** – for several billions on the other side.

**MS. O'BRIEN:** And because this analysis doesn't include the cost impact, the – actually, overruns on the project would actually make this even a better picture for the Interconnected Island. In other words, your net benefit here of 61 billion and a present value of 7 billion – as cost overruns are incurred, so we're spending 12.7 billion on the project, or whatever – that would actually go up under this analysis, wouldn't it?

**MR. E. MARTIN:** Yes, and the reason it would is that the increased equity would attract a return as well. So that would increase the dividends, which gives the province additional cash to mitigate rates driven by the overruns.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** And the other point, I think, that is critical to make with respect to that, as well – and if you go back up to the income and taxation, Commissioner, unfortunately there's been overruns, but the overruns are driven most significantly by labour costs. And additional labour at Muskrat Falls means that additional taxes are paid to the province.

Now, with additional taxes associated with an overrun it would be up to the province of what to do with that, but one thought would be to create, you know, a pot of cash that was unexpected because of the overruns were unexpected, and put that pot of additional taxation and benefits to the province into rate mitigation now. That would have a huge – that would have a very significant and positive impact and get us ready for rates.

Just a suggestion. But I wanted to add to that because Ms. O'Brien mentioned that there was a benefit to the dividend, but I also wanted to say there's a benefit to the taxation, and those types of cash that's going back to the province as well. It belongs to the people, they should get it.

**MS. O'BRIEN:** Okay.

So the more the province has to borrow and invest in here the better the – the higher the benefits are, in using this analysis.

I just want to point out one thing; this was obviously done prior to DG3, so when – you just talked about the fuel cost and such, when you were going over your evidence – this would have been using oil price forecasts that you were using prior to Decision Gate 3, obviously not the current situation. Fair to say?

**MR. E. MARTIN:** Absolutely.

**MS. O'BRIEN:** Okay.

All right.

**MR. E. MARTIN:** But I wouldn't want to leave the impression, Commissioner, that, you know, oil prices over a 50-year period – history has shown us that you cannot look at highs or lows. You have to look at a regression line and I just didn't want to leave the point that just because people may be thinking oil prices are lower today than they were then, that that is not the way it can be looked at.

It has to be looked at over 50 years and what has happened in the previous 40-50 is an indicator of that. And I just wanted to make sure, Commissioner, that I making that point out to you that oil prices have to be seen in the context of

a long period of time, the period of this, to make it relevant.

**MS. O'BRIEN:** So, that would be a good time for us to take our break.

**THE COMMISSIONER:** All right.

So, we'll take our 10 minutes here now.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Ms. O'Brien?

**MS. O'BRIEN:** Thank you.

I'd like to talk to you, Mr. Martin, about popular support and criticisms for the project.

Did Nalcor undertake a polling to determine the level of public support as you were executing the project and leading up to sanction?

**MR. E. MARTIN:** Yes, we did.

**MS. O'BRIEN:** Okay, so how often would you have polled?

**MR. E. MARTIN:** Not sure – 6, 8, 10 months? Every 6, 8, 10 months – it wasn't a regular thing, but it was, –

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** – you know, several times.

**MS. O'BRIEN:** And so why were you doing that regular polling?

**MR. E. MARTIN:** I don't want to answer the obvious – to see what people were thinking. I guess that's it.

**MS. O'BRIEN:** But why was it important for you to know what the public was thinking?

**MR. E. MARTIN:** I guess I was interested in that.

**MS. O'BRIEN:** Would that have influenced your decision-making?

**MR. E. MARTIN:** No.

**MS. O'BRIEN:** Okay.

So, I mean obviously it costs money to go out and do polling, so you're spending money to go out and do regular polling. It's not effecting your decision-making.

So why would you be doing it?

**MR. E. MARTIN:** I guess in retrospect, I was, I was interested in knowing what the public thought. Obviously, I've been very clear on my view on the project – then for sure, now for sure and in the future. So I thought it was a great thing for the province and I was interested in knowing what the people thought. If things – if they were thinking differently or if it was, you know, a very negative outlook, I would have talked to the government, you know. I would have said and advised folks: Look, we need to get some facts out there. We need to get information out there and make sure that if, you know, people were making decisions in their own mind and it wasn't, you know, a positive outlook, my view would be to make sure we get the right information on the table and facts because that would be useful to them.

**MS. O'BRIEN:** Okay.

So, this was going on prior to sanction for certain and did you continue it after sanction?

**MR. E. MARTIN:** I believe we did, I just can't remember the timeframes.

**MS. O'BRIEN:** Okay.

I'm going to just bring up just a few examples of some people who were speaking out about the project, P-01540, which I believe is – let me just double-check that – 01540 will be tab 19 of volume 2.

This is just one example of a news article that was out. This one is January 2012, Dr. Feehan of Memorial – he's an economist there and he was speaking out publicly. We've had Dr. Feehan as a witness and a number of his writings have

been put in evidence so I'm just – I'm not going to go through every one.

Do you have that in front of you, Mr. Martin?

**MR. E. MARTIN:** I do.

**MS. O'BRIEN:** Okay.

So, here it is, Mr. Feehan is out, he is urging essentially a deferred project option here – so you know – shelve it, I think. When you read through the article it's sort of a deferred – let's wait and see – proceeding now would be premature and imprudent.

And this is similar to one of the suggestions that had come from Natural Resources Canada that we reviewed in the past couple of days, you know, the wait and see sort of approach. And here, actually, you're gonna see a rather large picture of yourself come up on the screen.

So here you actually made some comment back in the media. And one of the ideas that Dr. Feehan was promoting then was this idea of conservation demand management, you know, trying to get the pricing right for electricity, bring demand down, and that would've made it easier to wait and see if we brought our demand down.

And this was your response in the media here: "Meanwhile, Nalcor ... CEO Ed Martin says Feehan's current comments must be put in perspective, calling his work 'a theoretical analysis.' Martin says it's not realistic to expect that raising electricity rates will result in people using less energy, particularly during the winter months." And you made some comment about going over to your dad and asking him, you know, making comments to him about he'd use electricity, less electricity, if the price was higher.

Just – I wanna get a – this seems to me that Dr. Feehan is really talking about price elasticity, you know, higher electricity prices people tend to turn back their thermometers, look for energy efficiencies to spend less.

I'm gonna say here your comments suggest that you didn't consider that a realistic look.

Is that an accurate statement of what your views on it were?

**MR. E. MARTIN:** Yes, it is.

**MS. O'BRIEN:** Okay.

So, I take it you're not a proponent of price elasticity as, say, as a phenomenon?

**MR. E. MARTIN:** I wouldn't say that.

Commissioner, the note here says, and I mentioned it wasn't realistic to expect that raising electricity rates will result in people using less energy during the – particularly during the winter months.

My recollection – that was in the context of – we had included some of demand – or some of the elasticity of demand in the forecasts. And I believe that was – I saw – it was the subject of much discussion in Labrador, I believe it was, when we had Mr. Stratton and company going through it.

**MS. O'BRIEN:** Mm-hmm.

**MR. E. MARTIN:** My perspective here was, you know, saying: I can't – we have to make sure that people are understanding that that was accounted for and price elasticity of demand. When I read Mr. Feehan's comments about, you know, deferring building and deferring decisions, my view was that the impact of price elasticity of demand – there was impacts but certainly not enough to start making statements like, I felt, Mr. Feehan was making and mislead the people to suggest that, you know, price elasticity of demand is something that we can depend on to defer our decision-making. I just did not agree with that. So it was in that context.

And then they went on to, you know, to use to an example of an older gentlemen, but if you read my comments, you know, my point there was, you know, I was saying can we raise electricity rates high enough to impact decision-making and timing of a massive nature on this. Well, I – my view was those rates would, as I said here, would have to be so high that you won't use electricity. I mean, that's my point, is that price elasticity of demand is an input.

But I think Mr. Stratton and others – who I do consider experts outside of, you know, of others who may be commenting on this – that my view there was that we have to be pretty clear that price elasticity of demand – I can't let that out there to say that that's gonna be enough to start delaying decision-making and any suggestions replacing capacity.

So that's my perspective and where I was coming from there.

**MS. O'BRIEN:** So what I understand, you know, Dr. Feehan's position, as he's put forward – particularly when it comes to demand, you know, pricing – is that one way you can do conservation and demand management is by setting your price for electricity at the right level and that you can look at things like time-of-day pricing.

So you can make electricity cheaper in the evening, so people are encouraged, you know, to do their – to set their dishwashers at night or to use – you know, use their clothes dryers maybe midday when it's not peak hours for use of electricity and that, by doing that, you can bring down your need at the peak time and thus not need as much capacity.

I think those are the types of suggestions that Mr. – that Dr. Feehan was putting forward, and it really had a lot to do with bringing our overall load demand down by conservation and demand management. Do you acknowledge that?

**MR. E. MARTIN:** Absolutely. We've talked about this, you know –

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** – and –

**MS. O'BRIEN:** And is that what you –

**MR. E. MARTIN:** (Inaudible.)

**MS. O'BRIEN:** – were addressing here –?

**MR. E. MARTIN:** Excuse me, but, you know, I don't want to leave the insinuation, as I said earlier in this, you know, testimony, that I'm a supporter of CDM. Obviously, you know, anything we can do to reduce demand and that

kind of stuff, it's a good thing, under both scenarios.

But I will refer back again, from a decision-making perspective, to Mr. Humphries and his team who were clear that, from – they included price elasticity, they reviewed CDM, and in terms of being able to make any more allowances than they did, they felt it was not statistically supportable, particularly from the capacity perspective. And, you know, from a capacity perspective, you have to be certain on that, particularly in the system that we live in, the fragile system we live in on an Isolated Island side. And that's the advice I took from those experts.

But I wouldn't want to leave the impression, as I, you know, as I was afraid could happen, that I'm not a supporter of CDM or demand elasticity. That's not the point.

**MS. O'BRIEN:** Okay. Well, let's bring up another one. Let's bring up P-01541. That should be tab 20 of the same book, Mr. Martin.

So this is a series of emails, and I'll – you can – I'll start at the – you might wanna sort of start at the last page, Mr. Martin, to orient yourself here, and I'll take you through it just very, very quickly.

So it seems that this is going on – Dawn Dalley is communicating with you when Wade Locke was giving his presentation. We've had Mr. – or Dr. Locke testify here as to the presentation he gave. Do you generally recall this in January of 2012?

**MR. E. MARTIN:** Generally, but primarily because I read it recently –

**MS. O'BRIEN:** Sure.

**MR. E. MARTIN:** – in the documents.

**MS. O'BRIEN:** Okay, so this is Dawn Dalley emailing you, sort of giving you an account of what's going on at Locke's presentation. Fair to say from this that you weren't actually there?

**MR. E. MARTIN:** That is correct.

**MS. O'BRIEN:** Okay, and she was?

**MR. E. MARTIN:** I assume she was, yes.

**MS. O'BRIEN:** Yeah, okay.

So she says: "He was generous in validating our work. Staying positive despite attacks from Dennis Browne and Danny D."

Would that be Danny Dumaresque?

**MR. E. MARTIN:** I suspect it would be, yes.

**MS. O'BRIEN:** Okay, all right.

So you say: "Now that's tough work, with those Grimes, old, tired partisans! No vision equals tired." And then you come up, and she says, "For sure Dennis was there with Roger." So that would be Roger Grimes?

**MR. E. MARTIN:** I assume, yes.

**MS. O'BRIEN:** Okay, and here we get to Feehan: "And Feehan took a bite out of him as well. He also couldn't answer any of the technical questions. We should host a public forum – book the hotel and open mic it like you did at the AGM. We could have answered every question and very well." And I – was here she referring to that Dr. Locke couldn't answer some of the technical questions? Is that how you understood it?

**MR. E. MARTIN:** I didn't understand it that way. I just understood it that we couldn't answer every question very well.

**MS. O'BRIEN:** Who couldn't? He – you didn't know who he was?

**MR. E. MARTIN:** No, that's not what I said.

**MS. O'BRIEN:** Oh, I must have misheard you.

**MR. E. MARTIN:** I wasn't agreeing or disagreeing with your question about Mr. Locke, and I – and I'll continue not to agree or disagree. The purpose of this was I believe that she said we could've answered every question and very well.

**MS. O'BRIEN:** No, when she referred to this word here – he. Who did you understand this he was?

**MR. E. MARTIN:** Oh, I understand. I'm sorry, I thought you were referring to the last sentence only. Can you just go – it appears to be Mr. Locke, but I need to see the sequence again before I –

**MS. O'BRIEN:** Sure.

**MR. E. MARTIN:** – expect (inaudible).

**MS. O'BRIEN:** So here is – this is where the Grimes –

**MR. E. MARTIN:** I'm not sure, but it seems reasonable to think that was Mr. Locke.

**MS. O'BRIEN:** Okay. All right.

So it seems – that's how I understood it. I was just –

**MR. E. MARTIN:** Yeah. It appears that way.

**MS. O'BRIEN:** – you know, confirming you that maybe Dr. Locke couldn't answer some of the technical questions and that was what she was referring to, Feehan was maybe posing some technical questions. That's what she meant by taking a bite out of him.

**MR. E. MARTIN:** That's what it appears to look like, yes.

**MS. O'BRIEN:** Okay.

So you say "Let's get it arranged – I am ready" and agree, and so she also discussed here we need to focus on the C.D. Howe presentation.

Would that have been Dr. Vardy's work or Mr. Vardy's work – or Dr. Locke's work, sorry? That was also Dr. Locke's work. Oh, that was – sorry that was Dr. Feehan's work at C.D. Howe? Okay. So then –

**MR. E. MARTIN:** Could you just go back there –

**MS. O'BRIEN:** Yes, absolutely, sorry

**MR. E. MARTIN:** – I lost the trail of your discussion there.

**MS. O'BRIEN:** Yes. With Mr. Learmonth – here you go. So this is Dawn Dalley back to you: “Agree let’s percolate on it and discuss on Friday (we need to discuss CD Howe presentation),” and, what Mr. Learmonth was just saying, that would have been Dr. Feehan’s presentation.

**MR. E. MARTIN:** I understand.

**MS. O'BRIEN:** Okay.

“And then if we’re still stoked...let’s float it to gov. Also – need your review of the NP opinion piece.” Would that be National Post?

**MR. E. MARTIN:** I can’t recall, but it sounds reasonable.

**MS. O'BRIEN:** Okay.

“And Wade did us justice on LNG and offshore gas.” So would that be Wade Locke?

**MR. E. MARTIN:** Yes.

**MS. O'BRIEN:** Okay.

“People focused on CDM and wind. He did say that the PUB should have its extension because there’s nothing wrong and nothing to hide.” So that was her comment to you.

And then you get back, and you say: “NP piece ok, but opening weak in that my heart ‘drops’ until I read on. We need to open more aggressive, for starters. Also need more balance on dissecting Feehan’s pitiful thoughts before going to the high level messages. Use the hi level to put belts and suspenders on the foolish messages Feehan puts out. He spent a full sabbatical semester preparing this foolish ‘one focus’ nonsense, and we deal with much more reality ‘depth’ on many more relevant, realistic perspectives with deeper, more informed analysis” than “he can comprehend.”

So that’s the part I wanted to talk to you about. What were you referring to here when you talk about Dr. Feehan’s “pitiful thoughts”?

**MR. E. MARTIN:** I’m trying to think back, but I think, if I looked at the previous article and such, would be an example that, you know, as I

mentioned just earlier, you know, suggesting and leaving the impression that, you know, you can depend on our system, from a, you know, a CDM perspective or from a, you know, any of the other types of things that we talked about that that could be something we could depend on and, you know, leave a message to the ratepayers and the people that we can depend on capacity from that type of thing, enough to defer decisions when – in my – from my situation the experts within the company, who have been running the system for decades are telling me that Ed, you cannot depend on this type of stuff for capacity; we have to keep the lights on, that’s our job and we need to drive that home regardless of, you know, others views that they could not substantiate – by they, I mean our people could not substantiate.

And, any time, you know, that we are misleading folks with respect to that kind of thing, I don’t think it’s the right thing to do.

**MS. O'BRIEN:** Okay.

One more email I want to go to, it’s at volume 6 for you, Mr. Martin, tab 122, P-01581, please.

**MR. E. MARTIN:** Volume 6. What tab again, please?

**MS. O'BRIEN:** One hundred and twenty-two.

So this is an email that we found from you to Karen O’Neill and others. I think the names will be recognizable to people here. I understand Karen O’Neill worked with communications on the project in particular. Is that correct?

**MR. E. MARTIN:** That’s correct.

**MS. O'BRIEN:** Okay.

Okay, so we’ve tried to figure out what was going on on this day. I know that you were doing, I believe, an interview with Mike Connors at NTV at around this time. I don’t know if that’s what this was referring to but we’ll see if you can shed some light on it.

This is later in the day, it’s, you know, 11 p.m. on Tuesday, November 15, 2011, and you say: “Karen et al,

“We need to aggressively address the” Muskrat Falls “bullshit ongoing from now on. Please book me on media, including open line and other asap. Also, we’ll need to instruct everyone else including politicians and extended contacts what to do. Includes business people etc, etc. We also need to have key influencing supporters come out. Let’s immediately take control and execute the comms/factual plan. I have had enough of the unsubstantiated bulls--t. We’ll talk tomorrow.

“Ed.”

Do you recall, Mr. Martin, what was – you were obviously quite worked up on this at this time. What was causing you to react that way?

**MR. E. MARTIN:** Well, there was a tremendous amount of Muskrat Falls bullshit going on so that’s what caused it.

**MS. O’BRIEN:** So, no, what would – when you refer to Muskrat Falls bullshit what are you referring to?

**MR. E. MARTIN:** Well, one example, you know, would be doubling of rates. That’d be a good one and, you know, there would be people out there, you know, stating that rates were going to double because of Muskrat Falls. That was before many things, but, in any event, it was incorrect. It was absolutely incorrect.

The press would pick it up and report it, and then a bunch of these people would continue to promulgate that, and I just thought that was incorrect. I just thought that was improper to be saying that, you know. Either they had the facts and were presenting something in a disingenuous way, which is probably the worst case, or they didn’t have the facts and were saying something they didn’t know what they were talking about.

And in either situation, it was 100 per cent incorrect and it was wrong to do it. And that is exactly what I’m talking about. And I’ll just add a little bit of flavour to that, you know, if I could, Commissioner. Because what people have to understand, again, is that rates in Newfoundland and Labrador, regardless of Muskrat – put Muskrat Falls way to the side –

rates in Newfoundland and Labrador are going up; Isolated or Muskrat Falls.

The assets are ancient. They were underinvested. Holyrood is not going to see us through, and no matter what happened in this province and in the rest of North America, rates are going to increase.

**MS. O’BRIEN:** I –

**MR. E. MARTIN:** And I could walk through and, you know, and indicate that if rates were at 11, 12 cents – I can say it now; events are happening now in the Isolated side of things, that they’re going, depending on the price of oil, to 15, 16, or 17 cents in any event, that’s happening anyway. And then to make the – so that’s Isolated. Muskrat will increase, at this point, rates over and above that.

We’re not sure about operating costs, they could bring it back down again; but the gap between what rates are going to be anyway, and what Muskrat Falls is, is nowhere near double and that’s the type of thing I was taking exception to without the facts.

**MS. O’BRIEN:** So I think at this time, you know, there were a number of critics speaking out, some of them who have already given testimony here at the Inquiry. Did you not see any validity in the criticisms or views that they were putting forward?

**MR. E. MARTIN:** We took every possible criticism we could and brought it into the company and we dealt with it. You know, it was – if it was an issue we put it on – you know, we’d call it a risk. If it wasn’t, we wouldn’t, but, Commissioner, you know, I could – what I’d like to refer us to is the volume of questions we answered.

There was a – I forget the numbers, they were – it was very, very high – but our people were recording the number of ATIPPA requests we had received. On top of that they recorded the number of just, you know, call-in or write-in questions that we received without ATIPPA, which we answered, I would say, 100 per cent. I received, you know, questions myself, which I personally answered.

We had annual general meetings where, you know, I committed to the attendees at that meetings that I would not leave the Holiday Inn until every question was answered and I ensured the people booked the Holiday Inn, you know, for up to midnight so that we could stay and I never left until I went around the room and waited 15 – at least four to five minutes for the last question.

There's some examples, but there's records and information there of how many requests we received on all of these issues and we replied to every one of them and if there was something that we were doing wrong or missing we dealt with it.

**MS. O'BRIEN:** Going back to this email now, you say: "... we'll need to instruct everyone else including politicians ... what to do."

What would you have been – what instructions would you be giving to politicians as to what they should be doing?

**MR. E. MARTIN:** It would be, you know, just a framework of the messaging, you know, what we're trying to – what we're trying to achieve, which would be to get facts on the table so that people can make the right choices with all of the information out in front of them.

**MS. O'BRIEN:** Okay.

I'm going to take you to another one now. It's at tab 30, I believe, of that book. Exhibit P-00924, please. Oh, no. I don't – maybe it's not at tab 30. It's at tab 20. I – sorry, just let me get it; 924. Yeah, tab 30, volume 2. Sorry, volume 2.

Sorry, line 2. Do you have it in front of you, Mr. Martin?

**MR. E. MARTIN:** I do.

**MS. O'BRIEN:** Okay. So this is some email exchanges back and forth between you and Vic Young. Did you know Mr. Young previously to your becoming CEO of Nalcor?

**MR. E. MARTIN:** No. I did not.

**MS. O'BRIEN:** Okay. And when you were having this email exchanges with him, did you

know him by this time – and we're looking at early 2012 here.

**MR. E. MARTIN:** Well, I, you know, I was corresponding with him, so from that perspective, yes.

**MS. O'BRIEN:** Yes. Did you know him other than someone who had sent you an email request and you were responding back?

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

**MS. O'BRIEN:** Okay.

Okay. So we've already –

**MR. E. MARTIN:** But I don't want to be – Commissioner, I mean – you know, Vic Young's a name I'd heard. I was familiar, you know, with who he was, but I just didn't know him, didn't have a relationship and hadn't spent any time with him.

**MS. O'BRIEN:** Okay, so what was – you say you were familiar with him. What did you know about him?

**MR. E. MARTIN:** Not very much. I guess it's Newfoundland and Labrador, you know. I would have heard of his name before.

**MS. O'BRIEN:** He had previous experience –

**MR. E. MARTIN:** Yes, absolutely, he was – good point.

**MS. O'BRIEN:** Yes.

**MR. E. MARTIN:** He was a previous President of Newfoundland and Labrador Hydro.

**MS. O'BRIEN:** That's right. Would – fair to say strong reputation in the community for, you know, business experience and acumen?

**MR. E. MARTIN:** I wouldn't have any knowledge of that either way.

**MS. O'BRIEN:** Okay.

So Mr. Young has his reputation, and he certainly has the past experience with Newfoundland and Labrador Hydro. So he's

asking you some questions here – and I’m not going to go through this in all detail. I mean, the email exchange certainly does speak to – speak for itself.

But one of the things that he is writing, and when we look up at the top he is really putting – you know, we look at the subject of his email: Need for Independent Financial Review to be tabled in the House!

And as I understand that, this – when you read through the emails, Mr. Young is suggesting, in particular, given the fact that the PUB was not able to make a decision in their report, that he’s urging that an independent financial review be done. Do you recall that?

**MR. E. MARTIN:** I recall the emails.

**MS. O’BRIEN:** Okay. This is obviously something that, a recommendation that had been also made by the JRP. Do you recall that, that they were saying that there should be an independent financial review?

**MR. E. MARTIN:** Yeah, I believe I recall that, yes.

**MS. O’BRIEN:** So when this was coming in in April – we’re April 2012, now, when we look at the top of this exchange. So this is right around the time that you’re aware that MHI is not going to be able to do the full scope of work – their scope of work is being reduced; they’re not going to be able to look at the risk and schedule. So that’s about the time frame we’re in. Would you recognize that?

**MR. E. MARTIN:** Is it April the 11th?

**MS. O’BRIEN:** Yes, 2012.

**MR. E. MARTIN:** I’m not exactly sure of the timing, but I’m not sure if that’s –

**MS. O’BRIEN:** Okay, Mr. Kennedy’s notes, we’ve already looked at them in evidence –

**MR. E. MARTIN:** Yeah, yeah. So –

**MS. O’BRIEN:** – is April 6 I think or something like that.

**MR. E. MARTIN:** So I don’t want to hold us up on that. Carry on.

**MS. O’BRIEN:** Okay. All right, so around that time.

Did this give you any pause for thought? When you have Mr. Young, given that he’d previously been President of Newfoundland and Labrador Hydro, where he is writing to you and saying, look, I really think there needs to be a independent financial review here, did that give you any pause for thought at this time?

**MR. E. MARTIN:** This, obviously, would give me pause for thought, as would other opinions I received from people as well.

**MS. O’BRIEN:** Okay. And after you paused and thought, what was your ultimate response?

**MR. E. MARTIN:** Well, you know, I feel I should read it then. I’m not going to paraphrase it. I’d have to –

**MS. O’BRIEN:** Mm-hmm.

**MR. E. MARTIN:** I’m pretty clear on my response here. Do you want me to read it out?

**MS. O’BRIEN:** No, I’m – the question is did you give a reconsideration of getting in an independent financial review?

**MR. E. MARTIN:** Now, I have to read this now.

**MS. O’BRIEN:** Okay.

Just note in point 2, here, I’ll just – in your response back to him, one of the things that you are saying here is you – you say: “From a risk perspective, classification as high or low also depends on comparison to alternatives. The risks associated with the Isolated Island alternative are comprised primarily of the volatility and uncertainty of fuel prices over the long term, plus the capital cost risk of the construction required in the Isolated Island case. Muskrat Falls risk is primarily associated with capital cost. In addition, the risk identification and mitigation activities of each alternative also has to be understood prior to assigning an

assessment of the level of risk to either, and reasonably comparing them.”

So you’re certainly – you’re turning your mind to the risks of the project in this response.

**MR. E. MARTIN:** Yes.

**MS. O’BRIEN:** But I don’t see anything here – you talk about financial implications to the province, I think you go on and suggest that that would be something that would be done by the Government of Newfoundland and Labrador perhaps? If we just read through.

**MR. E. MARTIN:** Yeah, so I’m sort of missing your point here. That’s what I’m trying to say here. You – I tried – I believe, I usually try to answer people’s questions. Did he have six items in the previous email to me? And I – so I thought that I answered each of his points would be my gut feel.

**MS. O’BRIEN:** Yeah, okay. But you didn’t – ultimately you didn’t make a decision to get an independent financial review, did you?

**MR. E. MARTIN:** No, you know, here’s the response I gave Mr. Young. As I said, you know, I believe that I had a reputation of answering questions and being open and following up on things, and I would have taken this input. I answered the questions like it was, but independent financial review is government’s decision.

**MS. O’BRIEN:** Sure.

And he is raising concerns here, you know, he used – you pointed that he used concerns like high-cost, high-risk project.

One of the other ones that I wanted to point to you specifically: he – mentally when he’s doing, sort of, back-of-an-envelope math, he’s adding 30 per cent for cost overruns at that time. Now, at this time you were looking at 7 per cent for contingency. Did that give you any pause for thought?

**MR. E. MARTIN:** As I mentioned, everything gave me pause for thought when someone suggested it, and after I paused for thought, you know, I moved on.

**MS. O’BRIEN:** You decided that 7 per cent was adequate?

**MR. E. MARTIN:** Absolutely. And, you know, I certainly appreciated all the information I received, but, you know, as I mentioned, we had people there doing what they did, had the numbers, and you take the input, but from a one-person perspective, useful, from a consultant’s perspective, useful, input is input, but at the end of the day, we make the call.

**MS. O’BRIEN:** Okay, thank you.

If we could please bring up Exhibit P-00926, and that will be volume 5 –

**MR. E. MARTIN:** I should mention – you’re probably gonna get there anyway, but another thing that – you know, another input in a different way I received from Mr. Young, was an early report, I think it was the late ’70s or something where, when he was actually in the CEO-president role at Hydro, one of – someone in the company delivered a report where he was asked to analyze the next-best option for Newfoundland and Labrador, which he did in a somewhat similar way and produced a report that he signed with some bankers from Upper Canada and some engineering staff that recommended Muskrat Falls with a Labrador-Island link.

So that was interesting, helpful reading in terms of being able to, you know, get into someone else’s mind who might’ve been in the chair before and had gone through the same time of analysis.

**MS. O’BRIEN:** Yeah.

**MR. E. MARTIN:** It wasn’t, you know, a huge determining factor, but once again, same as Mr. Young’s input in the letter, the fact that was there, that was useful input as well, and some other things helped me think through that because his view was, you know, he recommended it and thought things such as environmental approvals, potential to sell into Nova Scotia, arrangements with the Indigenous people and those types of things that were the next step and that he thought should happen to get it done.

**MS. O'BRIEN:** Yeah.

**MR. E. MARTIN:** So that was helpful as a, you know, as a checkpoint as well but not (inaudible)

—

**MS. O'BRIEN:** Sure, so here was a man who really did have a lot of experience. He'd really delved into this project previously, and I know it was a lot earlier, and at this time he's saying, hey, look, this is a high-risk project – high cost, high risk – he's looking at it as, you know, potentially 30 per cent cost overruns, he's urging an independent review, and at the same time, you're making the decision to move ahead with the project without getting the risk work that you had done reviewed by a cold eyes, independent reviewer.

**MR. E. MARTIN:** We'd been through that. What I was – that we were discussing, so nothing new there.

**MS. O'BRIEN:** Yeah.

**MR. E. MARTIN:** What I thought we were discussing was my ability to take input from people, you know, from the external world. And I was just trying to demonstrate, again, that I found that valuable, Commissioner, and we did incorporate that thinking.

And to the extent that we found something from that information that we were doing improperly, wrong or could be improved, we did it.

**MS. O'BRIEN:** But you didn't change course following Mr. Young's communications with you here. You just – you didn't change what you were – your – what you were doing.

**MR. E. MARTIN:** Absolutely not.

**MS. O'BRIEN:** Okay. All right.

Now, what I have up here is a – we've actually looked at this slide deck previously. I'm gonna go to another element of it – this is the "DG3 Alignment Session" and I just have a couple of questions.

**MR. E. MARTIN:** Should we go to the binder, do you think?

**MS. O'BRIEN:** Oh, yes, I – sorry, I thought I'd given you the site, but maybe I hadn't.

00926, volume 5, tab 101.

And, in particular, it's page 9 I wanna ask you about.

**MR. E. MARTIN:** Just one second, please.

**MS. O'BRIEN:** We've looked at this deck previously; it has Jerome Kennedy's handwriting on it – 8 per cent contingency.

**MR. E. MARTIN:** Right. Page 9.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** Proceed.

**MS. O'BRIEN:** Page 9.

So this is – what are you doing in the slide decks – is you are, really – one of the major focuses here is explaining what the changes are between the DG2 estimate and the DG3 estimate. So one of the changes was significant increases in the EPCM and owner's costs.

And there's one that I wanted to discuss here is that – "95% of engineering completed in NL. Significant premium to attract and retain workforce in St. John's." So that was one of the things that drove up the costs.

So, I just wanted to discuss that. We know that there was a benefit strategy in place so that the provincial government – as a policy decision, shall we say – had made a requirement that substantially all the engineering be completed within the province.

Is that correct?

**MR. E. MARTIN:** That's correct.

**MS. O'BRIEN:** Fair to say that that requirement added cost to the project?

**MR. E. MARTIN:** Yes, it is.

**MS. O'BRIEN:** Okay.

And did you have that discussion with government at the time? I know you were bound to follow the government's policy decision, but did you have the discussion with them, like: That's great, but if you do put on this requirement, do – you know, that is expected to drive up the ultimate costs?

**MR. E. MARTIN:** Yes, I did; I would have. I would have been clear on that. But, once again, from the perspective of – it is what it is – but I always attempted, you know, to give the government, you know, perspective so that they had that kind of information.

So, yes I did.

**MS. O'BRIEN:** Okay.

And one of the questions, I think, has been raised a bit in public is – we've heard evidence – particularly, say, with respect to the engineering which was done by SNC-Lavalin – that you ended up and I think this slide addresses it, you ended up paying a bit of a premium – as I understand it – to SNC-Lavalin to get their engineers to, sort of, pick up from Montreal and come to St. John's to do the engineering work.

**MR. E. MARTIN:** That's correct and we did and certainly, we experienced that situation in the oil developments as well.

**MS. O'BRIEN:** Okay.

And then ultimately then – once it was done – or did these people kind of pick up again and go back to Montreal?

**MR. E. MARTIN:** For the most part.

**MS. O'BRIEN:** Okay.

**MR. E. MARTIN:** There's some would stay but I think, you know, for a majority perspective, I would say yes.

**MS. O'BRIEN:** Okay, so similar experiences in the oil industry or was it different there?

**MR. E. MARTIN:** Similar.

**MS. O'BRIEN:** Okay.

So we're really paying a premium but we're only get people to stay for short period of time. That's one of the outcomes of these types of benefits strategies.

Is that a fair assessment?

**MR. E. MARTIN:** That's a fair assessment in that – but it's one aspect of the assessment.

**MS. O'BRIEN:** Sure.

**MR. E. MARTIN:** So, Commissioner, I would just like to note that, once again, when the province made the decision, I gave input, but I supported the decision.

There's different ways to handle this, but Ms. O'Brien is correct in what she said in terms of a lot of people would pull up and leave.

But that has to be weighed against the fact that when you bring the engineering into the local area or into the province, it does cause a lot of other things to happen as well. Relationships are established with local engineering firms. Newfoundland and Labrador engineers are some of the finest and the ability to have the critical mass here, you know, make no mistake – my experience has been – it gets a lot of our local engineers involved. It gives a lot of young engineers an opportunity to get started whether it be co-op programs or not.

It does garner expertise for the local community because even from an SNC-Lavalin perspective, I mean, they were great at that. They have an office here. They were great at that but it also behoves the engineering companies to develop locally because the extent they have rates to charge – if they can reduce the rates and get local people involved, it's an impetus for them too.

So I just want to have it put in the tape that you have to look at that as well and I believe a lot of young engineers and a lot of engineering companies here did get significant benefit from that.

But there's many ways to approach it.

**MS. O'BRIEN:** Okay, thank you.

One of the things I'd like to address with you now – you won't need your binder, Mr. Martin – is some evidence that you gave actually yesterday with respect – yesterday or potentially it was Monday – with respect to your involvement in the White Rose Project for Petro-Canada.

I just want to clarify – as I understood your evidence and as I actually have a draft of the transcript here – I'm reading it.

Are you saying that it was you who chose to sanction the White Rose Project for Petro-Canada at a P50 confidence level?

**MR. E. MARTIN:** I'm just trying to think of the – relationships here now. I know that we – we did – we performed that risk analysis within Petro-Canada. Husky's the operator.

**MS. O'BRIEN:** Yes.

**MR. E. MARTIN:** And I'm thinking through this now in terms of how it works. So Husky is the operator, they present their numbers –

**MS. O'BRIEN:** And the majority owner of the project.

**MR. E. MARTIN:** And the majority owner, yeah – absolutely.

**MS. O'BRIEN:** Husky is the majority owner, not Petro-Canada.

So you had said – and your evidence is that you would've – with respect to White Rose and Petro-Canada, I asked: Okay, so you would've used P50 in those cases? And you said: Yes, I would. And I said: Was that a decision that you would've made on your own or was that one made in consultation with the group of the various stakeholders of the project? And you said: On my own.

**MR. E. MARTIN:** Yeah, so what happened there we – Husky presented numbers to us. Overtime we did risk analysis – as my recollection – internal to Petro-Canada. And as the project commenced and went on, and my recollection is that we used P50.

**MS. O'BRIEN:** And that was your decision to make?

**MR. E. MARTIN:** Hmm.

**MS. O'BRIEN:** Like the question is: Was it you who decided to sanction the White Rose Project on a P50 level?

**MR. E. MARTIN:** Well, we would – I certainly would have, you know, involved the rest of the team from Petro-Canada. So –

**MS. O'BRIEN:** But ultimately, it was your decision?

**MR. E. MARTIN:** Well, I would say, you know, typical to any company, I wouldn't have the final decision on sanctioning. That would, you know, from an accountability and authority matrix in that particular company, it would've, you know, I would've signed off and it would've gone higher.

But from a perspective using P50, that's my understanding of what we were using (inaudible).

**MS. O'BRIEN:** So from you, like how – where would it go? Would it have gone just one level higher, or two levels higher or where would that decision have been made?

**MR. E. MARTIN:** I'd have to check back and see how, you know, what the authority matrix was at the time. I would have passed it up the ladder myself, so I'm just not entirely sure. I expect it would be a board approval.

**MS. O'BRIEN:** Okay.

Those are my questions for Mr. Martin, Commissioner.

**THE COMMISSIONER:** All right, thank you.

All right. Cross examination – the Province of Newfoundland and Labrador?

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

**THE COMMISSIONER:** Okay. Concerned Citizens Coalition?

**MR. BUDDEN:** Mr. Commissioner, I have to confess I wasn't expecting to start until 2 o'clock, and much of my notes are back at the – at my office. So my preference would be to start at 2 o'clock or sometime earlier than that if you wish.

But to be frank, I would prefer not to start right at this minute.

**THE COMMISSIONER:** All right. I don't wanna lose this time.

Mr. Williams?

**MR. T. WILLIAMS:** Yes. And just for your consideration sake, and I don't mean to – I spoke with counsel yesterday. There was some discussion regarding order, and I wasn't aware Mr. Budden would be raising this issue, but I had spoken with counsel for Ms. Dunderdale, and she was prepared to allow me to precede her only 'cause of a time conflict, and I know we probably have a half an hour left, and I would be able to cover off my questions, if it's agreeable with everybody else, just so you knew that in advance.

**THE COMMISSIONER:** Right. So is that agreeable with everybody that's here?

Everybody's shaking their head.

Okay, so, Mr. Williams, let's use the time that we have then.

And we'll get back to you this afternoon first, then, Mr. –

**MR. T. WILLIAMS:** Good morning, Mr. Martin.

**MR. E. MARTIN:** Good morning.

**MR. T. WILLIAMS:** And if you could just give me a second to get organized, 'cause I think we're all moving at a little bit ahead of where we thought we were going to be.

My name is Tom Williams, and I represent a group known as former elected politicians for the period of 2003 through to 2015, with the exception of former premier Dunderdale, who has her own counsel.

Now, you've had approximately two and a half days of testimony; we are sensitive to time issues, so I don't intend to go back through a whole lot of issues that have already been dealt with – counsel.

What I'd like to do is try to focus on just five or six key areas that I think are pertinent to my clients and that have arisen through the course of earlier testimony at the Inquiry and obtain your perspective with respect to some of the issues that may have been – have arisen and get your accounting of them.

So there's five or six issues that I'd like for you – or positions that I'd like to put to you, and I'd like to get your response to them based upon your experience and expertise having been in the role of CEO at Nalcor. And as I raise them, I'm not looking for your passive agreement on these. I'd like to hear objective, factual statements from you as to whether or not you agree or you disagree with some of the propositions that I was going to put to you. And like I said, I have probably just a half-dozen.

First of all, I'd like to address the issue of the Energy Plan, and there's been some evidence given with respect to that, and there has been some suggestion by client base that this was intended to be a long-term forecast and detailed plan, having learned from some of the lessons in the past to the future. And I'd like to get your perspective in terms of your participation in the creation of that and the objectives of the administration as it related to the Energy Plan and its involvement in energy planning over the, you know, next number of decades.

**MR. E. MARTIN:** Well, at – you know, at the outset, when I came in to the organization in 2005, some of my initial interactions were with Premier Williams, of the day, and his view was consistent and clear and – 'cause I was seeking direction – and he said, look, here's where we are.

From his perspective, we, you know, had been struggling for generations here in the province. His assessment was energy – between hydro and oil and gas – was some of the last great resources. Obviously, we still had the fishing, you know, resource and stuff. But he said, you know, we're dealing with issues there and we're

gonna fix that. But he said oil and gas and energy and electricity is what I want you to focus on. And he said, I wanna get it right, he said, because this is – you know, we're getting close to our last chance, and he said that has to be done properly.

So that was the genesis of the Energy Plan, so we talked that through, and he indicated that we had to put a long-term plan together.

So the government was tasked with that, but, you know, Nalcor was heavily involved. I mean, we had the expertise, so away we went.

In the final analysis, we – you know, we were also instructed to be clear and, you know, put the thoughts on paper so that the people can read this – who wish to read it and understand the direction we're taking so that there's no confusion. And that's what we proceeded to do.

So the group of us worked on it. It was exchanged back and forth between the minister and the premiers and stuff like that. But there was a working group that handled it.

**MR. T. WILLIAMS:** The working group was a mixture of both Nalcor as well as government officials?

**MR. E. MARTIN:** Absolutely, yeah. Yeah. No question about it.

And I – you know, Mr. Bown had a very – a coordinating hand in it. I was heavily involved in it as well, but we had other staff members.

So that transpired, and, you know, if I go to the end of that, you know, what we ended up realizing from virtue of a – we had both renewable and non-renewable resources. We wanted a renewable future. In our oil and gas business, we felt we had much more potential than had been expected, but we also had ocean access, which is huge from a Brent pricing perspective.

From an electricity perspective, we have massive hydro resources and other wind resources potential, and we were next to the largest markets in the world. So how do we get those things organized, develop the offshore, from a seismic perspective, to get things moving

properly and best practice and obviously get, you know, access to electricity markets.

We ran that through, and we looked at what success would look like – and success, on a conservative basis, provided, you know, things unfolded from an oil and gas perspective, say, less than other jurisdictions did. So we didn't take the high end we just took less than other jurisdictions that were successful, and, you know, it showed that the potential was significant.

And then we put our electricity potential against that, on a conservative basis, and we ran the numbers out longer term and thought about them and vindicated that, if we get it right, if we retain control of the resources, and we stick to our knitting, that, over the longer term, a Nalcor could be throwing off, you know, many, many dollars in the billions from a dividend perspective, and that would likely pale or be less than what the government would be retaining in oil royalties.

And when we looked at the per capita impact of that – I'm thinking 500,000 people – and putting those numbers into the type of numbers we were talking about we saw that on a per capita basis, if done correctly, we have an opportunity to be in, you know, the very top percentile of jurisdictions in the world, including the Middle East and other areas.

And that was the genesis of the Energy Plan. That was what it was based on and that's what we drove to.

**MR. T. WILLIAMS:** Okay. So moving ahead there – obviously, you know, the whole Labrador, the Gull Island-Muskrat piece fit into this, but there's been discussion or suggestion that early in the administration that Gull Island was going ahead regardless of all other options and alternatives.

So I would ask you if you could address that aspect in terms of the considerations that would have been given to other options and alternatives prior to finally resting on going it alone on the Gull – on the Muskrat Falls Project?

**MR. E. MARTIN:** The premier and the minister, in particular, were adamant that – they

wanted all avenues looked at. I – you know, I think the phraseology that was used to me was no stone left unturned.

You know, we had a feeling of something, and we were moving in the, you know, a visionary direction, and we had the clear instruction that this has to be done and looked at A to Z and, as decisions are made, they have to be based upon the right criteria.

And there was a combination, because I've heard some discussion here about, you know, was it going ahead any way or not, but it was a combination there. It was clear to us that we had to state – and particularly the leaders and the government had to state that here's a path that we're headed, and they felt, and I supported, that that unless you set a direction, and you pick an end point, you're not going to get people to rally around that. So that was a clear statement.

But it was also as clear and as critically communicated to me – from Premier Williams, and I would say, Premier Dunderdale more than took up the mantle over that period of time – that it had to make economic sense, they were not afraid to stand back and not do things.

From the oil perspective, Commissioner, I think Hebron might have been a good example that – in that case, Premier Williams walked away from the table because it wasn't working for us and it caused a lot of consternation. But it was a good example of demonstrating to us that certainly, the strength was there to do that. And I think, you know, from Premier Dunderdale's perspective, the example there that, I think, helped us was her walking away from the loan guarantee with the prime minister of the day.

So we were clear in our messaging that this thing had to work.

**MR. T. WILLIAMS:** And maybe it's a follow-up to that that the next issue was with respect to the perspective that this was going ahead at all costs, that – and the term has been used, you know, Nalcor had a blank cheque. So this project was going ahead regardless of costs, which obviously leads to the next thought that, you know, it would be done so regardless of the impact on ratepayers.

And there's been some exhibits, and I won't bring you back to the exhibits, but requirements for the federal loan guarantee that allowed that government would handle the overruns that were, I think, necessary in the early stages, as well as finalizing the loan – federal loan guarantee.

But if you could address the issue as to the sensitivities or the instructions or the mandate that was provided to Nalcor with respect to cost sensitivities, and as well as the issue of the impact, ultimate impact, on ratepayers.

**MR. E. MARTIN:** And to me the two are the same, so that – it's helpful to say that because, you know, the ratepayer focus was paramount, it was just absolutely paramount. And I believe, because it was so – it was driven so much into us that, you know – the impact on the people of the province was everything. As we moved towards the Muskrat decision for power, it was a ratepayer decision.

And apart from the fact that everyone was critically sensitive to people being able, you know, to afford electricity for obvious reasons – I mean that was a critical piece of it I think, overall. As well, there was a broad understanding that we had to be able to demonstrate that – that we, you know, if the ratepayers of the province were the ones absorbing the cost, then that had to be the primary focus of what we were doing.

And, you know, the presentations on rates, you know, the understanding of, for instance, the bump, as we called it, which was in some of our earlier scenarios – the fact that Muskrat Falls, even though it was the best long-term option by far, did have a more of a bump upfront.

There was deep discussions about how that was gonna be handled. We indicated how – where the funds from that could – or the financing arrangements – how they could be handled. And, you know, the leaders moved on from that.

But it was clear that that was at the forefront and the – these are things that we were gonna have to deal with.

**MR. T. WILLIAMS:** Okay.

The next area I'd like to touch on is an area that's been subject to some discussion with a number of Nalcor former employees – present and former employees – and that's with respect to the approach by government and Nalcor on addressing the project and moving it forward. It's been described as an integrated team; it's been described as an extension of government – an extension of the Department of Natural Resources.

There has been, you know, some suggestion, I would lay out to you, that, you know, whether or not Nalcor should be completely independent – separate – distinctly separate and apart – that there shouldn't be communications in between both these entities, and that government has a role to oversee exactly what Nalcor does.

You know, it's culminated in language such as Nalcor – government being a Nalcor cheerleader, and government being a passive bystander of Nalcor's operations and activities.

Can you speak to – as to the legitimacy of these comments or the fact that they're not legitimate, and the necessity of any co-operation that's between those two entities in order to take on a project like this?

**MR. E. MARTIN:** Well, at the outset, when the energy-corporation concept was formed, it was, you know, it was a clear mandate from our perspective. And the premier of the day, Premier Williams, you know, supported by the ministers, were clear that we were taking on, you know, from their perspective, a visionary outlook; we needed to have it based upon strong economics. But this, as I mentioned earlier, was a critical juncture in our history in terms of, you know, of bringing our last – some of our last, greatest resources to the table.

2041 was at the forefront. We had been dealing with oil – state-owned oil companies, such as Statoil, which impressed us. We were dealing with Hydro-Québec, which in some areas didn't impress us, but as a company did, frankly.

And, you know, the view was – is that government, you know, obviously was in charge. And of course, if you – I don't think there's any doubt of that – if you know premier-type mindset – particularly Premier Williams

and Premier Dunderdale – these are people who are in charge. And so that was clear.

But our view was, you know, was that we were going to create an entity that could do things that was with – not within the speciality of government – no more should it be. But we wanted to create an entity that was close, somewhat integrated. But our thinking was more of the companies and people we were going to be dealing with.

And (inaudible) 500,000 people, generally well educated. And some of our people are highly educated and very experienced. And our view was: We need to pull this group of people together under one umbrella. We are darn too small to have five or six different focus points, let's pull our – these people together under one umbrella – integrated with government but led by government.

But the view was: We were looking more to dealing with the ExxonMobils and, you know, the Chevrans and the Hydro-Québecs and the Emeras and not in a negative way, but on equal footing.

And that was the approach that was undertaken and it was, you know, always intended to be a close arm of the government but run like a commercial business.

And – meaning that, you know, we were dealing in a profit and loss situation as if we were a private sector company. But obviously, with the intertie and the umbilical from the government, there was no question that they were in charge and, you know, would continue to be so from a policy perspective.

**MR. T. WILLIAMS:** Arising from that is another area that I wanted to touch on.

What was your sense of the level of oversight to the operations of Nalcor by government and as well as – in addressing that issue – the level of engagement by government, whether it be at the departmental level, the ministerial level, you know, the premier – whether it be Premier Williams or Dunderdale – in terms of questioning the actions of Nalcor, challenging Nalcor.

We've had various evidence to that end and I'd like to hear your viewpoint as to what your perception was regarding the level of, you know, insight engagement and oversight from government.

**MR. E. MARTIN:** To your – I believe it was high.

But first – to your first point. And I think it's useful to talk about, Commissioner, because, you know, at the time we were created – we – Nalcor was created to be closely linked to the government, have the professionals in place. But we were created to be the oversight because the expertise sat there. So when I sat into that role, from that perspective, they were saying: You – we own you, we run you, we oversee you and you answer to us. But that being said, you are our eyes and ears out there to oversee and be the oversight for the developments that will happen.

So that's the mindset we were in – that we were to be that specialized entity to do that in conjunction with the private-sector companies, contractors and other things. And then that's why – back to government – at the working levels, there was a tremendous amount of integration – working together. We had to fit into the government processes, which are quite different than, you know, the private sector type – rightly so. And they had to fit into ours and understand. I mean, there's a tremendous amount of interaction there.

From my perspective, you know, I dealt very frequently and clearly with the premiers of the day, as well as the ministers. And it was an ongoing perspective and it was actual and I think it was clear that – to me – that a Premier Williams or a Premier Dunderdale would have felt that they were interacting with me frequently, regularly and on key issues.

Strong personalities all around, you know. Was it always a cake walk? Obviously not, you know, these are strong-willed people and many spirited discussion.

But at the end of the day, like it or lump it from my perspective, you know, there's a hierarchy of command and wherever you are in that hierarchy, you know, you lead when you lead and you follow when you follow, and it was

clear that the province had the hammer. And that's the nature of the business.

**MR. T. WILLIAMS:** Okay.

Last area I wanna touch on was the issue of arrangements with the province of Quebec. And there's been suggestion that, you know, maybe it's due to inherent mistrust – historical mistrust of the province of Quebec. Why we didn't investigate or peruse options, which doesn't appear to necessarily be the case.

And I'd like you to be able to speak specifically as to what actions were actually taken to peruse options with the province of Quebec, whether it be through purchasing power or whether it was trying to do, you know, they did put in a proposal under the MOU – or under the expressions of interest I understand – the EOI.

And can you speak to what considerations were given by Nalcor with respect to trying to do a possible arrangement with Quebec on this particular project?

**MR. E. MARTIN:** We had a series of engagements – I did personally. I mean, when I first got into the role I think that would be typical. I mean, early on when my first contacts was with the president and CEO of Hydro-Québec, Mr. Thierry Vandal, just an open discussion, just to introduce, and we agreed to get together.

I can't remember exact dates but, you know, I did go up, you know, to visit Mr. Vandal, once again to touch on the issues and build a relationship as we went. And that continued over time.

At another point, Mr. Jacques Lamarre, who was the previous CEO of SNC-Lavalin, approached me to say that he had set up a meeting with Mr. Vandal, who had appeared to be interested in trying to progress some of our arrangements. And I remember at the time saying: Well, that surprises me, Jacques, but, you know, if you say so, I'll give it a crack, 'cause, you know, some of the previous discussions weren't what I thought were necessarily headed in that direction.

So I flew back to Montreal, sat in with Mr. Vandal, and I think Jacques may have misread the situation 'cause that didn't work out to the best. Seemed to me he was thinking that I was going to offer something on the table so, you know, that didn't go that well. But moving on from that, though, I think it demonstrated that we were open to dealing with this stuff constantly.

And another time, Premier Dunderdale, I think I mentioned this earlier, in conjunction with, I think it was Premier McGuinty and Charest had asked myself and Mr. Vandal and Ms. Laura Formosa who was CEO of Hydro One, get together, which we did, several times. We put together a memorandum to do a development. And I think for various reasons that were beyond the control of that team, it didn't happen.

I know that – and that's Nalcor. I guess I think the premiers can speak to themselves. I believe they had relationships with the other premiers and, you know, there was dialogue, but I can't talk to that because I'm – you asked the Nalcor question, but they're just some examples –

**MR. T. WILLIAMS:** Yes –

**MR. E. MARTIN:** – Mr. Williams, in terms of, you know, we had always felt we had left the door open.

I think in another – another example was even on the court case, one of the court cases we put it on, I wrote a letter to Hydro-Québec outlining some of our concerns and saying, you know: We'd like to open the door to get together and talk about this and see through it, you know, 'cause essentially we don't, and this is the path we're gonna take.

So I wrote that letter and I did put a date on it to say: I'd appreciate a, you know, discussion at that point. They didn't reply and we proceeded. But we made the effort, you know, for another example.

**MR. T. WILLIAMS:** And the expression of interest that was submitted, I understand it was a joint expression of interest put in by the Province of Quebec and Province of Ontario?

**MR. E. MARTIN:** That's correct.

**MR. T. WILLIAMS:** And would that have received full and complete evaluation and consideration?

**MR. E. MARTIN:** Absolutely, no question.

And, you know, I do believe that, you know, they did put good information together, it was looked at, you know, critically, and the decision that was made ultimately – it was well researched and what's – I think you're asking from the perspective of who you represent, those people. There was some pretty aggressive questioning and analysis on that.

I mean, everyone knew the stakes. So it wasn't, you know, it wasn't something that was just, you know, momentarily accepted. There was deep discussion and, you know, and understanding that what was being done here.

**MR. T. WILLIAMS:** So while there wasn't prolonged, detailed, formal negotiations, this option – I mean, the issue of Quebec in consideration on the Muskrat Falls Project was given (inaudible) –

**MR. E. MARTIN:** It was, there's no question about it.

**MR. T. WILLIAMS:** – and sufficient consideration in your mind?

**MR. E. MARTIN:** No question about it.

**MR. T. WILLIAMS:** Okay.

**MR. E. MARTIN:** I mean, it, you know, it was just business, as they say. And I understand, you know, there's a historical relationship there, and for some of the premiers, you know, were aggressive publicly and those types of things, but the channels were always open.

You know, I've learned, you know, that from a political perspective, which wasn't my background, I found that that was a communication procedure that – I learned how politicians operated, 'cause I saw the same thing coming from Quebec sometimes, and from, you know, and from Newfoundland,

But my experience when I sat down in any arrangement with another premier from the

province, with the Premier Williams or Dunderdale, that didn't (inaudible) them. It surprised me, I learned that, but after some, sometimes after, you know, public discourse and I'd be going into meeting in support of the premiers, I'd be sitting there saying: Okay, this is going to be fun. It was like water off a duck's back to these people. Like, they just got in there and started dealing.

I think they understood – I learned that they understood that that was just a communications forum and they got down to business immediately, was my expectations. So I learned that.

**MR. T. WILLIAMS:** Since – my last point I'd like to raise before we, we likely break for lunch – is that obviously you've been involved in this project since its infancy. You've seen where the estimates, original estimates for the project were, where they were when you left, and where they are currently. And using global numbers, it's basically doubled – a lot of talk about the impact on ratepayers, et cetera.

What do you see is the value of this project in its current state, even since you've been involved in it, for the province in the future?

**MR. E. MARTIN:** Two points –

**MS. O'BRIEN:** Sorry, if I just interrupt.

Just to let the Commissioner know, we have been very careful to only stay with Mr. Martin on sort of Phase 1 issues, just for time. He will be called back, obviously, on Phase 2.

Maybe that question's fine, but I just wanted to indicate that, because then that's (inaudible) –

**MR. T. WILLIAMS:** I'm not asking him to address issues of –

**THE COMMISSIONER:** Right.

**MR. T. WILLIAMS:** – later people.

**THE COMMISSIONER:** Well, I'm just going to add one other thing too.

**MR. T. WILLIAMS:** Yeah.

**THE COMMISSIONER:** So the issue of benefits – I sat here and I listened to Mr. – Premier Williams, or Mr. Williams, speak. I've now heard others speak, and I've heard Mr. Martin speak. I don't need to hear it again, okay. I don't need to hear it again.

**MR. T. WILLIAMS:** Mr. Commissioner, this is a key –

**THE COMMISSIONER:** I know, but I don't need to hear it again. It's repetition, and I don't need to hear it again.

**MR. T. WILLIAMS:** I don't think Mr. Martin's had an opportunity to canvas that fully, so I don't know –

**THE COMMISSIONER:** Well, you asked –

**MR. T. WILLIAMS:** – if you have heard it.

**THE COMMISSIONER:** – you ask the right question and I'll let you ask it, but my understanding of the question you were asking him was, went to the very point of something that Ms. O'Brien has already asked him, which was – and which he gave a full dialogue on this morning on the benefits.

I'm not interested, to be quite frank, I'm interested as a citizen but I'm not interested as a Commissioner here in people's perceptions of the future benefits. That's not what this Inquiry is about.

This Inquiry is looking at the sanction decision and how the cost basically got to where they are. And that's what I'm going to focus on. The rest of it is political. And as I said early on, the show is not politics – the show is trying to investigate how we got to where we are.

So –

**MR. T. WILLIAMS:** But I –

**THE COMMISSIONER:** – my understanding of your question was, because I – first of all, I did understand it that we might be getting into phase 2 and that did worry me because I don't want – Mr. Martin is going to be back for phase 2. I expect he'll be back for phase 2, so I don't want to go there.

But then you asked about well, you know, notwithstanding the fact that we're there, what are the benefits? That's the word I heard you use.

**MR. T. WILLIAMS:** Yes, that's correct.

**THE COMMISSIONER:** Right.

**MR. T. WILLIAMS:** Yeah.

**THE COMMISSIONER:** So you don't think you got that answer this morning from Mr. –

**MR. T. WILLIAMS:** Well, maybe I can – and I appreciate your point. Maybe I can ask Mr. Martin: Do you feel you've provided an answer as to what the benefits of the project in your testimony to date?

**MR. E. MARTIN:** Two points: the first I'd like to make is – as you mentioned – the concept of the cost is doubled. I take exception to that and –

**THE COMMISSIONER:** But we're not going to talk about that because I'm not going to – I don't really want to talk about whether they doubled or whether they're not doubled. I mean, there's all kinds of points on that.

First of all, if you took 12.7, my understanding is it includes financing, which 6.2 didn't.

But I don't want to get there. I don't want to go there because we're going to go there in phase 2. So, let's talk about your second point then.

**MR. E. MARTIN:** Just on record that there's misinformation out there on that.

**THE COMMISSIONER:** All right, well you'll get an opportunity to speak to what you consider to be misinformation in phase two, so go on.

**MR. E. MARTIN:** Could you repeat the question again, please?

**MR. T. WILLIAMS:** It's been suggested that you've had full opportunity to speak to this issue that I raise with regard to the benefits of the project during the last two and a half days of your testimony. I'm just asking if you feel you've completed canvassed that, fine.

Is there anything else or do you feel you've canvassed that or is there something you feel has not been brought out through the evidence in that regard?

**MR. E. MARTIN:** I don't think I fully canvassed it so I'm just preparing my answer so I don't repeat myself to the Commissioner's point and I'm just, you know –

**MR. T. WILLIAMS:** Well maybe not to put the witness on the spot, I'm prepared – I think it's a worthy question, I think it should be addressed and in fairness to you allow you to address and answer and then maybe we can leave it to your counsel to raise it during his examination but I think it's a worthy question that I'd like to know if there's anything that we haven't heard.

**MR. E. MARTIN:** Mr. Commissioner, if that suits you, because I'm trying – I'm processing here now – as I'm knocking off all the things I talked about over the last few days and just walking through it. And it's a question I'd like to answer – it might be nothing –

**THE COMMISSIONER:** Okay.

**MR. E. MARTIN:** It might be one or two things but I don't want to repeat myself.

**THE COMMISSIONER:** Okay. So again, just to make certain everybody understands where I'm going here.

I'm trying to avoid repetition by witnesses as much as is possible. I'm particularly trying to avoid what I consider to be, you know, could be considered to be politics in some way, shape or form.

There are – Mr. Martin this morning, I thought, gave a fairly good, detailed explanation of his views on the benefits. If there are additional benefits, then yes, you think about those and you can certainly, through Mr. Smith – I assume you don't mind asking him the question if he indicates there is something more to ask – and we can leave it at that.

**MR. T. WILLIAMS:** And just to be clear, Commissioner, this is not about playing politics.

This is about bringing out legitimate issues that I think –

**THE COMMISSIONER:** I agree.

**MR. T. WILLIAMS:** – both the Commissioner and the viewing public would like to hear.

**THE COMMISSIONER:** Right.

**MR. T. WILLIAMS:** In regards to witnesses such as Mr. Martin.

**THE COMMISSIONER:** Okay, so my point was – seeing as it was out there, unless there is something added – which is what I just told Mr. Martin, that's where we're going with it.

**MR. T. WILLIAMS:** I'm prepared to leave the question to allow Mr. Martin's counsellor to address it –

**THE COMMISSIONER:** Thank you.

**MR. T. WILLIAMS:** – if he deems necessary.

**THE COMMISSIONER:** Thank you.

I just want to let Ms. Best know what happened here, because I know you weren't here at the time.

I called upon Mr. Budden to come next because Nalcor is going second-last in usual order. You weren't here at the time by Mr. Williams stood up and indicated he had had discussion with everyone and everybody was satisfied he could go first.

So I just wanted to explain how he happened to get there, you haven't missed your turn.

**MS. E. BEST:** Yes, thank you. And I had discussed that with Mr. Williams.

**THE COMMISSIONER:** Okay. Perfect.

Okay. So we'll come back then this afternoon at 2 o'clock then.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right. Concerned Citizens Coalition?

**MR. BUDDEN:** Good afternoon, Mr. Martin.

**MR. E. MARTIN:** Good afternoon.

**MR. BUDDEN:** We've met before of course. My name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition, and I have a number of questions for you. In many cases, I'll be referring to comments other witnesses have made. So I have a bunch of transcripts here just to hopefully make it go smoother.

So I'm going to start just by putting one of these to you, and I have a copy for you as well, Mr. Commissioner.

I don't have 20 copies, but I will be reading out the relevant portions.

**THE COMMISSIONER:** So this is a transcript of the hearings, you mean?

**MR. BUDDEN:** These are transcripts from different days of the hearings.

**THE COMMISSIONER:** Okay.

**MR. BUDDEN:** What I – my plan is just to – as I said a moment ago – is I wish to bring the witness to certain comments other witnesses have made and ask him if he – essentially, for his comment on them. Points of what, I believe, perhaps – evidence that he, perhaps, should speak to.

**THE COMMISSIONER:** So do all counsel have these documents?

You don't. Okay. So where you need to – if there's a reference to a document, and you need to – actually want to see it, or whatever, please alert me, and we'll make sure that you at least get either my copy or alternatively Mr. Budden's so that you can have a look at what it is that's being (inaudible) –

**MR. BUDDEN:** What I – what I planned to do – and I was thinking about how best to do this. I realize they are not formal exhibits, but obviously they’re part of the record of the Inquiry, and particularly where this witness seems to appreciate clarity, having the document in front of him, I thought it best to proceed this way. What I will do, I’ll read in the sections that I wish him to comment on, so, perhaps, we can start so that way all parties will have the same information.

**THE COMMISSIONER:** And does Mr. Martin get a copy then of this?

**MR. BUDDEN:** Mr. Martin has a copy. I just passed one to –

**THE COMMISSIONER:** Okay.

**MR. BUDDEN:** – him, and I’ll be moving through a half-dozen transcripts. The one I’m starting with is from October 17 – rather – this would be the evidence of John Mallam.

So, firstly, Mr. Martin, obviously, you would know Mr. John Mallam, I would assume?

**MR. E. MARTIN:** That’s correct.

**MR. BUDDEN:** Okay.

And from his evidence and from other evidence, I understand that he was – is an engineer. He worked at Newfoundland Hydro for approximately 37 years, would have retired at about the time of sanction, is presently on the board of Newfoundland Hydro, and throughout his career, he worked in – his evidence was – many aspects of Newfoundland Hydro, and one time or another, he indicated, he was involved in pretty much all the power generation facilities in a number of divisions within Hydro.

Does that all square with your understanding?

**MR. E. MARTIN:** Yes.

**MR. BUDDEN:** Okay.

I’d like to direct you – and again I put the transcript before you, for your convenience, and what I’d like you to – like to do now is bring you – I’m going to read a section, and I’d like

you to listen to it all the way through, and then I’m going to ask you to comment on certain aspects of it.

So –

**MR. E. MARTIN:** Where does it start?

**MR. BUDDEN:** It starts on page 8, and it’s down at the bottom where it says Mr. Mallam and I will read the part that I’m interested in.

**“MR. MALLAM:** Well, obviously, the other alternative to Muskrat Falls was the Isolated Island scenario. And that was a generation development plan that, over the years, has changed many times, and it was a hierarchy of different plant types involving wind, hydro and thermal resources. And there were numerous cost estimates that had been prepared for these different plants. And a lot these I was involved in when I was at Hydro, preparing directly, or they were done under my management.

“So the – I think the reason Paul approached me was that, prior to this time, I was the vice-president of engineering, and most of this work was done under my direction. And he wanted me to arrange for people within Hydro to refresh these estimates to make sure they were all done in current dollars with the latest available figures.

“So I was really just a person to contact, and I don’t remember if I contacted the individuals back at Hydro within engineering or if someone else did, but we contacted the people who had lead the studies of the plants that were in the current Isolated Island case to refresh those estimates.”

Ms. O’Brien said: “Okay.

“And were you actually doing the refreshing work yourself, or were you acting more, at this point” – and this would have been 2011, 2012 – “as a coordinator getting the right people ...?”

And he says: “I was just coordinator.”

And Ms. O’Brien: “And in terms of the contingencies that were built in to those projects for the estimates, would you have had any involvement with that?”

**“MR. MALLAM:** No. They would’ve been decided by the people who prepared the studies, and they were based on Hydro standard practices.

**“MS. O’BRIEN:** Okay.

“And those would be the practices that you reviewed with us yesterday?”

And he says: “Yes.”

And Ms. O’Brien said: “So I think you said yesterday – somewhere between 10 and 20 per cent contingency, more typically between 10 and 15 per cent.”

And Mr. Mallam said: “That would be typical for a study for a project” that was done – “that was at the point of being developed. For study purposes, it would be slightly less than that, and we have larger contingencies. So you might be – to use P-value equivalence, some of those feasibility studies were probably P70s.

**“MS. O’BRIEN:** Okay.

**“MR. MALLAM:** Some may have been as high as P90, and appropriate contingencies would’ve been applied. So say, for a P70, it might carry a 25 or 30 per cent contingency. If a project was at a P90-equivalent level, it would be a 10 to 15 per cent contingency.”

Ms. O’Brien: “Do you mean at a higher – typically, sometimes we think of a higher P-level would be a higher contingency because ... that’s what builds in more certainty to that you’ll come in under that number.

**“MR. MALLAM:** No, no. What I mean is that at – when I refer to an equivalent to a, say, a P90, I mean that the study that we – that was performed has a very high confidence level. There was a great deal of work done, and so we’re very confident in the value of the estimate; therefore, it needs a small contingency.”

And Ms. O’Brien: “And when you say ... it’s – when you’re very confident in the estimate, what type of contingency would you typically add on?”

Says: **“MR. MALLAM:** Oh, 10 per cent, 15 per cent.”

Okay, so do you accept – you’ve had a chance to listen now, and I’ve noticed you’ve been glancing through it. Do you accept that that was indeed the standard Hydro practice for doing cost estimates that were followed at the – this time in question?

**MR. E. MARTIN:** A lot of it in his – in Mr. Mallam’s transcript didn’t make sense to me.

**MR. BUDDEN:** No?

**MR. E. MARTIN:** No, it didn’t.

**MR. BUDDEN:** What parts didn’t make sense?

**MR. E. MARTIN:** I’m about to tell ya. You know, when we talk about terms like “For study purposes, it would be slightly less than ... and we have larger contingencies. So you might be – to use a P-value equivalence, some of these feasibility studies were probably P70s,” like, I don’t know about P-value equivalence.

To me, the process is to do your base estimate, to put your escalation on it, and then you would run, you know, a risk analysis, with Monte Carlo analysis. It would produce the information, and from that exercise, then you would discuss P-values and determine your contingency. This equivalency – and when I read here, it appeared to me Mr. Mallam was, you know, using some rule-of-thumb mindset or something to pick a P-value for an estimate.

And to me, that just didn’t make sense. You know, if you go down to – a couple of paragraphs down, it says: “No, no. What I mean is that at – when I refer to an equivalent to a, say, a P90, I mean that the study that we – that was performed has a very high confidence level.” That’s backwards to me, so it didn’t make sense to me.

**MR. BUDDEN:** Okay.

So are you saying that this was not the standard that was used to evaluate the Isolated Island Option capital cost estimates?

**MR. E. MARTIN:** I wasn't there prior to this happening. What I'm commenting on is that the description of the use of P-value didn't make sense to me when he was describing it.

**MR. BUDDEN:** Okay. My question was are you disputing that this was the standard practice that was used at Hydro for their Isolated Island cost estimates?

**MR. E. MARTIN:** This doesn't – I don't understand what he's talking about here. It didn't make sense to me. I wasn't there prior to my being there, if you know what I mean, so I can't comment on it further than that.

**MR. BUDDEN:** You were there after 2005 though? So you were there for six or seven years before the – before sanction.

**MR. E. MARTIN:** Yeah. And, of course, he's talking about before I came there, because on the capital project side – you know, the hydro and those other things I believe he's referring to – those studies were done before I got there.

**MR. BUDDEN:** I don't think he necessarily is. But what was your understanding of the practice that was used to determine the capital cost estimates for the Isolated Island plant – plants?

**MR. E. MARTIN:** At what point?

**MR. BUDDEN:** At the point pre-sanction – used to inform the estimates that were – the Isolated Island estimates that informed the CPW analysis.

**MR. E. MARTIN:** So I think Mr. Mallam referred to it here as far as getting an update on the studies that were previously done –

**MR. BUDDEN:** Yes.

**MR. E. MARTIN:** – updated by – it appears to be some of the people or firms that had worked with him before.

**MR. BUDDEN:** And what is your understanding of the process that was used to inform the CPW for the Isolated Island capital cost estimates, if it was different than what he's saying here?

**MR. E. MARTIN:** I believe that is consistent with what he's saying here. What I was commenting on is his commentary around P-factors – didn't make sense to me.

**MR. BUDDEN:** Okay. Well, he talks about it a little more in some other quotes, but just to focus on that particular thing, are – do you accept that this is the process that was used to do the cost estimates for the Isolated Island Option?

**MR. E. MARTIN:** I'll repeat my answer again.

**MR. BUDDEN:** Capital cost estimates.

**MR. E. MARTIN:** I'll repeat my answer again.

**MR. BUDDEN:** Well, you can simply answer the question.

**MR. E. MARTIN:** Well, I am going to –

**MR. BUDDEN:** Do you accept that this was the process –?

**MR. E. MARTIN:** – answer the question if you give me a chance. And it's going to be a repeat, though, and I wanna just lay that out there (inaudible) –

**MR. BUDDEN:** Well, just answer the question: Do you accept that this was the process?

**MR. E. MARTIN:** – because if we're going to be repeating ourselves, it's gonna take extra time.

**MR. BUDDEN:** Well, if you answer the question it won't.

**MR. E. MARTIN:** As far as Mr. Mallam went ahead and described here that the – he coordinated others to put together an update to desktop studies. I agree with that.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** I don't agree with the P-factor analysis because it doesn't make sense to me.

**MR. BUDDEN:** Okay.

Who would've had the greater experience with using the P-factor, yourself or Mr. Mallam?

**MR. E. MARTIN:** I don't know what experience Mr. Mallam had with P-factors.

**MR. BUDDEN:** Okay.

So you don't know whether he has more experience or you have more experience?

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** Okay, well, we'll move on to see what other quotes we have here.

Page 15, please. This is on the left-hand side where it's – Mr. Mallam is saying: "Let's talk about the cost first."

And then I'll read: "As I recall, at the time, they ..." – and he's talking here about the project team and the review that was done in August of 2012 leading up to a meeting with you on August 31, 2012.

**THE COMMISSIONER:** Mr. Budden, can I just interrupt for a second? What page are you on? I'm just trying to find you –

**MR. BUDDEN:** Page 15.

**THE COMMISSIONER:** Oh, thank you.

**MR. BUDDEN:** Okay. Left-hand side Mr. Mallam: "Let's talk about the cost first."

"As I recall, at the time, they told us that the cost estimates have been completed to a P50 level."

**MR. E. MARTIN:** Excuse me (inaudible) –

**MR. BUDDEN:** Why don't you let me ask my question, please?

**MR. E. MARTIN:** I'm just trying to get – I'm not sure where we are in the –

**MR. BUDDEN:** Sure.

**MR. E. MARTIN:** – time frame, so I (inaudible) –

**MR. BUDDEN:** This would've been the –

**MR. E. MARTIN:** And I'm just trying to test the first few words there to make sure I'm in the right –

**MR. BUDDEN:** This was –

**MR. E. MARTIN:** – (inaudible) here.

**MR. BUDDEN:** – the questions were with regard to the IPR, the Independent Project Review with Mr. Owen, Mr. Westney, Mr. Mallam and others. And that's what he's being asked about here.

**MR. E. MARTIN:** Is this DG1 or two – or two or three?

**MR. BUDDEN:** Neither. DG3.

**MR. E. MARTIN:** That's what I was trying –

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** – to understand here.

**MR. BUDDEN:** "MR. MALLAM: Let's talk about the cost first."

"As I recall, at the time, they told us that the cost estimates have been completed to a P50 level. And a normal procedure is to determine what an appropriate contingency is; you would do a risk analysis. So you'd look at the elements in the project and consider the risks involved in each one, determine what contingencies are required for all these individual items and, eventually, you'd build up a project contingency. That's the correct way to do it."

"Now, they did not have a risk analysis available to us" – meaning the IPR team – "so we couldn't see it. What they had done was applied a blanket contingency, which I believe was 10 per cent." And, again, an aside, it was actually seven – is – it comes up later. "And for a cost estimate completed at a P50 level, 10 per cent is well below what any reasonable standard would suggest should be required."

"There are quite a few organizations out there that produce guidelines for preparing cost estimates, and depending on the level of the study, the P-level let's call it, they recommend

various contingencies and for a P50-level study, I would've expected to see a contingency of 25 per cent to 50 per cent, perhaps higher, depending on the risk analysis.

"So, that was the concern with the cost estimate and, similarly, in a project schedule –"

And Ms. O'Brien interrupts: "Well, just before we go to project schedule, I ... want to talk – in terms of – at this point, we're talking about getting ready to sanction the project, to make a decision as to whether or not to go ahead.

**"MR. MALLAM:** Yes.

**"MS. O'BRIEN:** You know, whether or not you're going ahead with the project.

"What – in terms of confidence level, the number that you are going to be sanctioning that project on, your estimate that you're going – the cost estimate you're going to be sanctioning that project on, what – in your opinion, what was the appropriate P-factor to be using at the DG3?

**"MR. MALLAM:** I can answer that question a couple of ways. Ideally, you'd like to have the highest" – P-factor or – "P-number possible and so I'd suggest a P90; however, that's not always practical.

"Yesterday, I described the hierarchy of studies that we would typically do in Hydro and they would apply here as well. You'd start at a desktop level, prefeasibility, feasibility, final feasibility and so on, and the higher up that hierarchy you go, the more accurate the estimate, but the more costly it is to prepare the estimate. You have to do a tremendous amount of field work and pre-engineering and sampling the markets and so forth.

"So, as I said a moment ago, you'd love to have a P90 estimate, carry a 10 per cent contingency and base it on that, but, practically, you might use only a P70 and you can, in fact, even use a P50, but you can do that only if you have an appropriate contingency. And as I said again a moment ago, at a P50 level, I would've expected to see a contingency of 25 to 50 per cent, perhaps even higher.

**"MS. O'BRIEN:** Okay.

"Then the numbers – so, basically, you're saying the number – in terms of the amount of work that had gone into the estimates that they were presenting at DG3, so, you know, the detail level of the engineering and the costing and the work, the detail and work that had gone into creating those estimates, your belief was you could only have – I just want to make sure I'm understanding what you're saying, you felt that at that stage they were, you know, you may be 50 per cent likely to go" – under that number or 50 per cent likely to go over – rather – or 50 per cent likely to go under.

Mallam: "That's correct.

**"MS. O'BRIEN:** So, you would have taken that number and on top of that added another 25 to –"

Mallam: "To 50 per cent or more.

**"MS. O'BRIEN:** Just to make sure that the ultimate number you were using had a very high level of confidence, is that ...?

"... Exactly, yes.

"... Okay.

"And was this communicated by you at the meeting with Mr. Martin, Mr. Bennett, Mr. Harrington and others?

**"MR. MALLAM:** Yes, it's contained here in the report later on. There's a slide that deals with that and I'm pretty sure we discussed it at the time."

So the heart of what he's saying here, what I'd like you to comment on – Mr. Mallam is saying that if you're using a P50 at DG3, coming out of the IPR that they did, you should've used – not a 7 per cent contingency, but rather a 25 to 50 per cent contingency or even more. That's John Mallam; what do you say in reply to that?

**MR. E. MARTIN:** I say what he's saying doesn't make any sense.

**MR. BUDDEN:** Why doesn't it make sense?

**MR. E. MARTIN:** (Inaudible) few examples, let's walk through it.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** And it just makes me wonder, you know, where he's getting his information or his experience in dealing with P-factors at all, because of some of the comments I'm reading.

**MR. BUDDEN:** So you're –

**MR. E. MARTIN:** If I go back –

**MR. BUDDEN:** Just to stop you there –

**MR. E. MARTIN:** – go back to the –

**MR. BUDDEN:** I'd stop you there, Mr. Martin.

**MR. E. MARTIN:** (Inaudible) you go right ahead now – I mean –

**MR. BUDDEN:** You're saying you wonder – I want to clarify that, before we move on – you're saying you wonder where he's getting his experience or information.

**MR. E. MARTIN:** Mr. Commissioner, I'm – I probably need some guidance here in terms –

**MR. BUDDEN:** I think he may.

**MR. E. MARTIN:** – before we go ahead here, in terms of – is it right to stop as I speak and answer the questions – then I will. Or will I have a chance to go through in a logical sequence some of the answers, I'm wondering.

**THE COMMISSIONER:** Now, we're gonna have a very long, painful afternoon, and perhaps tomorrow, if this continues the way it's going.

So I'm going to, sort of, suggest to counsel and to the witness what I expect of them. Questions will be put, and they will be questions and those questions should be – the witness should be allowed to answer them. At the same time, what I expect, Mr. Martin, from you as a witness is to answer the question as best as you can. And if you do that, I think, this will avoid this toing and froing that likely is going to end up having to take place.

So – and I will say this. If a lawyer feels that the question is not being answered or that you might have misunderstand the question, I see no problem with him or her basically suggesting that that's the case and explain the question. So you may well be interrupted but the interruption should be very, very sparse. It should not need to happen very often.

So again, as I said, let's make this easy for everyone here. Questions asked, time given to answer, answer the questions and then I think we'll avoid any problems.

**MR. BUDDEN:** Okay.

**THE COMMISSIONER:** So ask your question again, Mr. Budden.

**MR. BUDDEN:** My question that we were asking at the moment we digressed was you made a comment about – as I understood it – Mr. Mallam's experience or understanding – something of that effect – and I asked you to clarify what you meant by it.

**MR. E. MARTIN:** So I went back to my original question – you asked me what I thought about it, I thought I didn't understand his comments.

And so, with respect to my comment about his experience with dealing with P-factors, my answer would be: I was going to give examples of why I'm confused about that.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** I have about four or five.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** So would you rather me go through each one and ask a question or would you rather me just blow through them?

**MR. BUDDEN:** Let's see how it goes.

**MR. E. MARTIN:** That sounds good to me.

So on the first one, on the page 19 on the left hand side, about three paragraphs up from the bottom, it starts off (inaudible) –

**MR. BUDDEN:** Page 19?

**MR. E. MARTIN:** On page – I’m sorry, page 15. I was looking at number 19 on top.

**MR. BUDDEN:** Understood, go ahead.

**MR. E. MARTIN:** My mistake, page 15.

And then third paragraph from the bottom it says – Mr. Mallam says: “So you’d look at the elements in the project and consider the risks involved in each one, determine what contingencies are required for all these individual” – line – “items and, eventually, you’d build up a project contingency. That’s the correct way to do it.”

If we’re talking risk analysis, my understanding is that you would go into each line item and you put a range against it. And then you would run a Monte Carlo analysis and that would roll up into an overall summary curve – a cumulative probability curve. And from that process then you would be able to use that to select the level of contingency you’re looking at overall.

So I didn’t understand that point he was making. It didn’t make sense to me is my point.

If we go to the next paragraph, he says midway through: “What they had done was applied a blanket contingency, which I believe was 10 per cent.”

So that, once again, from perspective of a risk analysis, as I just mentioned, it is a roll-up.

So the following sentence says: “And for” – the – “cost estimate completed at a P50 level, 10 per cent is well below what any reasonable standard would suggest” – that – “should be required.”

But the very purpose, Commissioner, of the risk analysis process that was followed was to let the curve be produced and then select a P-value off it. There’s no, you know, there’s no, you know, framework. Framework doesn’t allow for you to say: I think it should be this, so let’s make it that – it’s an outcome.

So I didn’t understand that.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** Would you like to interrupt me?

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** You go ahead.

**MR. BUDDEN:** The first – the very first paragraph in his answer – the one that began, “As I recall” – does that not explain the appropriate way to do it – the ideal way to do it – and he ends by saying, “That’s the correct way to do it.”

And then he goes on to what you do if you don’t actually have a risk analysis done.

**MR. E. MARTIN:** So what he described in the first paragraph, from my perspective, was incorrect.

**MR. BUDDEN:** Is incorrect.

**MR. E. MARTIN:** That’s what I just described, yes.

**MR. BUDDEN:** Okay, carry on.

**MR. E. MARTIN:** So I’m going to the third – the paragraph from the bottom: “There are quite a few organizations out there that produce guidelines for preparing cost estimates, and depending on the level of the study, the P-level” – they – “call it, they recommend various contingencies and for a P50-level study,” – et cetera.

I’d never seen anything like that. It doesn’t make sense to me because, as I just described, the outcome of the probability analysis that I just decried that process – I won’t do it again – it’s from that cumulative curve you pick your P-level. That would depend upon the various risks that any different organization might have for any different project.

And there’s nothing I’ve ever seen out there, ever, that recommends a P-value for each factor, because that just doesn’t make sense – because it’s the – it’s the correct preparation of the cumulative curve that gives you the factor.

That’s my point.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** And then I –

**MR. BUDDEN:** Have you –

**MR. E. MARTIN:** And then I go down  
(inaudible) –

**MR. BUDDEN:** Carry on.

**MR. E. MARTIN:** – another – you go ahead  
and interrupt –

**MR. BUDDEN:** Sure.

**MR. E. MARTIN:** – you go right ahead, Mr.  
Budden.

**MR. BUDDEN:** Have you ever seen a P-factor  
that produces a 7 per cent contingency?

**MR. E. MARTIN:** I think the, you know, I  
haven't – I produce with a range of factors. I  
think the factor that I saw would not – would not  
make a difference because I would have to see,  
like, you know, thousands of projects to do that.  
I believe that, you know, a P50, in many cases, I  
would believe it would produce anywhere from  
a 5, 6, 7, 8, 9, 10, 20 per cent – but that's not the  
point. By virtue of asking that question, as I  
said, it depends on the outcome of the risk  
analysis that – of each individual project.

So, you know, I just feel uncomfortable relating,  
you know, this adding a contingency amount as  
a relative relationship directly to a P-factor  
because it's the other way around. The P-factor  
from a rolled up curve gives you a contingency  
amount.

**MR. BUDDEN:** But they are related.

**MR. E. MARTIN:** Absolutely.

**MR. BUDDEN:** So a P-factor and a  
contingency are – go hand in hand. Generally –  
the higher the P-factor, the lower the  
contingency – as a general rule.

**MR. E. MARTIN:** Or the higher the  
contingency.

**MR. BUDDEN:** (Inaudible.)

**MR. E. MARTIN:** Did you say the higher the  
P-factor?

**MR. BUDDEN:** The higher the P-factor, so if  
you're going, say, a P90, you'd have a lower  
contingency than if you're going a P30.

**MR. E. MARTIN:** No, I think it's the other  
way around.

**MR. BUDDEN:** Okay. Well, what Mr. Mallam  
is saying here, that with a P – cutting to the heart  
of it – with a P50 you would typically, or he  
would recommend a contingency of 25 to 50 per  
cent.

What do you have to say to that?

**MR. E. MARTIN:** Once again, it confuses me a  
great deal, because it appears he's assigning a P-  
factor – a probability percentage to a P-factor on  
a blanket overall statement. Well that's just the  
antithesis of what the risk analysis is all about.  
Like, that, it just doesn't compute for me, so I'm  
struggling to answer the question,  
Commissioner.

You know, I (inaudible) repeat myself, now, but  
each, you know, organization would do their  
own risk analysis. As I mentioned, you go line  
by line, you apply ranges based on what each  
individual project – that could be a project, you  
know, to build a building in the Middle East  
somewhere, and you would roll that up, run the  
Monte Carlo, it would yield a curve, and you  
have to get all that input from the experts who  
were involved in that particular project to yield a  
curve that makes any sense. Now, that could end  
up a P50 at any number, based on their own  
situation.

So to assign a blanket 25 per cent to a P-factor –  
I'm going to stop there, 'cause it just doesn't  
make any sense to me.

**MR. BUDDEN:** Experts such as Dick Westney,  
those kind of people.

**MR. E. MARTIN:** And what about them?

**MR. BUDDEN:** I said you said you would  
assign it to experts to do this analysis.

**MR. E. MARTIN:** By experts, what I was talking about there would be the engineers and the builders and the cost people involved in that example I used – so that they would be able to understand the line items that they were. And I used an example of a major building the Middle East, we'll say, just to make the point that this applies across the board. When I said experts there, I meant the experts who would be applying the ranges to the various cost line items, is the experts I was referring to there. And the reason I said experts was you have to have people who understand what they're building, from an engineering perspective, to give you a reasonable viewpoint in terms of (inaudible).

**MR. BUDDEN:** Mr. Mallam is such an engineer, I believe. He is an engineer.

**MR. E. MARTIN:** He's an engineer.

**MR. BUDDEN:** You are not.

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** Okay.

You nevertheless believe you understand P-factors more than he does?

**MR. E. MARTIN:** It sure seems like it.

**MR. BUDDEN:** Okay. All right.

**MR. E. MARTIN:** Now, did you want me to carry on with several other examples, or another example, or are you finished with that question?

**MR. BUDDEN:** I'm finished with that question. There are questions that may bring us back to it.

**MR. E. MARTIN:** Okay. Proceed.

**MR. BUDDEN:** And your lawyer will have a chance to ask you on redirect.

Page 21 – just a couple of pages later, on the left-hand side, Ms. O'Brien says – let me know when you're there, Mr. Martin.

**MR. E. MARTIN:** Page 21. I'm there, thank you.

**MR. BUDDEN:** Yes.

**“MS. O'BRIEN:** Okay. And if you change the schedule, what impact would that have?”

Mr. Mallam says: “Well, that also affects the cost. A change in schedule always affects project cost.”

Would you accept that? Would you agree with that assertion?

**MR. E. MARTIN:** No, I would not. I would say that there's many instances where a change in the schedule – actually, I'll take that back, I will say I will agree, in general, that it would impact the cost, but it could be positive and it could be negative, depending on what the change is.

**MR. BUDDEN:** Well, obviously, if you're advancing the schedule – if you're doing it in a year less, that would save you money. But if we take it as a change – a delay in schedule, would you accept a delay in schedule always affects project costs – makes them higher?

**MR. E. MARTIN:** I think in both cases it does. My point is that I wanted to add to that a little bit, is that in certain instances you can change the schedule, you can change, you know, the sequence of a, you know, a particular time when you build a particular component of the schedule. And you could move it ahead further on, but it could actually save you costs if it was in conflict with another element that was going on at the same time.

So, I just wanted to make that point; it's not a blanket statement. You really have to look at the circumstance.

**MR. BUDDEN:** Okay.

Perhaps we could go to page 25. This – by this point, I'm examining Mr. Mallam. And this ties together some of what he's saying earlier, so I'll put it to you. Left-hand side, page 25, beginning at me saying: “– billion. Okay.

“So are you saying that with a P50 factor the cost estimate should be somewhere in that 7 to 8.4 billion, or even higher, range?”

Mallam says: “That’s the base, I think, or that’s where you have to start because on top of that you have to add the IDC calculation.”

I go: “Of course.”

Mallam: “And then you also have to take into account adding flow to the schedule, what that will do to the total project cost.”

“Yes. Flow, in that case, meaning the delay in the delivery.”

Mallam: “Exactly.”

That leads to additional expenses.”

Budden: “But just to – I’ve been accused of comparing apples to oranges so just, in this case, apples to apples, 6.2 becomes seven or eight or even higher.”

Mallam says: “Yes.”

And I say: “Okay.”

Now, you can get around that by adopting a higher P-factor. I’m correct in that, I assume?”

Mallam says: “Well, I wouldn’t say you’d get around it.”

Budden: “Not to get around it, but ... an alternate approach.”

Mallam: “Yeah. And I would suggest that would happen is if the estimate had been completed to a higher P-factor, it wouldn’t have been 6.4. It might have been seven or eight to begin with, with 10 per cent on top of that.

**MR. BUDDEN:** Okay.

So either way – it’s either a P50 with a larger contingency that brings us up to 7 or 8 billion or more, or you keep your contingency low, but you adopt a higher P-factor.”

Mallam: “Yes.”

Budden: “And your thinking is it brings us to about the same point?”

Mallam: “I would think so, yes.”

I would take it from your previous answer that you don’t accept Mr. Mallam’s assertions through that line of questioning either.

**MR. E. MARTIN:** Mr. Budden, it just doesn’t make sense to me. So, you know, I can’t.

I was going to stop and read earlier to where we started with that but that might take too much time. One phrase here I think could help you understand my confusion.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** It says on the page 25, around the middle, I think you say: “Okay.”

So either way – so it’s either a P50 with a larger contingency that brings us up to 7 or 8 billion or more, or you keep your contingency low, but you adopt a higher P-factor.”

And he says: “Yes.”

I’m going back to my previous point. It doesn’t make sense ‘cause that’s the antithesis of the process of, you know, you don’t select – you don’t put a P50 there and go around trying to pluck out different contingencies and hope for the best and then change something else. That’s just – it just doesn’t make sense to me.

As I said, you roll it up – and I won’t go through that again – but you produce the curve and from that curve you end up matching P50 to a contingency amount. So, I don’t know how you can draw a straight line up north from one axis to a cumulative curve and then take a left and come over to the Y axis and end up having three or four different contingencies at the same point. That’s why I’m confused. It doesn’t make sense.

**MR. BUDDEN:** Okay. Let’s move on to page 26. This is just a very brief quote here on the right-hand side.

I say: “Okay.”

And then Mallam says: “ – I can tell you that past Hydro – practice within Hydro was that at project release, our estimates and schedules

would have to be equivalent to somewhere between P70 and P90.

Again, that's somewhat of a repeat of an earlier question but perhaps put a little clearer. Does that – is that consistent with your understanding of past Hydro practices?

**MR. E. MARTIN:** I wasn't there for past Hydro practices. Prior to my – but I would be interested in asking to see the curves that produced that. And that would be very helpful. If there was no curves then I wouldn't have no idea how we could equate what was done to a P70 or a P90.

**MR. BUDDEN:** Okay. So ...

**MR. E. MARTIN:** It's not an intuitive thing, Commissioner, to just pluck that out of the air.

**MR. BUDDEN:** Sure. By the time of sanction you, of course, had been CEO of Nalcor, which is the – in many ways the successor company to Hydro. I know not technically but you know what I mean. You'd been on the job six, seven years at this point. You weren't familiar with what the practices were of Newfoundland Hydro for assessing the P-factor for its construction projects?

**MR. E. MARTIN:** I understand your question better now –

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** – so I'll come back on that. I thought you were referring to analysis of the Isolated Island, previously, which would have been before my time. But you're talking about capital projects in Hydro –

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** – and capital projects in CF(L)Co? I've never seen a P-factor used there up to that point in those companies.

**MR. BUDDEN:** Okay. Well, not necessarily CF(L)Co, I'm thinking of the Isolated Island projects, Cat Arm, for instance, some of the other projects that unfolded in the years and perhaps some of the anticipated projects with the Isolated Island, the smaller capital projects.

**MR. E. MARTIN:** Well, then I'm going to revert back to my previous answer. I wasn't there for those.

**MR. BUDDEN:** Okay. And you did not inform yourself when you were there.

**MR. E. MARTIN:** No, there's no reason to do that.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** And as I go further to say, at CF(L)Co, which had a significant capital program – although nothing, Commissioner, the size of what we're talking here – and then Newfoundland and Labrador Hydro that also had a significant capital program, which we increased massively when I got there because the assets need to be rebuilt. In those organizations I've never – I did not see, in my time there up to that point, the use of probability factors, the use of P-factors, the use of cumulative probability curves in preparing those capital budgets.

**MR. BUDDEN:** Okay.

Finally, with Mr. Mallam, we go to page 29. There's one quote there which I'll put to you. It's on the right-hand side, again, when I say: "Okay."

And then I say: "To your knowledge, how much experience did the senior management team at Hydro, the individuals that comprised that team – at Nalcor, sorry – of the Muskrat Falls Project team have with hydroelectric development at the beginning of this project?"

Mr. Mallam says: "Little or none."

And I say: "Okay."

He says: "To my knowledge, I think there was only one person in that senior management group that had any hydroelectric experience. The rest all came from the oil and gas industry."

Do you take issue with that assertion?

**MR. E. MARTIN:** I certainly do not because I'm – what I'm focused on is at the beginning of the project. And I think as we've had much

evidence here before, they brought certain elements of expertise to the project which was helpful, but we also went out and did – contract SNC-Lavalin and –

**MR. BUDDEN:** Yes, as we've discussed.

**MR. E. MARTIN:** – other experts to come in and fill in –

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** – you know, that part of the equation as well.

**MR. BUDDEN:** Finally, just, I guess, to wrap up Mr. Mallam, the Commissioner has heard from Mr. Mallam, the Commissioner has heard from you, the Commissioner has heard from various other people. What is it about your qualifications and experience that should lead the Commissioner to prefer your evidence to that of Mr. Mallam on these points?

**MR. E. MARTIN:** I believe if you're continuing in – if you're talking about the probability analysis, I believe my responses make sense and I believe Mr. Mallam's didn't.

**MR. BUDDEN:** Okay.

I'm going to ask you a few questions now about another important witness, Derek Owen.

And Mr. Owen was, as – again, was involved in IPR team, as I'm sure you remember. My understanding, from his evidence, is that he has been – at the time of sanction, he'd been an engineer for about 50 years; had worked in the project management field; had had senior positions in the offshore; had been project general manager at Hibernia, where I believe he would have – you would have worked with him; and since 2002, he had been a consultant; had done, he said, many cold eyes reviews.

Does that correspond with your understanding of Mr. Owen and his qualifications?

**MR. E. MARTIN:** Generally, yes, it does.

**MR. BUDDEN:** Okay.

I'd like to go to page 85 that may be – page 85 here in this – bit further on in this – I'm going to read from Ms. O'Brien's question, the left-hand side, "**MS. O'BRIEN:** In your assessment." So when you're there, perhaps you can let me know, and I'll begin to read.

**MR. E. MARTIN:** Pardon me, Sir?

**MR. BUDDEN:** You good?

**MR. E. MARTIN:** Yes, I am, thank you.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** Page 85, where the line starts there, right?

**MR. BUDDEN:** Yeah, it starts "**MS. O'BRIEN:** In your assessment" – she's asking Mr. Owen – "In your assessment – I know you've done a lot of work in this area over the years, what would you consider the appropriate P-level to be?"

"**MR. OWEN:** I don't know because I would" –

**MR. E. MARTIN:** I'm sorry to interrupt. I don't think I'm on the right page –

**MR. BUDDEN:** Okay, it's page –

**MR. E. MARTIN:** – because I –

**MR. BUDDEN:** – 85.

**MR. E. MARTIN:** Yes.

**MR. BUDDEN:** It would be on the left-hand side, O'Brien and Owen. Why don't you let me see what you have there?

**MR. E. MARTIN:** I'm sorry. I looked – you marked the page is where I started.

**MR. BUDDEN:** Oh yeah, I just went back a little before that. Yeah.

**MR. E. MARTIN:** Okay. Thank you.

**MR. BUDDEN:** "**MS. O'BRIEN:** In your assessment – I know you've done a lot of work in this area over the years, what would you consider the appropriate P-level to be?" And

again, there – he was part of the IPR team that did the DG3 IPR.

**“MR. OWEN:** I don’t know because I would have to look at – as I explained earlier – I’d have to look at the base estimate, and look at the base schedule, and then to look at the curve and to access whether or not that curve is going to be representative of what the contingency level should be.

“The only thing I can say is that – and I believe – that when you take the contingency that was derived, or quoted, and then convert that as a percentage, I believe that comes out as 7 per cent. I could be wrong but even if it’s 7 or 10, in my opinion, for a project of this nature, with the risk associated with this project, that is far too low.”

And firstly, do you have any comment on that? That’s Mr. Owen, with all his experience, saying that the contingency of 7 per cent is far too low. What do you have to say to that, Mr. Martin?

**MR. E. MARTIN:** I have two things to say to that.

The first thing, Mr. Commissioner, I believe the first paragraph that was quoted there is a good summary of what I was saying about the previous testimony with Mr. Mallam, and I agree with that. And with respect to the view on the 7 to 10, you know, that’s Mr. Owen’s view. There’s not much I can say about that; it is what it is.

**MR. BUDDEN:** Okay.

Does it concern you – or did it concern you at the time, because you would’ve known this at the time, I presume. Did it concern you that a person of Mr. Owen’s knowledge and expertise, who, after all, was brought in for this specific purpose of doing a cold eyes review, that he would consider the contingency that you guys were going with to be far too low.

**MR. E. MARTIN:** Well, two things there as well. Mr. Owen never mentioned that to me, never spoke to me about it, so I would have no knowledge at the time. And the second thing is here we are, and, you know, I think, you know, we would have to consider what – to what level

would, you know, any hindsight, you know, bias enter into it. I don’t know.

But he did not mention that to me at the time – not that he would have had an opportunity necessarily, but I didn’t know or understand he was thinking this way, and you have to ask the people who were dealing with him if he actually did –

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** – bring that up at the time.

**MR. BUDDEN:** Well, that may be an issue, but if it had been – if Nalcor had been made aware of this at the time, you would’ve expect it had been brought to your attention I assume?

**MR. E. MARTIN:** I would – I don’t know about that, but I think it would’ve been factored into their analysis and – but I can’t comment on if he did say it or if he didn’t say it at the time. And – you know, and I didn’t hear – I can’t remember any of the other witnesses that I saw mentioning it. So I don’t know if it was mentioned to them or not.

**MR. BUDDEN:** Okay. And again, if you had been aware of it at the time – if you had been aware that Mr. Owen considered that the contingency you guys were going with, the 7 per cent, to be far too low, what would you have done with that information?

**MR. E. MARTIN:** Probably brought the project team in, would’ve, you know, made sure they understood that he had said that, and I would ask them to, you know, walk through their work and re-validate and, you know, take that into consideration.

**MR. BUDDEN:** Okay.

So we’ll just go on – there’s another bit here. I’ll – just for completeness – I’ll ask you to comment on this. Continue on: **“MS.**

**O’BRIEN:** So you’re saying you would’ve used essentially a higher P-factor. Is that another way of saying what you just said?

**“MR. OWEN:** Providing I had confidence that the curve was giving me the – that was going to generate the reasonable amount of dollars,

because what we do is we look at the curve, we say moving to a P50 is this amount; moving to a P70 is that amount. Now, when we then – and I talked about benchmarking earlier – when we then go back and benchmark that as a percentage and come up with a ridiculously – not ridiculously, but with a very low percentage we say: Is there something wrong here? It doesn't – that curve was not generating the dollar amounts in contingency that this project required.

“In addition to that, when we look at probability of schedule, the risk analysis – and I haven't seen Westney's risk analysis, but in general the risk analysis will quantify in dollar terms what it will cost to move the schedule from a P50 to a P90. It will provide a cost associated. It all has to be inputted but most of the analysis will generate a dollar value for moving the end date from – let's say – the middle of 2017 to the middle of 2018. It will generate a dollar value and that dollar value then has to be added to the cost, such that every cost estimate and its contingency – and we may get to management reserve in a moment – and its contingency, has got to be tied completely to a schedule.”

What do you have to say about that?

**MR. E. MARTIN:** (Inaudible.)

**MR. BUDDEN:** Do you take issue with it for starters, or does it all sound correct to you?

**MR. E. MARTIN:** I think, you know, some of the process in the second part sounds correct to me. I guess my comment would be is that, you know, the risk analysis was performed and, you know, Westney was there with us doing that. We had others go through that work for us, and as far as moving around P-values to give you a flavour for the contingency you want, I think it's something that needs to be considered.

But I think it's something you have to be careful about as well, in terms of not going too far outside of a probability analysis to say: well, all this work is done and it's been vetted and re-vetted and there's experts around it. And I think you have to turn a critical eye to, but you also have to be careful not to say: Put that aside; my gut thinks we should do this.

I think there has to be a balance on that and, you know, and the deeper the process, I think you need to lean towards the process more so.

**MR. BUDDEN:** Okay. The process more than the gut.

**MR. E. MARTIN:** Yes. I'm not saying, you know, you can't look at both, but you gotta be very careful of that, too.

**MR. BUDDEN:** Okay. Has that been your operating principle throughout this whole process?

**MR. E. MARTIN:** Generally, yes.

**MR. BUDDEN:** Okay.

The – if we turn to page 88, it's a fairly brief point, but I thought you should speak to it.

**“MS. O'BRIEN:** You said earlier that you had raised, particularly with, I know you said the P1 schedule, as you had that information from Jason Kean that you did raise this with Ed Martin when you – the IPR team presented its report.”

And Owen said: “Yes.”

**“MS. O'BRIEN:** What was the reaction that you received from Ed Martin and other members who were there?

**“MR. OWEN:** I felt that Ed Martin was surprised. I mean ...” – I didn't – “... he didn't say he was surprised. I don't remember him saying he was surprised, but I felt from his body language and his reaction that he had not been made aware by the project team that ...” – this was what – “... that's what the risk analysis was showing for the schedule of the 2017 – mid-2017 date.

“I firmly believe he was surprised.” And then he continues in that vein.

So, my question is simple: Were you surprised at that information?

**MR. E. MARTIN:** That sequence is gray to me, I have to say. You know, in terms of that, you

know, I know you're looking for an answer, and I can't, you know, I can't speculate too much, but that would – you know, that's a pretty big statement so I'm sure that – you know, I'm not disputing his viewpoint, but I'm gray on that whole process there.

**MR. BUDDEN:** What – it's pretty simple, really. I mean, there was – the IPR team was brought in; the IPR team made a presentation to you. The IPR team, in their presentation, said that it was a P1 schedule.

They – Mr. Owen at least says that you were surprised on hearing that, as if you were hearing it for the first time. Were you in fact hearing it for the first time?

**MR. E. MARTIN:** Well – jeez, I'm jump – I mean, I hadn't heard of a P1 schedule before, and I made the point yesterday that, from a schedule perspective, I've never believed it was a P1. So I can say that.

**MR. BUDDEN:** Mmm.

Obviously, that would be something that, I presume, would resonate. I mean, here you are trying to build a dam and somebody us saying: Look man, you're on a P1. I mean, that would – that is something one would think you would remember – like, remember quite vividly.

**MR. E. MARTIN:** Maybe it has to do with, you know, some of the stuff we discussed yesterday around the difference between a schedule and a time-risk analysis and those types of things.

**MR. BUDDEN:** Okay.

So, because of the – and yesterday you adamantly objected to it being called a schedule risk, or something to that effect, so are you saying that you didn't take it seriously because you didn't regard it as a serious, correct comment?

**MR. E. MARTIN:** Well, I – you know, that type of thing being said, you take it serious, sure you would.

**MR. BUDDEN:** Okay.

You recall in your evidence – I believe it was yesterday, it was put to you some of the changes that Mr. Harrington had asked the IPR team to do, and the IPR team, obviously, pushed back. And it was put to you whether you found Mr. Harrington's actions problematic, and you indicated you did not. You remember that exchange?

**MR. E. MARTIN:** Yes, I do.

**MR. BUDDEN:** And I've accurately captured it?

**MR. E. MARTIN:** Yes.

**MR. BUDDEN:** Okay.

Let's go to page – it's the next day, the 18th, but it's still Mr. Owen's – you can put that one aside, I think we're done with it.

**MR. E. MARTIN:** You're done with that one? Thank you.

**THE COMMISSIONER:** Just wondering whether we should be marking these – you know, I hesitate to do it but I'm just wondering should we be marking these because there's references – specific references now that are being put to the witness. I know that this has been raised before and I'm just sort of calculating in my own mind whether we need to do that.

**MS. O'BRIEN:** No, I don't think it's necessary, Commissioner, as long as I just ask Mr. Budden to be careful to identify that – the date of the transcript he's using and the page number. All the transcripts will form part of our Commission records. If he does use a draft transcript, he should also indicate that as well –

**THE COMMISSIONER:** Yes.

**MS. O'BRIEN:** – because some of our most recent days, counsel get them as draft first before they're finalized. So if he could just put the details of what he's doing on the record, then there shouldn't be any issue.

**MR. BUDDEN:** Yes, I have one draft and I will identify that.

**THE COMMISSIONER:** Okay.

**MR. BUDDEN:** I'm now on, as I believe I've said, 18th October, continuing the evidence of Mr. Owen's under examination by myself.

At the bottom of page 34, Mr. Martin, there's a little passage there. I'm asking Owen about the – about that incident with Mr. Harrington and he – anyway, I asked him, I said: "I'm not asking you so much about the intent of Mr. Harrington in asking for those changes –."

I said: "– we'll ask him when he appears before us in November. I guess I'm asking you: the effect of adopting those changes would have been to mislead the Gatekeeper or other readers about the conclusions of the IPR. Would you agree with me there?"

And Mr. Owen: "There was a potential for that, I suppose. I hadn't – we hadn't thought about it that particular way. We had looked at it" – inasmuch as "– it was a request to change what the IPR team had really come up with and that's why we didn't want to have those changes."

So I guess what leaps out at me there now is he felt the changes that Mr. Harrington was proposing had the potential – I'll quote him here – I said to him, might these "changes mislead the Gatekeeper or other readers ...." And he said: "There was a potential for that ...."

Having seen Mr. Owen, the author of that report, his take on it, does that cause you to revisit your thoughts on Mr. Harrington's intervention?

**MR. E. MARTIN:** No.

**MR. BUDDEN:** Okay. So even if the changes that he was advocating had the potential to mislead you or other readers in the view of the author, you still see nothing wrong with what Harrington did?

**MR. E. MARTIN:** Well, the author didn't change them.

**MR. BUDDEN:** He didn't but what he tried to do, rather. Do you have any issue with what Mr. Harrington tried to do?

**MR. E. MARTIN:** As I mentioned yesterday, no, this is a – you know, it is a standard practice that I've been through over the years in the business that I've been through. That, as I mentioned yesterday, you know, consultants come in and they bring a lot of value and they produce, you know, information and documents which I think is critical.

I believe that you always have to be careful, you know, to make sure that they have, you know, all of the information, the in-depth information, they haven't missed anything. They can't get the same look after two weeks or whatever, or a week, that the project team would have, and it's been my experience that that's a process that's followed and this one here seemed to be followed and it had an outcome.

**MR. BUDDEN:** It had an outcome, but only because the authors resisted Mr. Harrington's intervention. You would agree with me there.

**MR. E. MARTIN:** Well, that's the type of people you would get in.

**MR. BUDDEN:** People who –

**MR. E. MARTIN:** Professionals like that.

**MR. BUDDEN:** Both Mr. Westney and Mr. Owen testified, I can bring you to the exact quotes, if necessary, but they both testified they'd never been asked, or they'd never been spoken to in this way, or been asked to change a non-draft report in this fashion. Does that concern you?

**MR. E. MARTIN:** No. You know, I don't know Mr. Westney – I know Mr. Owen better, he's been around.

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** You know, I mean, I don't think there's any shrinking violets there, if I use him as an example, and he had a couple of professionals going through a report. It is what it is. And as I mentioned, you know, I didn't see anything wrong with the process.

My experience with Mr. Harrington over the years had been there's, you know, there's good reason for normally things and suggestions he

might make. And, you know, I'd need to have some more information from him, which I'm unable to do, to say, you know, am I missing anything. But I don't think so.

**MR. BUDDEN:** So you're not at all troubled by the fact Mr. Harrington attempted to have, after the fact, the authors of an independent project review change their conclusion?

**MR. E. MARTIN:** Not unless I knew more of the context of what Mr. Harrington was thinking.

**MR. BUDDEN:** Okay.

Okay, did you – well, I guess, when did you find out about this, for starters? Did you know while you were still at Nalcor?

**MR. E. MARTIN:** I don't believe, I can't recall. I know I picked it up here, Commissioner, and it gets a little gray after that, but I don't think that is something that would have come to my attention.

**MR. BUDDEN:** I'd like to move on to another one now. We'll move on to Mr. Westney, as soon as I lay my hands on it.

**MR. E. MARTIN:** Am I finished with this transcript –

**MR. BUDDEN:** Yeah, you can put that –

**MR. E. MARTIN:** – Mr. Budden?

**MR. BUDDEN:** – aside, too. We won't have as much with Mr. Westney (inaudible).

We are now looking at November 16.

**UNIDENTIFIED FEMALE SPEAKER:**  
(Inaudible.)

**MR. BUDDEN:** Sure, of course.

We now have the transcript for November 16, and this is the evidence of Mr. Westney.

And my understanding as well that he's been an engineer also for about 50 years. That his particular expertise is risk assessment and he's had a very successful career with his

consultancy doing risk assessment for many large project developers.

Does that sound right to you?

**MR. E. MARTIN:** It sounds right to me, especially the firm.

**MR. BUDDEN:** Westney, yeah.

**MR. E. MARTIN:** I'm not sure if I can recall – and this would only be through testimony, Mr. Budden. So I'm sure but I'm – I'm not sure Mr. Westney indicated that his expertise in his business was not necessarily the risk analysis, it was others, and his expertise was in other areas. You'd need to check the transcript.

So I just didn't want to say yes without –

**MR. BUDDEN:** Okay,

**MR. E. MARTIN:** – being sure of about that.

**MR. BUDDEN:** You're not questioning that he has expertise in risk assessment, I presume? You guys hired him after all for that.

**MR. E. MARTIN:** I know the firm does. I am very clear on that.

But Mr. Westney himself, I'm not sure.

**MR. BUDDEN:** Okay.

Let's go to page 13 and there's a question here Ms. O'Brien put forward.

And this was covered to some degree yesterday but I just want to nail it down a little bit.

**"MS. O'BRIEN:** Okay.

"So just to confirm here, you have confirmed with Mr. Dodson" – who works with Mr. Westney, they have established that – "that he communicated to Mr. Harrington that, you know, the Westney view would be that for a project of this type, given the Crown corporation and it's a utility and whatnot, that a P-factor of at least P75 would, in our view, be the most appropriate. But that you didn't put that in your formal, written report to the CEO because you consider that to be more of a communication

that would just take place to the people you're reporting to on the project team? Is that – have I stated that correctly?"

And Mr. Westney says: "I may – let me comment a little bit."

Ms. O'Brien says: "Yes."

**"MR. WESTNEY:** I wouldn't say we said the P75 is most appropriate. First of all, yes, I've definitely confirmed this with Keith Dodson. I believe that his comment was at least P75. This is strictly from the project perspective. So we're project guys talking to project guys, this is how we feel about this project – both the project itself and the context of the project."

And I turn the page, it says: "So it's not like we think it should be P75 and not P80 or P60, it was more" – like – "hey, at least P75. And keep in mind when we're talking about that, we're talking about the strategic risk probability curve."

And then, there's some questions about who – whether Westney knew whether it had been communicated to you or to the board and he said he had no idea.

But dealing with the – firstly, was that communicated to you?

**MR. E. MARTIN:** No.

**MR. BUDDEN:** Okay.

So you had no idea that your risk consultant was recommending that the project use at least a P75?

**MR. E. MARTIN:** No, that didn't – that was not in the written report. It was not discussed, you know, at the meeting that was had with me. So no, I – if they had that view, I expect they would've put it in the report.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** They seem to handle that – other things that way.

**MR. BUDDEN:** They indicated they didn't put it in the report, they chose to communicate it

verbally. I think it was Mr. Kean who it was communicated to – but that's beside the point – it was one of the project team.

But your evidence is that that was never communicated to you.

**MR. E. MARTIN:** That Mr. Dodson said that to somebody. No, it wasn't, no.

**MR. BUDDEN:** That's – yeah, okay.

So you were never aware – just to pull it all together – that Westney were recommending at least a P75 for the Lower Churchill Project?

**MR. E. MARTIN:** I wasn't aware of that. And if that was the case and that's how they felt, I would expect it would've been in the report with everything they talked about.

**MR. BUDDEN:** Okay, leaving aside the mechanism of (inaudible).

**MR. E. MARTIN:** Well, I answered the question, initially.

**MR. BUDDEN:** Okay, yeah you did.

**MR. E. MARTIN:** Yeah.

**MR. BUDDEN:** You weren't aware of it.

If you had been aware of it, how would that information have factored into your ultimate choice of a P50 factor?

**MR. E. MARTIN:** Can't speculate. Once again, I can get the people around the table and, you know, we would review the information and data.

And I can't spectate on where I would've gone with it.

**MR. BUDDEN:** Okay.

Does it cause you concern that perhaps your P50 was not in line with industry standards?

**MR. E. MARTIN:** Well, as I mentioned earlier, there are industry – industries in the utility sector that use P50. We talked about Manitoba Hydro, we talked about BC Hydro and we talked

about Quebec hydro. I think we offered some example of – in other industries, where they use P50.

I think we talked about comparative analysis, you know, is an important factor here as well, because I believe the P50 is in the most likely area under the probability distribution curve. So having comparative analysis at a P50 makes sense. And I think we also understood that some companies in some areas do different.

And when you say: It's a standard, it does make – no, that doesn't ring true to me – is my answer to that.

**MR. BUDDEN:** Okay.

Do you believe your knowledge of the assessment of P-factors is greater than that of the Westney team?

**MR. E. MARTIN:** I believe that the responsibility for – at the end of the day – for choosing the P-factor, doesn't belong with the consultant. It belongs with the company.

**MR. BUDDEN:** That wasn't my question, of course.

My question was: Do you believe your knowledge of the assessment of P-factors is greater than that of the Westney team?

**MR. E. MARTIN:** Could you be – you are specific, but I missed part of the question, could you please repeat it because I want to be –

**MR. BUDDEN:** No problem at all.

**MR. E. MARTIN:** – exact in terms of –

**MR. BUDDEN:** Do you believe that your knowledge of the assessment of P-factors is greater than that of the Westney associates team; risk management team?

**MR. E. MARTIN:** Within a company framework, yes.

**MR. BUDDEN:** Okay. That's an answer.

Let's move on to page 20, please.

**MR. E. MARTIN:** You said: This is an answer. Was there a question attached to that comment you just made: This is an answer?

**MR. BUDDEN:** No, I was surprised by it, to be frank.

But let's move on – page 20.

**MR. E. MARTIN:** Well, I appreciated the clarification.

**MR. BUDDEN:** Okay, you're welcome.

Ms. O'Brien – we're going down the left-hand side on page 20 – and this is a question that Ms. O'Brien is putting to you. And just to contextualize it a bit – this is following a discussion of the 497 million in strategic risk that of course, we've talked about.

But I do want to return to this one point.

**“MS. O'BRIEN:** ... the first question I want to ask you is: Narrowing the strategic risk at DG3 down to a list of three, is that consistent with” – the – “wide-angle view approach that Westney advocated?

**MR. WESTNEY:** No.”

O'Brien – **“MS. O'BRIEN:** Would the” – LPCT – LP – “LCP have, at this time at Gate 3, faced additional strategic risks that are not captured by the items here that were identified – the three items?”

Westney: “Well, of course – yes. I mean, one would think that – I mentioned earlier in reference to the Black Swan article, all megaprojects by definition have strategic risks. Often a megaproject is defined not as a billion dollars, as we've heard, but project that's – of course, it's inevitably greater than that – but it's so large that it actually impacts the environment in which it takes place.

“And so, it will inevitably have political risks; risks from, what I would call nonfinancial stakeholders, generally thought of as NGOs, people in the community who are impacted by the project, et cetera. And there can also be economic risks – particularly those that pertain

to the goods and services that are procured by the project.

“Keeping in mind that a megaproject was so large that it’s placing big orders for steel and engineer equipment, and” – this – “has huge demands for labour and the ability of the marketplace to supply that would change over time. And so, just because a project is at DG3 versus DG2 – exactly as that Black Swan article says – it, by no means, means that those risks have gone away and there’s a limited extent to which you can mitigate them either.

“So I would say that what strikes me when I look at that list of, effectively, three construction risks to the exclusion of other types of strategic risk that are inevitably there – it would certainly jump out at you that those types of risks are absent.”

What do you have to say to that? Does that ring true to you or do you disagree with it?

**MR. E. MARTIN:** Well, I have two points with respect to that.

**MR. BUDDEN:** Sure.

**MR. E. MARTIN:** One point is – where he notes that there could be, you know, there would be in his mindset other risks other than what were identified potentially, I agree with that. I think I’ve talked about that at length here that, you know, that even after we move through our mitigation efforts, I was clear that – I believed there were additional risks, which I communicated to, you know, to the right people and we discussed how we were gonna fund those. So I would agree with that.

Now, my second point is – a little bit of saying, you know, to Mr. Westney – if I remember correctly, and I don’t think we have to bring up the PowerPoint presentations, but the PowerPoint presentations –

**MR. BUDDEN:** Hmm.

**MR. E. MARTIN:** – had a Westney logo on them – I think as well as the Nalcor – and I think they produced a report.

**MR. BUDDEN:** Hmm.

**MR. E. MARTIN:** In that report they produced these – you know, the strategic risk with a number attached to it. And that was what they produced. And all of this other stuff was not in that report. So it’s interesting now, many years later, with the situation we’re faced with that this becomes the key element that was not provided by Westney at that time. I find that interesting.

**MR. BUDDEN:** So you’re saying that you – or at least you were never aware that the Westney concept of strategic risk was broader than these three items that are mentioned here at – that came to the 497.

**MR. E. MARTIN:** (Inaudible.)

**MR. BUDDEN:** (Inaudible) point here – just may I finish?

**MR. E. MARTIN:** I thought you were finished.

**MR. BUDDEN:** I thought I was, too, but let me carry on. That’s not your fault.

**MR. E. MARTIN:** Okay, I gotcha. You go ahead.

**MR. BUDDEN:** So what he’s saying here, as I understand it, is look we have these three specifically identified risks, but there’s a whole constellation of potential strategic risks that are not captured by just these three.

Were you advised as to that particular point – you personally advised?

**MR. E. MARTIN:** I can’t remember being personally advised, but it wouldn’t make any difference because I knew it was true.

**MR. BUDDEN:** Okay. So if you knew it was true, what allowance was made for it in the DG3 sanction estimate?

**MR. E. MARTIN:** So the allowance for that, as I went through yesterday, is that I made it clear that we – additional risk could occur – unknown – and so therefore I didn’t have an additional number for that. But then the step was to say the key critical point, you know, at that perspective of if and when it did occur, what do we have to fund it?

And that's what I discussed, primarily, with the government is that the available funds to cover that kind of risk and we laid out that there was, you know, value with the excess sales, a portion of the return on equity, water rental income –

**MR. BUDDEN:** Hmm.

**MR. E. MARTIN:** – that we were paying ourselves –

**MR. BUDDEN:** Sure.

**MR. E. MARTIN:** – were the key elements. As well as there was a buffer between – once again on a comparative analysis – it was a need for power, so by virtue of, you know, of a reasonable difference between the two that also had to be considered in terms of how to treat and account for risk. But the funding of it were the elements that I mentioned and that's how we handled it.

**MR. BUDDEN:** Okay.

So it's not reflected in the sanction number, the 6.2, it lies somewhere outside of that.

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** Okay.

So to turn – in other words, there is no allowance for strategic risk even though you're aware of strategic risk in the number advanced at sanction.

**MR. E. MARTIN:** That's entirely different than what you just said before that.

**MR. BUDDEN:** Is it really, do you think?

**MR. E. MARTIN:** Yeah, well, that's the way I understand.

**MR. BUDDEN:** Okay. The 6.2 billion does not included any amount for strategic risk.

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** Okay.

So the – but you did acknowledge that there was, indeed, strategic risk that required funding.

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** And the funding was going to come from outside of the sanctioned number.

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** So that wasn't – I would suggest to you that that certainly wasn't – that didn't inform or that wasn't part of the public debate at sanction. Would you disagree with me there?

**MR. E. MARTIN:** Yeah, I disagree – so I'm with you up to the first logical point –

**MR. BUDDEN:** There's three points.

**MR. E. MARTIN:** – that made sense with me.

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** The final piece is a bridge too far for me; I don't agree with that.

**MR. BUDDEN:** Okay.

It's certainly not reflected in the CPW, is it?

**MR. E. MARTIN:** In the – once again, you know, we have to think comparative analysis. The purpose of the CPW –

**MR. BUDDEN:** I've got questions about that, but –

**MR. E. MARTIN:** Yeah, sure. And you have to treat both of those the same, so it's reflected to the extent – it's not reflected in both. But as far as it not being in both sides of the equation, that's correct.

**MR. BUDDEN:** But only one side of that equation had a megaproject.

**MR. E. MARTIN:** I disagree with that comment, you know, Mr. Budden.

**MR. BUDDEN:** Where's the megaproject in the Isolated Island?

**MR. E. MARTIN:** If you – you know, I guess the building of a replacement plant for

Holyrood. I think that's in the early 2030s, I think it was. That's a megaproject.

**MR. BUDDEN:** That's what you're hanging your hat on there?

**MR. E. MARTIN:** That's one thing I'm hanging my hat on.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** What I was trying to finish there – I'll speak a little faster, if that's helpful.

**MR. BUDDEN:** No, you're fine. You're doing fine.

**MR. E. MARTIN:** Okay. Well, that's good. Thank you.

And then I think we need to cost out some of these hydro projects – they call them small projects, I always called them smaller hydro projects. These are substantial projects within themselves. And I also think you'd need to look at the refurbishment of Holyrood, which will be no small feat. And I also believe that Professor Flyvbjerg had mentioned – which I found aligned with my thinking, but it was new information from an expert, you know, source – that the impact of risks in those types of things and the probabilities of overruns in those types of things were not tied to the size of the project. He said that as well.

**MR. BUDDEN:** But he was talking within the category of megaprojects.

**MR. E. MARTIN:** No, he was not in that context.

**MR. BUDDEN:** I think he was. But in –

**MR. E. MARTIN:** Well, I think –

**MR. BUDDEN:** – any event the –

**MR. E. MARTIN:** Well, excuse me, Commissioner, I won't argue that, but I –

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** – I believe that's what was said and I just want to go on record to say that.

**MR. BUDDEN:** Sure.

The – however, all those other elements of the Isolated Island Option, they've already been costed, if I follow Mr. Mallam, at a P70 to P90.

**MR. E. MARTIN:** Well, we –

**MR. BUDDEN:** So that would include strategic risk or any other risk, would it not?

**MR. E. MARTIN:** Well, I'm going to – you know, I won't backtrack on all of it, but I don't believe Mr. Mallam was making sense when he said that.

**MR. BUDDEN:** Okay.

Do you have any information to the contrary? Do you have any information to suggest that the Isolated Island components, the capital cost components – leave the fuel aside, we'll get to that – but that the capital cost components were assessed on a P50 or any other standard – costed?

**MR. E. MARTIN:** On the Isolated Island side?

**MR. BUDDEN:** Yeah. Yeah.

**MR. E. MARTIN:** Yeah, I think that's what we had talked about before was that they didn't have a probabilistic analysis, you know, attached to them – was my understanding.

**MR. BUDDEN:** And you based that understanding on what?

**MR. E. MARTIN:** On the fact that I had never seen one and on some of the testimony that was provided here over time that I had listened to that it was – I'm just going back to the previous documents I just read. It was updated studies, I think, then they hand it back out to – they took older information that had been compiled over the years on the Isolated side and they sent it back out, according to what Mr. Mallam said –

**MR. BUDDEN:** Yes.

**MR. E. MARTIN:** – to the people that prepared those, and they updated them and sent them back in.

**MR. BUDDEN:** He also –

**MR. E. MARTIN:** Now, to my –

**MR. BUDDEN:** I'm sorry, go ahead.

**MR. E. MARTIN:** To my understanding that there was not a probability analysis attached to those when they came back in.

**MR. BUDDEN:** He repeatedly, in his evidence, says that they were P70 to P90 projects.

**MR. E. MARTIN:** I – go back to my earlier point. I don't believe there's any substantiation for that.

I believe, by the sounds of Mr. Mallam's testimony – which, you know, I obviously said I didn't understand, confused me and didn't make sense – he was plucking, you know, P-factors out of the air based on a gut feel. And, to me, that is not how it's done. It's not reasonable.

**MR. BUDDEN:** Okay.

Perhaps we can take our break now, Mr. Justice – Mr. Commissioner?

**THE COMMISSIONER:** Okay, we can do that if it's good for you.

**MR. BUDDEN:** It is.

**THE COMMISSIONER:** Okay.

So we'll adjourn for 10 minutes for a break.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right. Mr. Budden?

**MR. BUDDEN:** Mr. Martin, I overlooked one thing in the October 18 transcript. Perhaps you can go back to that. It may still be in front of you, actually, or maybe the – I believe it's the previous one.

It's Mr. Owen, and I'd like you to turn to page 41. I'm going to put to you a question and an answer – a question your own counsel, Mr. Smith, put to Mr. Owen and his answer.

Just let me know when you're on page 41 of the October 18 transcript.

**MR. E. MARTIN:** I am.

**MR. BUDDEN:** Down in the lower right-hand side, Mr. Smith asked a question as follows of Mr. Owen: "Have you ever run into ... the situation where the management risk is withheld from the capital cost, if you will, of the project to prevent contractors or others from trying to access it?"

Mr. Owen's answer was: "I've never – in my experience the management risk or the management reserve has always been included in the sanctioned amount."

Are you aware of any other megaproject from your own personal experience where management risk was not included in the sanction amount, Mr. Martin?

**MR. E. MARTIN:** It would depend. The projects, you know, such as Hibernia, when I was in the project management team, I wouldn't know if the management reserve was included in the sanction amount or not, so ...

**MR. BUDDEN:** Okay.

So from your experience, you're not aware of any – you know, you appear not – I would assume you're not aware a lot one way or the other. But are you aware of any situation where – Mr. Owen, with his many, many years of experience, is unaware of any situation – he's never, in experience, encountered a situation where the management reserve has been excluded from the sanction amount.

I'm asking if you are aware of any such situation.

**MR. E. MARTIN:** I'm not – aware and not aware.

And I would also add that – I don't have Mr. Owen's résumé, but my understanding is he's

spent his career in single-project environments, had a successful career. I would add the comparable-analysis situation was a new piece of data for me as well.

And with respect to, you know, management reserve and such, as I expressed yesterday, when you do the comparative analysis – provided, you know, you treat them the same – they are covered off in the economics, and then the key point becomes funding the management reserve. And that's what – in this particular situation, is what I focused on, with the province and the board, was funding a management reserve to make sure that things that should be covered by a management reserve could be covered.

**MR. BUDDEN:** But as we confirmed just before the break, in this particular instance, the management reserve for strategic risk was excluded from the sanction number. It was, wasn't it?

**MR. E. MARTIN:** It was not included in the 6.2.

**MR. BUDDEN:** Therefore, it was excluded from the sanction number – the 6.2?

**MR. E. MARTIN:** The actual dollar amount – I said that, yes.

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** I said that several times, clearly.

**MR. BUDDEN:** Does it cause you concern that Mr. Owen, who after all was your consultant – has been doing work on the Lower Churchill Project for years, has – I would suggest – an impressive résumé, has been a consultant for many, many years – had never encountered such a thing? Does that cause you concern that perhaps you were not following best practices in this instance?

**MR. E. MARTIN:** It does not cause me concern. And I'll explain it again.

You know, the 6.2 was the amount that was assigned to the project management team, and I do have experience when – that you do not put the management reserve – if that's what you

want to call it, there's several other terms – in that project management team budget. I've seen that. To me that's – that happens.

**MR. BUDDEN:** Well, that's – we're mixing apples and oranges here, to use an expression we all use. We're talking about the sanction amount, not any particular budget or collection of budgets. This is the actual amount that was sanctioned.

**MR. E. MARTIN:** I can only speak so fast, Mr. Budden, so I'll try to go faster because there are linked points here. I understand – I'll come back to your question, if I can – the second one.

But, you know, I was trying to flow through the fact that I have seen many instances where the, you know, reserve amount is not included in the project management team budget, so you come out of that, and then you get – you know, it has to be included and accounted for, you know, in a budget.

In my case, thinking that's the economics of the comparative analysis, where it was by virtue of the fact it wasn't in both, and therefore, you have a comparative analysis with a big buffer for, you know, for Muskrat Falls; that covered that off, and then the second point on the management reserve or contingent equity is that you have to go to the government or the shareholder and make sure you can fund it.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** And if you can fund it with those three things I mentioned, then I feel it's covered, and I said that before.

Go ahead. What's your next question?

**MR. BUDDEN:** Okay.

The next question – we'll move on. I've got the answer I'm gonna get. I'd like to go to Exhibit P-01002, Madam Clerk.

This is coincidentally back to Westney but in a somewhat corollary way.

**THE COMMISSIONER:** 01002 is ...

**MR. BUDDEN:** What this is Mr. Martin, and you saw Mr. –

**THE COMMISSIONER:** Just hang on, just trying to get the number here.

**MR. E. MARTIN:** (Inaudible.)

**MR. BUDDEN:** It may not be before you.

**THE COMMISSIONER:** Okay. That one is not in your book.

**MR. BUDDEN:** Sure.

**MR. E. MARTIN:** Okay.

**MR. BUDDEN:** It's a – and I never thought to bring a paper copy, but it's – what this is, is a workshop that Westney did in St. John's here for the Nalcor team back in late 2007. You weren't among the participants, but most of the project management team were, other than Mr. Bennet.

Perhaps we can go to page 13, Madam Clerk.

**MR. E. MARTIN:** Could I just ask, could you go back to the email for a second, and –

**MR. BUDDEN:** Sure.

**MR. E. MARTIN:** – I apologize for this, but I find it difficult when we're flicking back and forth to get it, and I just need to get the tos and fros here.

I have it, thank you.

**MR. BUDDEN:** Yeah, it's the notes I'm interested in. So if we can scroll down to page 13, Madam Clerk.

It's paragraph 6 I'd like you to focus on. Perhaps you could read that to us, Mr. – read it in the record, Mr. Martin.

**MR. E. MARTIN:** "Their experience on Terra Nova is instructive – the project appeared to do everything right wrt risk management – yet they had a 100% overrun. We discussed the many reasons for this .... The approach on LCP must clearly address these reasons and not repeat the same mistakes. Lessons Learned must be" –

carefully considered – or, sorry – "considered carefully."

**MR. BUDDEN:** Okay. Do you have any understanding here today what those lessons learned were?

**MR. E. MARTIN:** No, I don't.

**MR. BUDDEN:** Okay.

The – I asked a similar question of Mr. Bennett, and he answered in part that included getting proper risk assessments done and so forth. Would you agree that would be an appropriate lesson learned from the experience of Terra Nova?

**MR. E. MARTIN:** I think it's a good thing to do. I just – I'm not familiar with the lessons learned from the Terra Nova project. I don't have them in my head.

**MR. BUDDEN:** Okay.

Perhaps we can move on to paragraph 10 and read that to us.

**MR. E. MARTIN:** "Note on PMT: NLH has about 1000 people of whom 130 are engineers – most are involved in the Regulated Assets. So LCP has to hire from outside. There is something of a culture clash ("old" NLH vs the new young guns from the oil patch). About 50% of LCP is heritage Hydro, 50% are new. The Energy Corporation needs to define and build an org with the needed engineering and related competencies; the LCP needs to build a team similarly ... plan is for a PSC. Question of what roles and competencies should be LCP, and what can be outsourced to PSC? (WCG has some ideas here) Paul's authority as PM is evolving – he does not have all he needs yet."

**MR. BUDDEN:** Okay, first thing, I'm realizing that we're now looking back even further in time, back to 2008. Does that seem to be – and I'm particularly interested in the culture clash that it speaks of – does that seem to be an accurate description of circumstances as they existed at that time?

**MR. E. MARTIN:** I wouldn't use the word culture clash.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** But there, you know, what I think the point is, is that we were, at that point, beginning to bring a project management team into an operating organization. And, you know, my experience with that, you know, was, you know, and has been is that there is, you know, different approaches to operations versus a construction project. And it's primarily, you know, driven I think primarily by the fact that an operating organization you're doing your 25-year asset plans, you know, you're planning things out, and, you know, it's sort of a regular, ongoing thing. And if you happen to move something from one year to the next, you know, usually you can account for that because, say if it's a capital program, you would plan your capital program need within the two or three or four-year periods. So it wouldn't have to be done at the last minute. You might be able to move that forward and move other things.

So there's a culture, if I put it that way, in operations, which I'm not saying is right or wrong, it's there. And then when you bring in a project team attached to an operating organization or make it part of it to build a big construction project, the mindset's different; shorter time frames, much more pressure, limited ability to move things around and you find much more of a, you know, we'll say, a driving mentality in a shorter time frame.

**MR. BUDDEN:** Sure.

**MR. E. MARTIN:** So I can – you know, culture, you know, I guess culture clash is strong to me, Mr. Commissioner, but I can see two different cultures and usually there is, in my experience, some – and maybe the word is clashing, as you bring them together.

**MR. BUDDEN:** Sure. But it's hardly, you know, hardly shocking that might be the case and, of course, so – and here you all were about to do something that none of you had done before, build a hydro-electric megaproject in Labrador.

So you have two cultures coming together to take on this pretty significant task. Are you with me so far?

**MR. E. MARTIN:** With you in terms of agreeing with you?

**MR. BUDDEN:** Yeah, do you agree with me?

**MR. E. MARTIN:** I think what you said makes sense and with the added caveat, I guess, it'd be hard to find a lot of people available who had built a hydro project in Labrador in the past 40-odd, 50 years, but I take your point.

**MR. BUDDEN:** True, but I mean the old hydro people had built, perhaps, Cat Arm or smaller projects still – your oil people had done things offshore, but now you are all onshore trying to build, for the first time, really, in the history of this very new company, Nalcor, do a hydroelectric megaproject, which is a pretty significant (inaudible).

**MR. E. MARTIN:** Yeah, and I think you said in Labrador, and that's correct.

**MR. BUDDEN:** Yeah. Labrador wasn't the real focus of my question, but I think we're at the same place.

**MR. E. MARTIN:** Oh, I thought that was a key element. I apologize for that.

**MR. BUDDEN:** Yeah.

I guess my – I would suggest that perhaps this, more than ever, might suggest the need and benefit of a steering committee, such as was contemplated. By steering committee, what I'm – and I put this to Mr. Bennett and perhaps we'll go to his quote in a minute, but a steering committee, as it was envisioned in some of the draft documents we've seen, with input from external people with expertise. So it would be like, yeah, almost like the word says, it would steer this new entity comprised of talented people; people who hadn't built a dam before, towards the goal of building Muskrat Falls.

Put in those terms, do you not see the advantage that a steering committee might have brought?

**MR. E. MARTIN:** Absolutely, and as I mentioned yesterday, you know, I see two key benefits to, you know, a steering committee, executive committee – call it what you may. Point A, which to me is the most relevant, is the,

you know, ensuring, to the extent possible, that these two cultures that we just talked about, you know, get integrated properly so that one's not getting ahead of the other, obviously, because you're building something for the operators to operate. And there is what we talked about, there's different way they operate. So a lot of it is making sure those interfaces occur as you build so that you're preparing yourself to receive that asset to the best manner possible; I'm not getting things mixed up. And that was the primary purpose of – one of the primary purposes.

The other was to provide a framework for guidance and decision-making. I thought the first one was handled reasonably well, because my understanding was there were people attending those meetings on a regular basis, and it did evolve into making sure that, at the end of the day, we were properly preparing for commissioning and integration to start up.

And from the overall, not a – I think not a decision-making body, but the body that, you know, could review decisions, offer input, that wasn't, you know, coming along as well as anticipated. So we filled that in with a team where I was more involved with leadership from the project for the most part.

**MR. BUDDEN:** Sure. I guess the distinction, however, I'm drawing between the steering committee – particularly as it was envisioned in Nalcor draft documents and an executive committee – is a steering committee brings in outside experts, people who can say, look, you know, this is how we did things. Here's a hint, you know, this is – these are the kind of things that – guidance we can give.

Mr. Bennett, his evidence was – and I can put it to you if you wish – was that he recommended to you that such a steering committee be formed, but that you didn't approve that idea. Does that coincide with your recollection?

**MR. E. MARTIN:** That's not my recollection, no. I just can't remember that commentary. But in any event, you know, I've indicated that the term, steering committee, executive – I mean I see those as interchangeable. And I mentioned how I handled it and adjusted when I thought I had to, to handle those elements.

**MR. BUDDEN:** So you saw no benefit to bringing in outside expertise such as envisioned in that draft steering committee document?

**MR. E. MARTIN:** I think, you know, our value in – of external expertise, it was evident in terms of, you know, the different benchmarking work we did, you know, different groups that were brought in to analyze and give us advice, the various studies that had happened over time.

So, we valued it, to do it that way, but bringing them in on an executive committee, you know, that didn't happen and we handled it the way I mentioned it.

**MR. BUDDEN:** Okay, fair enough.

I have another document. This is an exhibit but just for convenience I'll put it to you in print. It's probably easier to use. Because I have a copy, I'll do the same for you, Mr. Commissioner.

This is exhibit – for everybody else Exhibit 00206. And we have heard other evidence so I'll summarize in the interest of time but –

**THE COMMISSIONER:** Tab 11.

**MR. BUDDEN:** This appears to have been a meeting that took place at The Rooms. We've heard from other witnesses and from Mr. Sturge's notes, which are at Exhibit 00883, but which I don't think we need to go to.

It was attended by – on behalf of Nalcor: yourself, Mr. Bennett, Mr. Sturge and Mr. Chris Kieley. On behalf of the province: Premier Williams, as he was then; minister of Natural Resources, Dunderdale; Gary Norris, who I believe was clerk at the time; Brian Crawley and Elizabeth Matthews from the premier's office; Robert Thompson, I can't recall his exact position; and Charles Bown.

First, did you recall that meeting?

**MR. E. MARTIN:** Yes, I do, Mr. Budden, and, just to help me, you're taking that list off of someone's notes, are you?

**MR. BUDDEN:** I'm taking from Derrick Sturge's notes, which are –

**MR. E. MARTIN:** That fine; I just wanted to –

**MR. BUDDEN:** – Exhibit 00883, yeah.

**MR. E. MARTIN:** 'Cause I couldn't, you know –

**MR. BUDDEN:** It's non-controversial.

**MR. E. MARTIN:** I couldn't note who exactly was there, but I'd go with that.

**MR. BUDDEN:** Sure. Okay.

What – my read on this, and I put this to other witnesses, but my read on it, which I ask you to speak to, is that this was a presentation – firstly it was a Nalcor slide deck, or other presentation, which we have here, and it appears, from my read – basically judging from the way it's marked up – to have been a presentation made by you guys from which a discussion flowed.

And some of the comments in the margins there – the handwritten comments appear, I would suggest, to be comments on the exhibit itself – on the document itself. And I think if you turn to page 5, that is perhaps the clearest example of what I'm talking about.

**MR. E. MARTIN:** And do you know whose comments these are?

**MR. BUDDEN:** We believe – one witnesses has identified – tentatively identified the handwriting as that of Gary Norris, but we haven't had that confirmed –

**MR. E. MARTIN:** No, we're not sure.

**MR. BUDDEN:** – by Mr. Norris.

Pardon?

**MR. E. MARTIN:** Well, we're just not sure, is that what you're saying?

**MR. BUDDEN:** Correct.

**MR. E. MARTIN:** I understand. I understand.

**MS. O'BRIEN:** Sorry, I'll just interrupt here and let – we have interviewed Mr. Norris; he has identified it as his handwriting, and we will

either be entering a statement or getting some information to that effect.

**MR. BUDDEN:** Okay, well, that's that. It is Mr. Norris.

**MR. E. MARTIN:** Great. Thanks.

**MR. BUDDEN:** Yeah.

So, again, take a moment. And page 5 may be the, as I was saying, the place to focus on.

**MR. E. MARTIN:** Right.

**MR. BUDDEN:** And when you've – feel comfortable, we can move on to my main line of questioning.

**MR. E. MARTIN:** I'm ready.

**MR. BUDDEN:** You're good?

So my point that this is, really, a presentation from which discussion and dialogue would have flowed, does that appear to be correct to you?

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** Okay.

And do you recall this meeting?

**MR. E. MARTIN:** I recall this meeting.

**MR. BUDDEN:** Okay.

And if we – I'm particularly interested in page 17, but if there's anything that you leaf through on the way that you feel is particularly relevant, by all means speak to it if we can do it in a relatively tight time frame. But it's page 17 that I'm really interested in.

This was put to you in direct, as well, by Ms. O'Brien, so if it looks familiar, that's why.

So we were at – the scenario here, as I understand it, Mr. Martin, is that we are at the point where Gull has essentially been put on the back burner, and we're now talking about – or, rather, you folks are talking about developing Muskrat Falls.

**MR. E. MARTIN:** Just another 15 or 20 seconds, please –

**MR. BUDDEN:** Of course.

**MR. E. MARTIN:** – I just – get through that. And on page 12, there's an "Option D - Gull Island with Island Link and Maritime Link" is under study, so that's what jumped out at me when you said Gull was off the table.

**MR. BUDDEN:** Back burner, I believe I said.

**MR. E. MARTIN:** Back burner?

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** Okay. Well, that seems to be under study, but we'll see.

So once again, to your point, page 14 it says, "Option A – Muskrat ... first followed by Gull" was feasible – it's there. So your assumption, as I get to page 17, is that Gull is on the back burner, is that your assumption?

**MR. BUDDEN:** That is my assumption, that this is now a discussion about – primarily a discussion about developing Muskrat Falls. Again, the time frame is April of 2010, so that, I would suggest, would coincide with the broader evidence that we've heard at this Inquiry.

**MR. E. MARTIN:** Mr. Budden, I don't believe that it was on the back burner at this point.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** And – so I just – that's what my feeling was when I went through the report, was that it was not and we were still looking at Gull as – you know, as included fully in the options.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** So I just want to – not refute that, but say no. My –

**MR. BUDDEN:** That's not your understanding?

**MR. E. MARTIN:** My memory is that Gull was still on the burner.

**MR. BUDDEN:** Okay, all right. Well, we'll – let's move on for now. We'll park that.

Under "General Assumptions for all cases" – all cases – we're talking here about Lower Churchill, so presumably all cases were the Muskrat and – or Gull – "P75 capital cost estimates." So I would suggest that it's self-evident from this document that this meeting – you – Nalcor went into this meeting with a general assumption of a P75 capital cost estimate. I would suggest that flows pretty much irresistibly from what we see in front of us. Would you agree?

**MR. E. MARTIN:** Do you mean reading it?

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** Yes, in this case it says "P75 capital cost estimates" for all cases, and I just wanted to make the point that this P75 – we were still primarily seeking going through with these projects driven primarily by, you know, a profit-based project development rather than the primary case to be providing power to the province. That's my understanding if I look back at the timing here.

**MR. BUDDEN:** Okay. Well, that's an interesting digression, but in the interest of time, perhaps again, the – on the face of it we have "Scenario Economics - Key Assumptions; General Assumptions for all cases: P75 capital cost estimates." So I put to you that, as of April 23, 2010, Nalcor's operating under the assumption that these were P75 capital cost projects. Would you agree or disagree with me?

**MR. E. MARTIN:** I – excuse me for one second. I have to make an important point here, because it's obvious –

**MR. BUDDEN:** Perhaps you can answer my question first?

**MR. E. MARTIN:** Sure, I can, yeah.

**MR. BUDDEN:** Okay. Would you agree or disagree with me that this clearly contemplates a P75 capital cost estimate for Muskrat Falls and Gull for that matter?

**MR. E. MARTIN:** It says that, so I agree with that.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** My supplementary point was that these – if you look at option A on page 14, it says “Muskrat Falls first, followed by Gull Island through Quebec plus Island Link.” So that was a combination project going through Quebec, and that would be 2,250 megawatts for Gull and 824 for Muskrat, which is a – it’s north of 3,000 megawatts.

It talks about an Island Link, but that would be relatively insignificant in the bigger scheme of things. So I would see this one we were looking at was primarily for a sale into the market – was driving this.

That’s option A; I’ll come back to the point of this. “Option B - Muskrat Falls ... with firm transmission rights, do not pursue upgrades.” So that came across to me as Muskrat Falls through Quebec, you know, to sell into the market as on a PPA.

**MR. BUDDEN:** Where you to?

**MR. E. MARTIN:** I’m on page 15.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** And that’s a through-Quebec, Commissioner, option for Muskrat Falls. Under additional consideration, that bears that out because it says the “Above consideration likely defers the Maritime Route until the Upper Churchill repatriation.”

But that’s the point there, and option 3 is the same as option 2 – sorry, Outcome 2, Option A – “adjusted to proceed with Muskrat ... non-firm prior to upgrades,” so that’s still going through Quebec, Commissioner, for Muskrat. And in that context, you know, I had asked for P75 updates as a basis, because when you’re going through on a commercial transaction such as that through Quebec, you’re looking for a power purchase agreement with, you know, an Ontario entity or a New York-New England entity.

And once you do that kind of deal and get a price, then you have – you know, you have

assumed the cost risk on the project, and the price you get is going to have to cover that cost. And I’ve – I always felt comfortable in having a buffer as an indicator on top of the – on top of, you know, a P50 cost if it was going through that way so that if we did a PPA long-term, even if you didn’t have enough to cover some of those costs, then you could be faced with a situation where you were selling power for a long time and not making any money – or losing money.

**MR. BUDDEN:** How does that differ from the PPA that was ultimately arrived at with Newfoundland Hydro? It’s PPA in either case, isn’t it?

**MR. E. MARTIN:** Absolutely.

**MR. BUDDEN:** Yeah.

**MR. E. MARTIN:** And I’ll tell you the difference. I’ll tell you the difference – or the similarity. Is that you’re back to a comparative analysis and there, when you do a comparative analysis at P50, the buffer exists for you with the difference between the two. \$2.4 billion was the buffer in terms of the CPW. So that covered that off in terms of the buffer situation. And then in addition to that we had excess sales of 3 billion –

**MR. BUDDEN:** Mmm.

**MR. E. MARTIN:** – return on equity and those types of things. So that was the difference between a comparable analysis in terms of what you had to cover it and a single project –

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** – where you had to cover with a PPA into New York and New England.

**MR. BUDDEN:** We’ll get to the comparable analysis, but just before we do, what we have here – what we actually have in front of us, as you can see, it is a contemplated development of Muskrat Falls and, perhaps, Gull as well, at a P75 capital cost estimates.

So perhaps you could just read what’s handwritten there to the right, if you would, Mr. Martin?

**MR. E. MARTIN:** We're on page 17?

**MR. BUDDEN:** We are still.

**MR. E. MARTIN:** There's lots on the right. Is it –?

**MR. BUDDEN:** The one immediately opposite the "P75 capital cost estimates." Somebody's drawn a dash.

**MR. E. MARTIN:** Yeah. It says: "more stress placed on the project cost – very conservative approach."

**MR. BUDDEN:** Okay.

I would suggest that suggests that somebody has noted that a P75 capital cost estimate was – would put more stress on the project cost. That's fairly evident, isn't it?

**MR. E. MARTIN:** That was the intent.

**MR. BUDDEN:** Okay. That was the intent.

**MR. E. MARTIN:** Absolutely. I've just explained that.

**MR. BUDDEN:** Okay. So the intent of P75 is to put more stress on the project cost.

**MR. E. MARTIN:** In this particular case for a project that was being sold through Quebec and financed on a PPA with an outside entity.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** 'Cause you need the, you know, you need to be testing to see if that – if that's enough to cover you because if it doesn't work for you, you lose money for a long time.

**MR. BUDDEN:** So your evidence – your evidence – never mind other people's – your evidence is this meeting, this discussion wasn't primarily about developing Muskrat Falls power to Newfoundland for domestic use, but was rather the commercial sale of power down through Quebec. That's your evidence?

**MR. E. MARTIN:** That's correct. I'm just going by – looking back at these things again, that's (inaudible) –

**MR. BUDDEN:** Is that your – is that an actual recollection or are you reconstructing that based on what you presently believe?

**MR. E. MARTIN:** Both.

**MR. BUDDEN:** Okay. So you have an actual recollection of that meeting; that this focus was primarily on the commercial export of power.

**MR. E. MARTIN:** Yes.

**MR. BUDDEN:** Okay. Is there anything here that talks about comparative – any kind of comparative analysis?

**MR. E. MARTIN:** No.

**MR. BUDDEN:** Okay. Why wasn't that noted here, if that was an issue?

**MR. E. MARTIN:** Could you help me with the – I mean, I can't see the issue –

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** – is my concern.

**MR. BUDDEN:** Okay, where a P75 – and you distinguished that that was significant – part of the reason you distinguished it, if I understood you correctly, was because we are now into the commercial sale of power and it was necessary to have a certain buffer or profit margin. You're with me so far?

**MR. E. MARTIN:** I'm with you 100 per cent.

**MR. BUDDEN:** And then you talked about how you distinguished that from a situation of a comparative analysis, such as would result from a DG2-type –

**MR. E. MARTIN:** Mmm.

**MR. BUDDEN:** – or DG3-type comparison of the Isolated Island, the integrated Island options. So –

**MR. E. MARTIN:** Mr. Budden, I compliment you. You know, it's for the first time that I've seen that brought up; that distinction being made a focal point of the discussion, you know, here

and that – and I think you’re spot-on. That’s exactly –

**MR. BUDDEN:** I’m going to disappoint you because –

**MR. E. MARTIN:** – exactly the (inaudible) we have.

**MR. BUDDEN:** – I think it’s a false distinction, but let’s move on.

**MR. E. MARTIN:** No, no, but that’s exactly the distinction. And, you know, I can’t force your questions but I’d sure like you to ask me more on it.

**MR. BUDDEN:** Okay.

Okay, where is it noted here? One place in this document where it’s noted that there’s a comparative analysis being done that influences the choice of the P-factor.

**MR. E. MARTIN:** There’s nowhere in here because this is not a comparative analysis. This is a single project focus being sold into the market and based upon a PPA, hands down –

**MR. BUDDEN:** And this has nothing to do with the domestic development.

**MR. E. MARTIN:** That’s exactly right. So when you pass this, you go into the domestic – that’s when we introduced the two alternatives and that’s when the process changes into a comparative analysis, and that changes the ball game.

You know, from my perspective, it changes the ball game entirely in terms of how the analysis and the economics are done. You go to an – well, I’m not going to into it, Commissioner, because I’ve already said it, but I just want to make that point, that’s exactly what I see is a key issue here in terms of the distinction between these types of options – absolutely spot-on.

**MR. BUDDEN:** Can you point to any document whatsoever, wheresoever, anywhere, any note, any exhibit – anything – that references this comparative analysis and its choice of a P-factor?

**MR. E. MARTIN:** It won’t be here because this is before that. But if you get into the documentation around when we went into a need for power and comparing two alternatives, it’s in there.

**MR. BUDDEN:** There is a document –

**MR. E. MARTIN:** This is not here.

**MR. BUDDEN:** – in there somewhere that says we’re going with a P50 because we’re into a comparative analysis and it’s necessary or fair to use a P50. You’ll find something like that?

**MR. E. MARTIN:** First off I’ve learned, you know, in this environment I need to be precise.

**MR. BUDDEN:** Yes.

**MR. E. MARTIN:** And there’s, you know, hundreds of documents –

**MR. BUDDEN:** Mmm.

**MR. E. MARTIN:** – and, Commissioner, I can’t think of one right now. I mean, it’s the type of thing I’d like to research, but I know that, obviously, this is the way it was done; this is the way it was presented. And, you know, my understanding there was knowledge of P50, but to pin it down to me giving you a reference to a document, I won’t do that.

**MR. BUDDEN:** Okay, well, perhaps it’s something you might want to think about overnight and perhaps bring up to your counsel. Because I think it’s an important point. Because I’m suggesting to you, there is no such document. I’ve seen nothing that suggests that there’s any kind of influence of a comparative analysis on the choice of P-factors. I’ve seen nothing.

**MR. E. MARTIN:** I think you’re wrong, but once again, I can’t pull the document out of my head, Mr. Commissioner, I just (inaudible) –

**MR. BUDDEN:** Okay, well, that’s fine. There’s other people –

**MR. E. MARTIN:** – (inaudible) level of detail in preparing the documents.

**MR. BUDDEN:** Other people will be looking, I'm sure.

So just to wrap this up, you are saying that it was necessary to go with a P50 on Muskrat Falls, so as to get an accurate comparison with the Isolated Island Option. Am I right?

**MR. E. MARTIN:** I don't think the term "necessary" is proper.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** I think it made sense to use a P50 but, you know, you can use – you know, anything else could've been used. So "necessary" is too strong a term. What I've described, you know, many times – I don't want to waste the Commissioner's viewpoint as to why P50 was chosen, so I just want to say that –

**MR. BUDDEN:** In your direct evidence –

**MR. E. MARTIN:** – I wouldn't say it was necessary it had to happen.

**MR. BUDDEN:** In your direct evidence, what you said – and correct me if I'm wrong, and there's transcripts here – but if I understood you correctly, what you said was: A P-factor had to be used because if there was anything other than a P-factor, say a P75, you'd also have to use a P75 from the Isolated Island Option, and given the application (inaudible) fuel, would increase the divide from 2.4 billion to something far higher still.

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** Okay.

I guess two elements to that. First element, is you're assuming, of course, that the Isolated – the capital cost of Isolated Island elements are being factored on a P50. That's your assumption, isn't it?

**MR. E. MARTIN:** Yes, it was. Yeah.

**MR. BUDDEN:** And so your assumption is wrong, if, say, Mr. Mallam is correct and they're done on a P70, P90, then what we have here now is an already unfair CPW, isn't it? Because you're comparing Muskrat at P50, to Isolated

Island elements at P70 or greater; that's not fair, is it?

**MR. E. MARTIN:** First off, I –

**MR. BUDDEN:** Leaving aside the fuel (inaudible) –

**MR. E. MARTIN:** – I put absolutely no credence in P70 to 90 from Mr. Mallam; I've said why. So that's not on. So I –

**MR. BUDDEN:** Well, let's assume for the sake of argument, because there's – I mean, it's either right or it's wrong. It's answerable. So let's assume – and again, if I'm wrong –

**MR. E. MARTIN:** I will not assume it, because it's wrong.

**MR. BUDDEN:** I'm asking you to assume.

**MR. E. MARTIN:** Not gonna happen.

**MR. BUDDEN:** So will you concede that if indeed a P70 to P90 –

**THE COMMISSIONER:** Now. I've had it. I've had this foolishness – I've had it, Mr. Martin. You're not being the witness here. You're trying to run the show. It's gonna stop right now. And if it doesn't stop, unfortunately I won't be able to hear the rest of your story.

Now, I've had it. I've listened, I've been very patient, I've tried very hard to take notes on everything you've said because I wanted to know it. But I don't like the attitude that you're displaying here, to be quite frank. You are not responsive to the questions; you're actually being rude, as far as I'm concerned, and I don't want it anymore. I wouldn't put up with it in court, and I'm not gonna put up with it here.

So we're gonna take five minutes, because I need to cool off, and then we're gonna come back, and this is gonna shift from what's been going on, and we're gonna go through this in a way that we can look like professionals even if we don't.

That's it. Five minutes.

**CLERK:** All rise.

Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Mr. Budden?

**MR. BUDDEN:** My question, Mr. Martin – are you ready to proceed?

**MR. E. MARTIN:** Absolutely.

**MR. BUDDEN:** Okay.

If one assumes – again, if the assumption is wrong, then the answer is meaningless, but if one assumes that the capital cost components of the Isolated Island option were indeed calculated at P70 to P90, in that case it would be unfair to compare the Isolated Island with the Integrated option, wouldn't it? But it would be unfair to the Isolated Island option in that instance?

**MR. E. MARTIN:** It would be unfair to the Isolated option?

**MR. BUDDEN:** Yes, because you're comparing a P50, which is what –

**MR. E. MARTIN:** Yes, it would, in that particular case, which you know I don't agree is there –

**MR. BUDDEN:** Understood.

**MR. E. MARTIN:** – but theoretically, yeah, that's the math.

**MR. BUDDEN:** Okay.

And with respect to the fuel, we've heard evidence from Mr. Westney that although he was asked to do a probabilistic analysis of fuel prices, he didn't feel comfortable doing so and felt it was outside of his area of expertise. And again, I'm not going to beat this to death, 'cause you addressed it in your direct.

But with respect to fuel, there are appropriate ways of measuring where fuel prices might go, but Nalcor chose not to retain an individual or a company to do those calculations. Am I correct on that?

**MR. E. MARTIN:** We – can I just give you some background first and then answer the question? We hired PIRA to do the oil forecast.

**MR. BUDDEN:** I understand.

**MR. E. MARTIN:** And then on the statistical analysis, we believed that Westney was an expert, and we hired them to do a statistically analysis on one option or the other. So we felt we did hire an expert. So from that perspective, I'm not agreeing with your comment.

**MR. BUDDEN:** However, you're not disputing that Westney, themselves, were reluctant to do the exercise? They thought they lacked expertise, even if you thought they did.

**MR. E. MARTIN:** At the time it occurred we had no inkling, no feedback, nothing from that perspective, so no. And I guess they didn't have to do the work. So we felt we had the expertise there and heard nothing.

In the testimony that I did hear on that point – I would like to check the transcript – I believe that we was responding to he's not an oil price forecaster. And we agree with that.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** But I – you know, as I mentioned, statistically – I would be surprised if he didn't agree that they had a specialty in statistical analysis.

**MR. BUDDEN:** Okay. Really, two more questions on this thread.

The first one is you're basically describing it as a binary choice, a comparative choice, between the Isolated Island and the Integrated Island. But in fact – as we know from other evidence, there were in fact other choices out there: liquefied natural gas and so on.

As a first point, you will acknowledge that there were other options other than those two?

**MR. E. MARTIN:** When you say the – on the Isolated side – there's two – on the Isolated side there was a combination of many.

**MR. BUDDEN:** Yes.

**MR. E. MARTIN:** Is my point.

**MR. BUDDEN:** Yes, good point.

**MR. E. MARTIN:** So, you know, a combination of many on one side, with Muskrat on the other with some supplementary stuff. I obviously agree with that.

**MR. BUDDEN:** Yes.

And my point is that one – I would suggest – flaw in your comparative analysis is that it's not just a binary choice, a binary universe. Meaning that – I mean, if I took your point, you're saying, essentially, it hardly matters what P-factor you use as long as you're consistent between the two of them because you're really comparing two choices, and only two choices.

And I guess my comment on that would be, in fact, there are indeed other choices, and if the cost of Muskrat Falls were to go beyond a certain point, not only are there fundamental issues of affordability, there may be other choices. Would you concede that point?

**MR. E. MARTIN:** No.

**MR. BUDDEN:** Okay.

So there are no other choices at any cost?

**MR. E. MARTIN:** Do you – I'd like to expand on it a little bit.

The first point was – I thought you mentioned it doesn't matter about whether you use a P50 or a P75 – I think it matters a great deal. And in our case, I explained the P50, but – and I thought to go to a P75 would favour Muskrat too much. But I think you have to look at what's reasonable in terms of not favouring one over the other. And I believe P50 was the right way to go.

The second – that there was other options – the reason I, you know, the way it's presented, I'm not agreeing with, because all the options that were considered – and there was a process to screen some options, and what was left on the table to put those many, you know, the combination of those options – wind, turbines, refurbishment, everything into Isolated. So many

of the options stayed, other ones were screened out to get there, with the calculation shown. And that was compared to Muskrat Falls with additional gas turbines. So they had several things in there as well.

So from my perspective, I believe the screening, you know, the choices were considered and there was a phase 1, phase 2 screening and we did consider all the options.

**MR. BUDDEN:** And my point – I will just make it one final time, because I may be putting more time in than is necessary.

But my point is fundamentally this: That it's not simply an exercise of comparison to one other option. It is also important to arrive at a true price for Muskrat Falls for two reasons: one – fundamental affordability or budgeting or whatever a country has to do to keep the lights on. And the second one – if the cost ends up being higher than anticipated, some of those other options may be back on the table.

Do you concede that point?

**MR. E. MARTIN:** I concede that – it's not conceding, it's the truth, but the same thing could have happened on the other side.

**MR. BUDDEN:** Yes, but –

**MR. E. MARTIN:** I think it's just, you know, it's a thing that you have to agree with, it's just –

**MR. BUDDEN:** Sure. And I guess the other –

**MR. E. MARTIN:** – a mathematical equation.

**MR. BUDDEN:** – the other thing that surprises me about the choice of P50, as opposed to P75 or perhaps having a better contingency, (inaudible) higher contingency, is this: You are in a politicized public environment making a cost estimate that people are going to remember and judge you on as this thing unfolds. So I'm surprised that one would go with a P50 if all the experts are saying: Look, the numbers are too low, a P75 is better.

Are you not setting yourself up to be right where you are, at a public inquiry, trying to defend the choice of what, I would suggest, was a

lowballed number? Like why do that to yourself with a low number?

**MR. E. MARTIN:** I've described the reason for P50 already many times. I'm not going to waste everyone's time to do it again.

**MR. BUDDEN:** Okay.

I would suggest to you perhaps another reason for going with a P50 is to keep the cost of Muskrat Falls as low as possible so as to make the project the most attractive sell possible at the moment of sanction, which was, after all, a political, public debate.

Would you agree or disagree with that?

**MR. E. MARTIN:** I would disagree with that.

**MR. BUDDEN:** Okay. Fair enough.

**MR. E. MARTIN:** Entirely.

**MR. BUDDEN:** Pardon?

**MR. E. MARTIN:** Entirely.

**MR. BUDDEN:** Okay.

I'm up to about my two hours, but if I could have another 10 or 15 minutes, Mr. Justice, that would –

**THE COMMISSIONER:** Go ahead.

**MR. BUDDEN:** I'd be able to wrap up then.

**THE COMMISSIONER:** Go ahead.

**MR. BUDDEN:** Okay.

You're familiar, of course, with Mr. Derrick Sturge?

**MR. E. MARTIN:** Yes.

**MR. BUDDEN:** He was your CFO for many years.

I'm going to hit on a couple – I'm going to try to tighten this up a bit, but I have one or two key points in his evidence.

I'm – I have in front of me the transcript of Mr. – part of Mr. Sturge's evidence from November 1.

And – perhaps we could go to Exhibit 00877; I'm going to be going back and forth here a little bit. And we're in to Mr. Sturge's notes here, now, Exhibit 00877.

I don't know if you have that in front of you; you may.

**MS. O'BRIEN:** It's not.

**THE COMMISSIONER:** You have that? That's not –

**MR. BUDDEN:** Okay.

**THE COMMISSIONER:** – there.

**MR. BUDDEN:** It's pretty short. It's just a note that will appear on the screen in front of you in just a moment.

And there's a reference here – I think it's – yeah, up the right – upper-right corner. I'll read it to you as best I can. It says: Lower Churchill Project capex – this is from August 8, 2012 – “very strange process – I (and most of Finance team) have still yet to see the DG3 Capex in any level of detail – appears that Ed/Project Team are keeping them close.”

Do you have any comment on that?

**MR. E. MARTIN:** As you –

**MR. BUDDEN:** Was it indeed a very strange process?

**MR. E. MARTIN:** I just need a couple – or a second or maybe 15 to quickly review the context of the rest of the note.

**MR. BUDDEN:** There's a blacked-out portion there, which could be – it could be anything. I don't know what it is either.

**MR. E. MARTIN:** And I'm just trying to read. Maybe you can help me – on the left-hand side of that page. In the middle, there's a note that said: “Ed – update on” – do you know what that word is?

**MR. BUDDEN:** I do not.

**MR. E. MARTIN:** Okay. Okay, in any event –

**THE COMMISSIONER:** Could be Forristal. Would that make any sense?

**MR. E. MARTIN:** It does make sense, 'cause that's a federal government individual who we dealt with, with the FLG – federal loan guarantee. Yeah, so that was helpful to me.

So the comment on the LCP capex – I mentioned this previously as well. You know, it's not – in my experience, you know, in the – both the project and the corporate and operating side of the world, the engineers handle the engineering and the costing and scheduling of the projects. The accountants do not.

I had that experience myself at Hibernia, for instance, where I had been in and out of the project: part of the in – as cost and schedule manager; out – as CFO and those types of things. So that wouldn't be unusual to me that that's the way that unfolded.

And a subsequent point – and I'm glad I read the other side with respect to the Forristal meeting – I think it's an indication of, you know, of the approach as well to make sure that people with the expertise, you know, level, were engaged properly and in proper things.

And Mr. Sturge was instrumental in pulling together the federal loan guarantee. It was a huge undertaking. And, from my perspective, I'm very comfortable with how, you know, the cost and schedule were handled with the accountants not being, you know, deep into it.

But it was also effective to have the expertise throughout the organization focused on the right things. A lot was going on.

**MR. BUDDEN:** Perhaps Exhibit 00880, please, Madam Clerk.

This is another note of a similar nature.

**THE COMMISSIONER:** Not in your book.

**MR. BUDDEN:** So we're back – we're on the screen again – 00880.

A note here – now we're into September, but it's reflecting back.

It says: "LCP Cost Estimates" – it's there on the left-hand side – 9/12/13.

"Ed has had multiple meetings with the project team on the state of the capital cost estimate but has not included me in any of this – he clearly does not want me to know where the estimate currently sits.

"As of right now all I" – can share – all I can be, "all I am sure of is the DG3 \$6.2 B estimates."

This is your CFO speaking, your vice-president of finance.

Does it concern you that he would feel excluded in this fashion?

**MR. E. MARTIN:** It does.

**MR. BUDDEN:** Okay. Were you aware of this at the time?

**MR. E. MARTIN:** No.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** As I said the other day, you know, he's the CFO. If he wants to be included, get included.

**MR. BUDDEN:** Okay. Well, he's saying there that you don't share the information with him.

How is he – how does he include himself with that if you won't share it?

**MR. E. MARTIN:** Gets up from his desk and walks over and talks to the project team.

**MR. BUDDEN:** Going around you?

**MR. E. MARTIN:** They both report at the same level.

**MR. BUDDEN:** Okay.

Last couple of questions from Mr. Sturge – I have – did I give it to you? Yeah, the transcript for the – for the 1st of November.

Perhaps we can turn to page 13. And I asked him, and he elaborated on this a bit, I said: Why is – well that was the previous comment – Why is this very strange? And he said – and now I'm on to 13 –

**MR. E. MARTIN:** And what –

**MR. BUDDEN:** The first comment was on page 12.

**MR. E. MARTIN:** First comment on page 12.

**MR. BUDDEN:** Yeah, and that was to do with the previous exhibit, 00877. I made an error there, I should've asked this question (inaudible).

**MR. E. MARTIN:** The top of 12 on the left-hand side?

**MR. BUDDEN:** On the top of – on the bottom of 12 on the right-hand side, I say: "Why is that very strange?" And then we carry over and Mr. Sturge says: "Because we were in a process where we were about to – you know, we were getting close on closing the federal loan guarantee at this point. And Canada still had yet to see the numbers. We had no ability to share those numbers until we had approval to share them and at this point we were getting well advanced and our concern was that we were soon going to have a surprise for Canada.

"Because I think it was generally known that the number had gone to 6.2 billion, you know, well in advance of this date but had yet to be rolled out broadly."

And I say: "How was it well known? This was before sanction? 6.2 billion –"

Sturge: "Yeah, I know but I think at this point, internally anyway, it was known that the number was 6.2. I –"

"I think at this point we all knew the number was 6.2 billion but all we had seen was, sort of, the build up of the change from DG2 to DG3. But we" – have yet to see – "the detail of how that played out and how it gets rolled out to Canada."

"Okay."

So this is August of 2012, this comment was made and he was obviously feeling frustrated and somewhat excluded and marginalized. Again, that's the context for the very strange remark – a situation he thought was very strange. And, I guess, my question to you is: Should not your CFO – your vice-president of finance – be more involved, at that point, given what's involved here?

**MR. E. MARTIN:** Well, I don't know how much more involved. I read here in the middle of the page: "I think at this point we all knew the number was 6.2 billion ...." Well, son of a gun, he knew. You know, we were all under pressure to get numbers out and so he obviously was in the loop, that was clear.

And what I will say is that to go to an external body such as the federal government, you know, they're – you have to cross your t's and dot your i's. It's the nature of the business that you can not go out, Commissioner, with, you know, data you're not supporting definitely, and we were all under pressure. But I would not be comfortable in succumbing to pressure, you know, like that if we had extra work to do on the number.

**MR. BUDDEN:** Okay.

You – moving on to page 16 – this is the last of Mr. Sturge's quotes. But if you – I don't know if you saw my examination of him, but I focused on what he knew or didn't know about the risk assessments that had been done and the risk registry. So that's the context, or I guess the background of what I'm asking him here.

And he's saying here, on the right-hand side, starting at: Absolutely. "Absolutely, so I would rely on the process in place and I would rely on the quality of the individuals doing that work and I clearly rely on that."

And I say: "And even now you stand behind the process that was in place in this ... 2012 period, for identifying risk?"

And this is the part I'm interested in:

**"MR. BUDDEN:** I can't speak to the quality of the LCP risk process, I can't."

And I say: “Even as the chief financial officer of Nalcor, you can’t speak to the quality of the Lower Churchill risk process.”

And he says: “I can’t, I can’t. Because I had no involvement” – with – “in it, it was operated totally as a project piece of work. No corporate involvement whatsoever.”

Does that square with your understanding, Mr. Martin?

**MR. E. MARTIN:** It squares with my understanding.

Mr. Sturge, in his group, had been actually instrumental and, you know, and Mr. Sturge, as I mentioned, was – you know, he was a good individual for looking ahead and getting things moving. And one thing he initiated was – for the company, as he should – was the overall risk-management program for the corporation; hired a, you know, a risk manager. And this was for all divisions: Churchill Falls, NLH, et cetera, plus Muskrat Falls.

They put a framework in place, and had this, you know, a strong coordinating leadership respect with pulling it in from everywhere. And did the same for the, you know, for the Churchill Project.

As far as, you know, how deeply Mr. Sturge and his group and the risk group would go down into every division to handle the risk situation, I think you’d have to talk to him about that and (inaudible).

**MR. BUDDEN:** We did, at length.

**MR. E. MARTIN:** So that’s good. And, you know, and the question – what I would, you know, believe is that in terms of identifying the risks in each division, you need to go to the – Churchill Falls, the operating people, who are, you know, on the face of it, the accountants, for instance, would not be the ones to actually identify the operating risks. I mean, that’s just the way it is. And that would be the same in a construction project; you’d have to have the

engineers and the people running the business bringing the risks up to a certain point.

So, I couldn’t see the coordination effort of the risk-management group handling that because they wouldn’t have the expertise.

But then as you roll that up further and start to assess how those risks fit in, in the overall corporate structure, then we get more heavily involved in that, and would bring forward things like an assessment on, they called it heat charts, but you know, what would be a red, or what would be a yellow, or what would be – that was across the corporation.

So my perspective is that would be the type of role. For him to be saying I can’t speak to the quality of the LCP risk process, I –

**MR. BUDDEN:** Perhaps I can contextualize –

**MR. E. MARTIN:** – couldn’t, you know, I couldn’t comment on his view on that. I believe he also said in his testimony – I think we need to check this. I also believe he said clearly that the Lower Churchill Project was the first adopter of risk analysis. And I think he also mentioned that they were way ahead of the rest of the corporation when it came to risk analysis, Commissioner.

**MR. BUDDEN:** I don’t recall that but –

**MR. E. MARTIN:** Yeah, but –

**MR. BUDDEN:** – it’s a matter of record. But, I guess, my point is this –

**MR. E. MARTIN:** I think it might be worthwhile to, you know, to check that out because that would help in terms of, you know, offsetting the quality comment.

**MR. BUDDEN:** Sure. My –

**THE COMMISSIONER:** I do believe he did actually testify that the Lower Churchill group was one of the first and whatever, but I’d have to go back and assess the whole thing.

**MR. BUDDEN:** Sure.

My point is more this: Mr. Sturge has testified that the central risk registry of the Nalcor corporation did not include any risk from the Lower Churchill Project, the – it simply did not make it to the central registry of risk of Nalcor, it was a separate process. If that were true, would that concern you?

**MR. E. MARTIN:** Not particularly would it concern me, but I do believe it was part of that risk register. I'd need to check that.

**MR. BUDDEN:** Okay, well, we'll move on.

**MR. E. MARTIN:** There's two comments there.

**MR. BUDDEN:** Just a couple of more questions, just two brief ones about your background.

In which position were you personally involved in probabilistic risk assessment for capital cost projects?

**MR. E. MARTIN:** I think I'd mentioned this. We did probabilistic risk work on White Rose and also on Hebron.

**MR. BUDDEN:** So those two positions, what was your position at White Rose and, particularly, in relation to that risk assessment?

**MR. E. MARTIN:** I was a joint venture manager and I was responsible for the White Rose asset from Petro-Canada's perspective. And we would've been running internal probabilistic analysis as the project went on to, you know, test where we thought it was going. And –

**MR. BUDDEN:** When you say, we, you mean the White Rose team of which you were a member.

**MR. E. MARTIN:** That's correct.

**MR. BUDDEN:** You weren't head of that team.

**MR. E. MARTIN:** Yes, I was.

**MR. BUDDEN:** You were, were you? Okay, and who did you answer to?

**MR. E. MARTIN:** The vice-president of East Coast, Canada, for Petro-Canada.

**MR. BUDDEN:** Okay. And the other position you mentioned? You mentioned two, I believe.

**MR. E. MARTIN:** Yes, and Hebron, part of that was with Petro-Canada. I think Chevron and others were doing some risk analysis on Hebron. We were trying to get it off the ground. And at some point I moved to Nalcor. And the Oil and Gas group there, they were doing some probabilistic analysis on Hebron as well.

**MR. BUDDEN:** Okay.

Before arriving at Nalcor, was there ever a position where you were the one who made the final call on what probabilistic risk factor to use?

**MR. E. MARTIN:** No.

**MR. BUDDEN:** Okay.

When you went to Newfoundland Hydro, as it was then, Newfoundland and Labrador Hydro, my understanding were – was that there were four vice-presidents there at the time you arrived. Would that be correct?

**MR. E. MARTIN:** Well, I'd have to check the numbers; there was a number of them.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** I just can't recall exactly, now, the org structure, but I'm not disputing that, but I can't confirm if it was that number –

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** – or some more.

**MR. BUDDEN:** I can't say I have personally researched this, but I have been told that within several months of your arriving all but one of the vice-presidents had left Newfoundland and Labrador Hydro. Would that be correct?

I don't necessarily need to know the reasons, but I'm just asking, as a question, would that be correct?

**MR. E. MARTIN:** There was several changes, and my only reason I'm hesitating, Mr. Commissioner, is that, you know, it's an org structure. A long-time ago, there was – it wasn't only vice-presidents; there was also directors that left, and I'm not sure of the numbers and mix, but if the question is there was substantial change, that would be correct.

**MR. BUDDEN:** Okay.

And would it be fair to say that most of the vice-presidents and directors left within a few months of your arrival?

**MR. E. MARTIN:** I would say the majority of them, because part of the change there was, you know, an aim to take out a line of management. I felt that the distance from the CEO to the shop floor – had views on how close that should be, and I thought it was worth while to remove a level from the organization, so I can't remember the exact numbers, Commissioner, but over time that was a goal, and we tried to manage that as effectively as we could.

**MR. BUDDEN:** Really, I only have two more questions.

The first one is, Mr. Kennedy – in response to a question put to you by my learned friend Ms. O'Brien, when she, I believe, was pointing out that Mr. Kennedy's note contained no reference to P-factors other than a passing one with respect to the Maritime Link, you answered – and I wrote this down as accurately as I could: I can't comment on Mr. Kennedy's state of mind or the degree of his note taking.

What do you mean by that?

**MR. E. MARTIN:** I think – I thought it was self-explanatory. I just, you know, I can't comment on what he was thinking. How can I do that?

**MR. BUDDEN:** Fair enough.

The inference that I drew from that, and you correct me if I'm wrong, are you – okay, let's rephrase it entirely: are you suggesting that you did discuss P-factors and probabilistic analysis with Mr. Kennedy and he simply has forgotten it or failed to note it?

**MR. E. MARTIN:** I can't recall. My point was, I think I made before, it wasn't something I wouldn't discuss. It's not something that I drove to discuss constantly, so – but it was, you know, a concept that I feel comfortable I'd certainly raised at the government, might have either been in passing or as part of a discussion, but I didn't focus on it, Commissioner. I mean, it wasn't something I was driving hard on.

**MR. BUDDEN:** Okay.

**MR. E. MARTIN:** So that's – that was my point. I don't know if I did or not.

**MR. BUDDEN:** The witnesses –

**MR. E. MARTIN:** It wasn't something I would avoid.

**MR. BUDDEN:** The witness we've heard from so far from government all seem to have a very imprecise, if any, understanding of P-factors or probabilistic analysis. That's in the evidence I would suggest to you. Do you disagree with that?

**MR. E. MARTIN:** I've heard much of the evidence, so I think I've heard that theme, but I can't comment on it all.

**MR. BUDDEN:** Sure.

And finally, my final question, the Commissioner, yesterday afternoon about 4 o'clock – I think it was yesterday – put to you a question, and your answer – and it's the last sentence I'm going to focus on: Mr. Commissioner, I'm going to stop there, I guess, and turn back to the counsel to make my point – that's where I – 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 sense 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.

I guess my final question to you – I would suggest to you – you're dealing here with a

number of very bright, driven, accomplished people. And most of them would seem to have had real no – no real idea about the probabilistic analysis that in part drove the sanction cost. I would suggest to you that you perhaps weren't clear enough, you weren't detailed enough in your explanations to them, perhaps you were too focused like a rifle shot. Would you agree with that point or would you disagree with it?

**MR. E. MARTIN:** I would disagree entirely.

**MR. BUDDEN:** Okay.

Thank you. I have no more questions.

**MR. E. MARTIN:** Do you want this paper back, Mr. Budden? I'm getting pretty loaded up over here.

**MR. BUDDEN:** (Inaudible.)

**THE COMMISSIONER:** Thank you.

All right. Just before we break then today, you'll be next Ms. Best.

**MS. E. BEST:** Commissioner, I have no questions.

**THE COMMISSIONER:** Okay.

**MS. E. BEST:** Thank you.

**THE COMMISSIONER:** Okay. So after that will be – oh, we've already had – so it'll be Mr. Bown.

**MR. FITZGERALD:** I have no questions either.

**THE COMMISSIONER:** Oh, okay.

So Robert Thompson?

Okay, so you'll be first on tomorrow morning.

I spoke last night to Commission counsel, and I understand they've been speaking with all of you, and I think now we're – based upon what I was told, there's about seven hours left of cross-examination, so I think we have plenty of time to say that, on Friday morning, we should be able to allow those that wanted to go to that

swearing in to go, because I know some of you have requested that.

So what I'm thinking about doing is, depending on how we go tomorrow, if we get a good bit done tomorrow, and I feel we can finish on Friday afternoon, we'll finish Friday afternoon without sitting at all in the morning, 'cause you guys will have to be there for 10 o'clock anyway and be an hour and half or so at least. But we'll see how it goes tomorrow. Right now, it looks like we're doing okay.

So anyway, I just want to let those know who were planning to go to the swearing in that it looks like, yes, that is a go. All right?

So we're adjourned then 'til tomorrow morning at 9:30.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.