COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1 Volume 58

Commissioner: Honourable Justice Richard LeBlanc

Thursday 13 December 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Good morning.

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

Mr. Coffey, when you're ready. If you just give me one (inaudible).

MR. COFFEY: Oh yes, Commissioner. That's why I was sitting here.

MS. O'BRIEN: Sorry, Commissioner.

Before Mr. Coffey begins, I'd seek to enter four new exhibits, please: P-00319, P-00320, P-00327, and P-00329. These are early exhibits – you can tell from the exhibit numbers that ultimately did not get entered on the day that Chief Piétacho was scheduled to testify.

THE COMMISSIONER: Okay, so they relate to his evidence?

MS. O'BRIEN: Yes.

THE COMMISSIONER: Okay. All right.

Mr. Coffey when you're ready?

MR. COFFEY: Yes, thank you, Mr. Commissioner.

Mr. Martin, I'm Bernard Coffey – we know each other. I represent Robert Thompson.

Mr. Martin, I want to take you back to the beginning of your career at Newfoundland and Labrador Hydro, okay? When you arrived in 2005.

Can you tell us please what steps you took to look into the involvement of Newfoundland and Labrador Hydro in the power industry in the province? What steps did you take to familiarize yourself with the industry?

MR. E. MARTIN: In general, I initially carried out a series of visits to the various departments and divisions throughout the province. I met with, you know, a myriad of people throughout the organization, in what I would call, Commissioner, a cross section, you know, from the top down to the middle groups and some front line people. Certainly introduced myself, you know, to the union partners and such.

And in essence, went through various documents, those types of things –

MR. COFFEY: Okay.

MR. E. MARTIN: – and, you know, continued to ask questions about pieces of the business that were new to me as I progressed.

MR. COFFEY: And now in particular, what I'm interested in is: the legislative or statutory legal responsibility for – within this province as it existed in 2005 when you arrived – for the planning for future power.

Did you make any inquiries about that? Who was responsible for this? Is it Newfoundland Power, is it us, is it the PUB, is it government? Who is it?

MR. E. MARTIN: I did not make inquiries, Commissioner, but it was, you know, it was indicated to me that, you know, through – and I can't exactly remember the terminology but through, you know, what had occurred over the years, Newfoundland and Labrador Hydro, you know, had assumed and was given and was understood to have the responsibility for planning for the system.

MR. COFFEY: Okay.

And that was – do you remember who – you don't remember who gave you that?

MR. E. MARTIN: I'm sorry, I don't remember –

MR. COFFEY: Okay.

MR. E. MARTIN: – who it is. I mean, I would have – more than likely, obviously, would have been the system planning group, you know, people, senior people there who I would have been discussing things with.

MR. COFFEY: And do you recall when you arrived in 2005 – kind of the first 6 months, 12 months that you were there – what you were given to understand that was the state or status of affairs in terms of generation planning for the province and needs in the province in that moment in time?

MR. E. MARTIN: Over the first, we'll say, 3 to 6 month period, you know, it takes time to get into any arrangement. I think two things struck me over, say, the first 6 months. Well, it's three things, Commissioner, I would say.

The first thing is that the dedication and quality of the people was high and – not that I wasn't expecting that but it was impressive, there's no question about that.

The second thing that I realized was that when I first went there, from a safety perspective, I was asked how, you know, the safety culture was and I was informed it was quite good. And according to the standards I was used to, I rapidly found out that it was not, but not because of the people. It was because of, you know, where they saw the bar set. So that was one revelation.

And the third revelation was – when I understood the age of the assets, you know, primarily some of the transmission assets and Holyrood, but other things such as the gas turbines and I was able to understand the level of investment that had gone into those, you know, those key assets over the previous seven to ten years, I was somewhat shaken by the fact that, you know, I did not feel that we were in a good place at all with respect to my understanding of – if not those types of facilities but certainly heavy equipment that you can really track a maintenance curve and life cycle curve on things like that. And when I understood where the assets were, I was, you know, very concerned.

MR. COFFEY: In relation to that, when you say the level of investment, I take it from the rest of your comments you – the inference to be drawn is the relatively low level of investment that had occurred in the past five to seven years.

MR. E. MARTIN: That's correct.

MR. COFFEY: Okay.

MR. E. MARTIN: And I would say the same for Churchill Falls (Labrador) Corporation as well.

MR. COFFEY: Yeah. The plant –

MR. E. MARTIN: That's correct.

MR. COFFEY: – Churchill Falls.

Now, again, in terms of, you know, what you understood when you arrived, as you've indicated just now you found – you thought your impression was that personnel were more skilled than you had anticipated, more dedicated than you anticipated they would be.

MR. E. MARTIN: I would just adjust that – not that I anticipated –

MR. COFFEY: Yes, yeah, yeah.

MR. E. MARTIN: – because the company had a good reputation.

MR. COFFEY: Yes. And that's where I'm going, okay?

MR. E. MARTIN: Yeah, I think there's no question about that. So I wouldn't say I was expecting poor quality at all. I was just probably pleasantly surprised that they were impressive –

MR. COFFEY: Yeah.

MR. E. MARTIN: – it was an impressive group of people.

MR. COFFEY: They lived up to their reputation.

MR. E. MARTIN: Exactly.

MR. COFFEY: Okay. And were you here in the province in the mid-'90s?

MR. E. MARTIN: No, I wasn't –

MR. COFFEY: Okay.

MR. E. MARTIN: – um, yes, I was.

MR. COFFEY: (Inaudible) '94, '95?

MR. E. MARTIN: Yes, I was.

MR. COFFEY: Okay.

MR. E. MARTIN: Yes.

MR. COFFEY: Do you recall – and I raise that in terms of (inaudible) –

MR. E. MARTIN: Now, Mr. Coffey, I'm not exactly sure about that. I'm trying to test my memory banks.

MR. COFFEY: Okay.

MR. E. MARTIN: I was moving around quite a bit then, but –

MR. COFFEY: Okay. Well, what I'm going to refer you to is this: Where you aware of the controversy that surrounded the then Premier Wells attempt in 1994 to privatize Hydro and the public pushback or backlash against it?

MR. E. MARTIN: I was not, frankly.

MR. COFFEY: Okay.

MR. E. MARTIN: You know, that's – was not, you know, something I would be tracking over time. I certainly learned about it and, you know, understood at – when I got there. So I'm familiar with it –

MR. COFFEY: (Inaudible.)

MR. E. MARTIN: – but at the time it wasn't something on my radar screen.

MR. COFFEY: Were you – did you – in 2005-2006, did you make any inquiries about what this legal situation was in relation to any Churchill – Lower Churchill Project, okay, and the assets that would be involved in it, and the Public Utilities Board? Did you make any inquiries about whether the PUB had any say or not, or where all that stood?

MR. E. MARTIN: Yes, I did –

MR. COFFEY: Okay, what were you – what did you – who told – who did you speak to and what were you told?

MR. E. MARTIN: I can't remember who I spoke to. But in the context of, you know, we were putting together, you know, an overall framework and road map in terms of how to move forward. You know, I was gathering – we were gathering data from everywhere. Some was obviously newer to me than others. And it came up during that period of time that the, you know – I can't exactly remember where, Mr. Coffey, but it was, you know, obvious that the Lower Churchill had been exempted from PUB oversight with respect to, in my estimation at the time, moving ahead with a –

MR. COFFEY: Yes.

MR. E. MARTIN: – development.

MR. COFFEY: With a development.

MR. E. MARTIN: Yes.

MR. COFFEY: Some development of the Lower Churchill.

MR. E. MARTIN: Yes, correct.

MR. COFFEY: Okay.

So then to summarize, up to this point, from sometime between mid-2005 when you arrived and I'll suggest perhaps as a cut-off point here 2008, okay? During that period you understood, number one, that for whatever reason or reasons – good or bad – responsibility for planning for future generation needs in this province was that of Newfoundland and Labrador Hydro. Is that correct?

MR. E. MARTIN: That's correct.

MR. COFFEY: And, number two, that any development on the lower – of the Lower Churchill, hydro development, would be exempt from PUB oversight because of something that had happened before you ever arrived.

MR. E. MARTIN: That's correct.

MR. COFFEY: Okay.

And I'm gonna suggest to you that those two understandings probably – did you have any sense that they would've permeated your senior management – all of your senior personnel would've understood the same things?

MR. E. MARTIN: I believe they would.

MR. COFFEY: And in your dealings then, you know, from 2005, you know, right out through – up until, certainly the reference to the PUB, okay, up until that point – in your dealings with government personnel those two understandings would've grounded your dealings with them too, wouldn't it?

MR. E. MARTIN: That's correct.

MR. COFFEY: Now, you've spoken, I believe, about the rationale for – I'll use the word "rationale" – for the creation of the Energy Corporation, which is now known as Nalcor. You've spoken to the Commission about that.

MR. E. MARTIN: Yes, I have.

MR. COFFEY: And would it be fair to say that – and I don't want to be too financially crass about it, but Nalcor was tasked with buying the expertise needed – if the Lower Churchill was gonna be developed, to find that expertise?

MR. E. MARTIN: I'm glad you –

MR. COFFEY: Hiring.

MR. E. MARTIN: Yeah, I'm glad – I'm pleased you put the caveat in –

MR. COFFEY: Yeah.

MR. E. MARTIN: – because that's as a pejorative term, but I like the – better your term about hiring and acquiring –

MR. COFFEY: Yeah.

MR. E. MARTIN: – the necessary resources.

MR. COFFEY: Yeah, yes, yup.

MR. E. MARTIN: And the only reason I suggest that, Mr. Commissioner, is buying connotes, you know, whatever it costs but it wasn't like that. It was –

MR. COFFEY: And –

MR. E. MARTIN: It was a prudent, you know –

MR. COFFEY: Yeah, and the –

MR. E. MARTIN: – acquisition of that and we based our acquisition of people on benchmarks in the markets.

MR. COFFEY: Mr. Martin, I assure you I wasn't – it wasn't meant in that way at all. It was just simply – it was in – you understood that, look, it's my job to go and, you know, reasonably hire what's required and in order to do this. But relating to that – and here's where I'm going with it: Was it your understanding that that expertise did not exist within government at that moment?

MR. E. MARTIN: And that was clear. And, once again, very quickly, that's not a pejorative statement –

MR. COFFEY: No. Yeah.

MR. E. MARTIN: – you know, they're two different organizations formed for two different reasons. So I wouldn't want to leave any impression that the quality of the government people is not very high.

MR. COFFEY: Nalcor was not being created to duplicate what already existed.

MR. E. MARTIN: That's a very good point. That's exactly how I would look at it.

MR. COFFEY: And then, I'm going to suggest to you: arising out of that – naturally arising out of that would be an understanding by both government personnel and by yourself and your senior personnel at Nalcor that the government personnel were relying upon yourselves at Nalcor for advice in relation to the Lower Churchill.

MR. E. MARTIN: That's correct.

MR. COFFEY: You've been asked by Ms. O'Brien about the decision support packages for DG2 and DG3. I will tell you that I have asked Mr. Harrington and Mr. Bennett about those, about who decided what went into them, okay? I'd ask you to focus on 2010, DG2 DSP, okay? We have the documents here, they're here.

My understanding from Mr. Harrington was that despite the fact that the DSP, that is an exhibit, I think it is 60-odd pages – 62 or so – PDF pages. His indication was – was that look – he said, Mr. Coffey, there's a list of documents relating to this – and they're appended to it, okay? And I – he said the stack of paper – he motioned, and I suggested to him that he was motioning about two feet high, the supporting paper, okay?

Are you familiar with the idea that the decision support package in its entirety would be this huge massive paper?

MR. E. MARTIN: I believe it was several volumes.

MR. COFFEY: Now, the decision support packages for you – for the Gatekeeper at DG2 is dated, the cover page I think is dated November 17, I think 2010, and – or 16th, and then the board is the 17th, but they're both before the November 18, okay?

What I'm going to ask you about is this – is that – first of all, in terms of the – what the board received, which is I think 200-and-some-odd pages at that time, did they receive that on that day or the evening before?

MR. E. MARTIN: I can't recall.

MR. COFFEY: And how about the package that you received? The one you signed off on?

MR. E. MARTIN: I would've received it – I can't recall exactly, but it would not have been that night or that day.

MR. COFFEY: And what I'm getting at – getting around to, Mr. Martin, is this – is trying to ascertain how to – the level of centralized knowledge, you know, at DG2.

MR. E. MARTIN: Mm-hmm.

MR. COFFEY: Who was charged with deciding what went into the DG2 support package? You know, whose responsibility was it to decide what goes in – what's in and what's out?

MR. E. MARTIN: I guess there's responsibility and accountability. I mean, responsibility, in my mind – the project team would put that together. It's a large document. I certainly wouldn't be into it day to day. And – so they would, you know, pull it together. You know, I would have a review of that and such, and whether or not I say put something in or put something out, the package was the package, and I would've signed it. So at the end of the day, you know –

MR. COFFEY: Oh yeah. Ultimate responsibly.

MR. E. MARTIN: Absolutely.

MR. COFFEY: Of course.

MR. E. MARTIN: You know – so, you know, was I always asked if something would go in or something would go out? Not necessarily, but at the end of the day, I signed the package.

MR. COFFEY: And if we go then to the DG3 package, which is more than 500-pages long, okay, there was only one package, I think, at DG3. Was that correct – for both yourself and for the board?

MR. E. MARTIN: That's correct.

MR. COFFEY: And in relation to that – the same question – so, like, who decided what went into the DG3 support package – decision support package?

MR. E. MARTIN: I'll give you the same answer.

MR. COFFEY: And Ms. O'Brien has pointed out that, I think, the IPR is in the DG2 report – IPR report is in the DG2 package, but it's not in the DG3 package – the actual report. Are you able to identify – ultimately, you know, in theory, you're responsible. I understand that. But in a practical way, whose decision was it that – you know, it was in the last one, but it's not going in – it's in the 2010, but it's not going in the 2012. Do you know whose?

MR. E. MARTIN: You know, I don't – I can't name a name, no, Mr. Coffey. But I – you know, but I will say again –

MR. COFFEY: Yeah.

MR. E. MARTIN: – you know, the responsibility to put the package together was in the project team, but –

MR. COFFEY: So that would be Mr. –

MR. E. MARTIN: But I signed off on it, so –

MR. COFFEY: Oh yeah.

MR. E. MARTIN: – you know.

MR. COFFEY: So that would be Mr. Harrington and Mr. Kean, effectively?

MR. E. MARTIN: And Mr. Bennett would be – I would expect Mr. Bennett would –

MR. COFFEY: Would also have a hand –

MR. E. MARTIN: Absolutely, you know, just because of the hierarchy of the organization. I wouldn't bypass Mr. Bennett to go to Mr. Harrington and Mr. Kean only, but they – the three of those, for sure, would've had a hand in it.

MR. COFFEY: Now, the – because who decided, for example, at DG3, what went in that package, or did not go in the package, was deciding what the board members would and would not know, weren't they?

MR. E. MARTIN: That's one element. Certainly there was tremendous dialogue at the board as well, over, you know, a much higher-than-normal meeting schedule, so the document would be one element.

But, Mr. Coffey, I'm gonna say this in a way not to – you know, it's probably obvious, but, you know, obviously we wouldn't give them a document, let 'em read it and go in and ask for a vote. I mean, the document is a guideline. The – I believe the key – many of the key issues, discussions, concepts and ability to discuss was handled verbally. That's where I found was the highest value.

For instance, on, you know, any type of design element or whatever, various board members, you know, would have questions on everything, and that dialogue would be, I think, if not as important, probably more important that just the document.

MR. COFFEY: And we have the board minutes themselves, but they do reflect, for example – I'm gonna suggest to you that, on, like, technical design matters, Mr. Bennett might make a presentation, on risk, Mr. Sturge talked to the board about risk?

MR. E. MARTIN: Mr. Sturge would talk to the board about the risk process, but if you're talking risks –

MR. COFFEY: Yes.

MR. E. MARTIN: – you know, there would be representatives of the actual people executing the various divisions.

So, for instance, at Muskrat Falls –

MR. COFFEY: And that's what I'm talking about here. I'm not talking –

MR. E. MARTIN: Okay.

MR. COFFEY: – about –

MR. E. MARTIN: No problem.

MR. COFFEY: I'm focusing on that.

MR. E. MARTIN: And the only reason I expanded is because Mr. Sturge –

MR. COFFEY: Sturge.

MR. E. MARTIN: – in that process, would have accountability across the organization for that, but the actual risk management would be handled within that division.

So, you know, risks would not be presented by Mr. Sturge, by design. It would be presented by the people who were managing the risks.

MR. COFFEY: So that would be Messrs. – who?

MR. E. MARTIN: It could be – depending on who Mr. Bennett and Mr. Harrington, you know, decided. It could be them or whoever else they would want to bring to the table.

MR. COFFEY: And then a decision then as to whether or not to tell the board members at – for example, at DG3, about, you know, the existence of these P-value estimates for cost and for schedule, whose decision was it to tell the board or not tell the board about those?

MR. E. MARTIN: Well, you know, I believe that we discussed risk at the board so –

MR. COFFEY: Oh, no, I'm – well, those – those particular topics – who decided that?

MR. E. MARTIN: You know, it's – when you put it in terms of a decision, it just comes across as the thought that somebody would say – myself or someone – would say we're not or we are going to talk about it. It just wasn't like that.

You know, the process that we had developed, you know, at the board level, as I mentioned earlier, was lots of – you know, obviously lots of things were going on. The – myself and the staff and the company were responsible for risk management, and I saw my, you know, role in conjunction with others working with me to bring that to – bring all of those things to a high level and discuss, you know, the critical items, whether it be risk or financing or whatever.

So from that perspective, that was the design of the organization and the way we operated, and I'm responsible for that in the final analysis, Mr. Commissioner. So from that perspective, that's the way it was. I just wanted to make the distinction. It wasn't like do I say this or don't say this.

MR. COFFEY: Now, in relation to that – that idea – Mr. Bennett has – not in relation to the board, but in relation to government personnel – has told us that, although he never explicitly discussed with you whether or not he, you know, could tell, for example, Charles Bown, about this 500-million strategic risk estimate, he – Mr. Bennett has told us he never discussed it with you, explicitly, but he understood implicitly that he wasn't to speak to Mr. Bown about that nor about the P1 slash P3 schedule.

He's told us that. He said, if that was going to be said, that was Ed Martin's decision. So the idea that somebody could implicitly understand something without it being spelled – you know – being – you know, rearticulated.

In relation to the board, amongst yourself, Mr. Bennett – and Mr. Bennett, in particular, who's – it would be fair to say that Mr. Bennett could inferred – reasonably inferred – that if what the boards gonna be told about cost and risk is Mr. Martin's call. And Mr. Martin doesn't lead, you know, doesn't explicitly say something in a particular way, spell it out – then Mr. Bennett's not gonna do it either.

MR. E. MARTIN: I didn't feel that way about it.

MR. COFFEY: You didn't?

MR. E. MARTIN: No, not at all. Mr. Commissioner, just a little bit of, you know, colour on that.

We had open board meetings. I cannot think of – if not any time – many times that I didn't have the leads of each business division when they were discussing things with the board in the room, or possibly with others – it was an open forum. And once again, you know, if we use the strategic risk of 497 or the P1 time risk thing – I've explained my thinking around that. So I won't go there again.

But to come into the board and, you know, give them a rolled-up view of where things were – yes, if discussions were undertaken, it was fairly open dialogue. And you know, I'll use the example again of, you know, we wanted to spend early to maintain some of the weather windows before sanction. That would've been discussed, and I think, you know, whatever came up could've been discussed – it was an open forum.

MR. COFFEY: But if Mr. Bennett was there and it was an open forum, if he's still understood that he's not to speak on certain things. Whether (inaudible) understood it, from you perspective, that it's self evident then that he's not going to.

If he understood what I'm – if Ed's not gonna tell him about the 500 million at DG3, and going into why we've discounted it, then Gil's not going to either.

MR. E. MARTIN: I didn't feel that way. I mean like I said, it was a fairly open forum, we all knew each other. Gilbert certainly knew many of the board members as well. You know, I'm sure he would have – well, I would've expected he would have said something because the way the atmosphere was at the board, it would, you know – it would've been well okay, let's talk about that. I didn't feel the relationship was such that we would shut dialogue down – that wouldn't occur to me.

MR. COFFEY: Now it is clear, I believe, and – well, I shouldn't say it's clear I believe, my beliefs don't matter.

I believe the – though the documents do show that at DG2, the board was in the decision support package and made aware of the $300 to $600 million management reserve. They were made aware of it? The estimate –?

MR. E. MARTIN: Well –

MR. COFFEY: – contingent – contingency.

MR. E. MARTIN: Yeah, it was in the package.

MR. COFFEY: In the package. That's fine.

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

MR. COFFEY: (Inaudible) – it was.

And – what were they told at that – in writing – were they told anything equivalent to what the PUB was told about how Nalcor handled that at DG2?

MR. E. MARTIN: I can't recall, Mr. Coffey.

MR. COFFEY: Okay.

Now when we go to the DG3 Decision Support Package, I'm gonna suggest to you that in the fall of 2012, November - December 2012, this – I'm gonna suggest to you this was the situation – that two years before the strategic risk had been estimated at 300 to 600 million and – to use a phrase – had been zeroed, negated, from your perspective.

Correct?

MR. E. MARTIN: Is that – you're saying DG2?

MR. COFFEY: DG2. Two years before, in 2010 –

MR. E. MARTIN: Yeah.

MR. COFFEY: – that was true.

MR. E. MARTIN: And by negated, I think offset.

MR. COFFEY: Offset, yes.

MR. E. MARTIN: Yeah, yeah.

MR. COFFEY: And –

MR. E. MARTIN: Yeah.

MR. COFFEY: If we look at the QRA that Westney did in May, June – and finalized, I believe, in September or so, 2012, and look at the curves, the – particularly the strategic risk curve – the range – and you've been – everyone's been focused on this P50, 497 million – for understandable reasons. But if you look at the range, the P25 to the P75, I think you'll find the range is 333 million to 633 million. Okay?

So you would have been aware of that? You would have looked at the strategic risk curve in DG3?

MR. E. MARTIN: That's correct.

MR. COFFEY: So you would have been aware that two years before the range was 300 to 600 million. Now, in the fall of 2012, the range is still – and it's a little – it's 33 million higher at the low and the high ends, but it's still roughly just over 300 million to just over 600 million. You were aware of that in 2012.

MR. E. MARTIN: I just said that.

MR. COFFEY: Can you tell the Commissioner why, then, the board was not told about that like they had been in 2010? Why weren't they told in 2012 what they had been in 2010?

MR. E. MARTIN: As I mentioned, I won't go into great detail, you know, in 2010 we had that information mid-year. We ran the series of mitigations that I'd gone through at great length, and, you know, the advice that I understood and accepted was that we had reduced that to nil and –

MR. COFFEY: In – at which stage? 2010 or '12?

MR. E. MARTIN: At '12.

MR. COFFEY: At '12, okay.

MR. E. MARTIN: And then, and as I mentioned earlier, at the board level we were still certainly recognizing strategic risk. I didn't use those terms with any of them, as I've said before, but I was clear that, you know – I'll step back one a bit again and use the example again of – we would have been having discussions around schedule and such, because we wanted early works to start and fund. So, those types of things were being discussed. Productivity was obviously a key discussion and the risks around that.

And, then to move back to where I was just a moment ago, it would be clear that exposure above the six point two existed. And we would have discussed, you know, in some fashion they're unknown but there was understood that things, Commissioner, could additionally happen and our attention turned to funding.

And I'll stop there because we went past that again this sort of thing. From a funding perspective, we received a contingent equity letter from the province, which would have satisfied the board that they felt that could be funded.

MR. COFFEY: Now, back to the beginning of your answer – who told you that at DG3 the strategic risk, which ranged from $333 million to $633 million, who told you that that had been completely offset?

MR. E. MARTIN: Well, I went through the -

MR. COFFEY: No, no who? Please name the individual or individuals who told you that that was the case.

MR. E. MARTIN: So I just need a sentence to set it up and then, you know, I'll get to it because, you know, it's not a person is my point.

You know, the way this would work is – the team would come forward and I would, once again, look at a Gilbert, a Mr. Harrington, Mr. Kean, there could be others in that league and we would go through the results of what was coming out and the series of mitigations. We'd go through it in detail, we'd have a session on that so it would be a group talking it through with me. And that would be an ongoing process, as I mentioned, over the years so it's not a strategic risk amount that just came up on – that's it. This would be an ongoing process over time because we were constantly identifying risks and mitigating risks. That was a key activity of the project team.

MR. COFFEY: I come back to, who told you?

MR. E. MARTIN: Mr. Bennett, Mr. Harrington, Mr. Kean and you know, two or three others who were likely in the room.

MR. COFFEY: So, you're – none of them, certainly none of the first three individuals you've named have opined in any way that that happened, okay. Do you understand that?

MR. E. MARTIN: I don't understand that, no.

MR. COFFEY: In fact, just to put this in context, Mr. Bennett has told us that in relation to the 497 million slash 500 million P50 strategic risk estimate at DG3 – that when asked why he hadn't told Charles Bown about it, he said, well if anyone was going to tell government it was you. And that suggests, in Mr. Bennett's mind, the $500 million figure still existed and hadn't gone away – and he was the vice-president of the Lower Churchill Project.

So how do you – one square Mr. Bennett's understanding of that estimate, and who would know, who would decide whether government got told – and he says it was you – versus your view that – your understanding that at DG3, that it had been completely mitigated? Can you –

MR. E. MARTIN: Uh –

MR. COFFEY: – I'll just ask you, I want to put it squarely; I mean, can you explain how those two states of affairs could exist?

MR. E. MARTIN: Well, Mr. Commissioner, I – you know, I can't speak for what's in Mr. Bennett's mind –

MR. COFFEY: Okay.

MR. E. MARTIN: – but I think it's – I do believe it's a bit of a bridge too far, the way the question was phrased – that when Mr. Coffey said, you know, telling someone about the 497 – that could be telling about the 497 that had been mitigated. It could be saying the 497 had not been mitigated. I just don't think you can make the jump to say that because he suggested the 497 wasn't discussed with someone, it was – still existed. I just don't know what was in Mr. Gilbert's – or Mr. Bennett's mind on that. So that would be a, you know, a bridge too far for me to assume that.

MR. COFFEY: Which suggests, of course, that you and Mr. Bennett never discussed the topic.

MR. E. MARTIN: I don't – that doesn't make –

MR. COFFEY: If you don't know what was in –

MR. E. MARTIN: – logical sense to me.

MR. COFFEY: – if you don't know what was in his mind – and this is an important topic and he was your vice-president, I'd suggest you never actually discussed it. Because otherwise you'd be able to tell us, well, this is what Bennett told me, and this was his reasoning.

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

MR. COFFEY: Okay.

Now, Mr. Martin – and you have indicated that, you know, you were not – your practice was not to keep detailed notes, which is fair enough, you know, for some things. Sometimes the documentary record exists anyway, so why duplicate it?

But what I want to ask you about is this – is – because everyone from – I think every government witness agrees that, you know, whenever they ask a question or wanted something canvassed, that, you know, either yourself or Mr. Bennett – and particularly you though, was quite willing to and did provide the information; (inaudible) discuss it, and no one takes any issue with that, okay?

But that route, of course, requires either speaking – working off of documents, like a documentary presentation – a PowerPoint – and/or verbally delivering it. Or based upon the presentation, the deck, or what you're carrying in your head, or what you're reading from a page.

So, what was your practice? You gave many presentations to Cabinet and to various senior government politicians and civil servants. What was your practice?

MR. E. MARTIN: And what was your third –

MR. COFFEY: Oh –

MR. E. MARTIN: – option? What was your third –

MR. COFFEY: The third option –

MR. E. MARTIN: – option?

MR. COFFEY: – is that, well, the deck is there but you're actually using detailed notes as well – that you have handwritten or typed notes.

MR. E. MARTIN: I would say the first two. The third one – I wouldn't bother with handwritten notes. I just don't – I didn't find that to be anything I needed.

MR. COFFEY: Now then – and then relating to that, if we could bring up, please, Exhibit P-01525. And I'm using this just as an illustration, okay, because there's –

THE COMMISSIONER: That's –

MR. COFFEY: – Mr. Kennedy has many other notes.

THE COMMISSIONER: – not in your book.

MR. COFFEY: I apologize, Commissioner, I didn't look. But they'll come up on the screen, and – P-01525.

Now, if we could go, please, to page 19? Just scroll down a tiny bit, please? Yeah. Mr. – this is – these are Mr. Kennedy's notes, Mr. Martin. It's dated, top left-hand side, October 2, 2012. And there's a cost estimate change since DG2. And it's my understanding, based on the evidence, that this was a document produced by Nalcor – probably part of a deck – and his handwriting is there.

And it is indicated, I believe, that this was – these notes were made during a presentation by yourself – or a meeting with him.

When you were using this sort of a deck, what would you – this sort of a – not a deck, but like a slide –

MR. E. MARTIN: Could I please –

MR. COFFEY: Sure.

MR. E. MARTIN: – could we just scroll to the front? Can I just get a –

MR. COFFEY: Sure.

MR. E. MARTIN: – just a quick –

MR. COFFEY: Oh, no – yeah, this – oh, you go ahead, but this is just – as it turns out, unfortunately, this is just one page, right, in this particular – it is part of another (inaudible) –

MR. E. MARTIN: Oh, I understand what you're saying. Let's proceed; I just find it useful, usually, to see the cover page and the purpose and those things –

MR. COFFEY: Yeah.

MR. E. MARTIN: – up front; it usually triggers –

MR. COFFEY: Yeah.

MR. E. MARTIN: – a bit more of a memory in me.

MR. COFFEY: Well, I – you know (inaudible) –

MR. E. MARTIN: No, but I'm fine; let's proceed.

MR. COFFEY: – Mr. Martin, the heading here, and – is simply – I gather the purpose is to explain to Mr. Kennedy, the minister, the ways in which and the reasons for the cost increases between DG2 and DG3 – cost estimate change since DG2; and you can look at the various analyses – if you can just scroll up a bit, please?

There we are. And enhance it a bit, please? Yeah, bigger? You look at the bottom of the page there, you'll see the different categories, Mr. Martin – see that?

MR. E. MARTIN: I do.

MR. COFFEY: Okay.

So, that was the meeting.

MR. E. MARTIN: You know who else was at the meeting, Mr. Coffey?

MR. COFFEY: No – well, I haven't gone back to check, but the purpose of this is this – it's not so much this particular meeting as it's – I'm talking about your presentation style – is what I'm trying to (inaudible) –

MR. E. MARTIN: Well, that's very helpful to hear that; I understand now.

MR. COFFEY: So, you know, we have this here, and if we could go down, then, to – please – pages – 22?

This is a meeting of October 18, 2012: "Meeting w/ ED re: DG3 #s."

And this is a document that I started – well, I mostly took Mr. Kennedy through. It goes from pages 22 to 25 here. And there are very detailed write-downs here by Mr. Kennedy. (Inaudible) –

MR. E. MARTIN: And, Mr. Coffey, just – excuse me –

MR. COFFEY: Yes.

MR. E. MARTIN: – for interrupting, but do you know anywhere in these notes who is – are the attendees noted anywhere else in his notes, do you know?

MR. COFFEY: Not in this one that I am aware of.

MR. E. MARTIN: Okay.

MR. COFFEY: And that's not to say there wasn't somebody else there, but he does – he styles it, and his habit, apparently – based on what we've seen, his habit was to note whoever was in the room. In the – in other situations, it's apparent; he's done that. But here it just says "Meeting w/ ED."

And the broken cost increase, and more concrete and so on, and she probably changed Gates, 267, and then it goes down. And as he explained to the Commissioner – Mr. Kennedy did – he said this was broken down in detail. And you can go through the notes some time; I won't pick them out.

What I'm asking is this: How would you know this? How would you have those figures?

MR. E. MARTIN: I would have been told them.

MR. COFFEY: Told by the project management team, presumably.

MR. E. MARTIN: Yes.

MR. COFFEY: So you would have come to the meeting with – unless there's a deck that has all these figures broken down on it – and I stand to be corrected but I haven't seen one – you would have had some other documents that broke out the classifications into subsets, subcategories?

MR. E. MARTIN: Not necessarily. I'm trying to understand why you would say that.

MR. COFFEY: Well –

MR. E. MARTIN: You know, am I missing something here?

MR. COFFEY: Well, if there's not a deck, like, that has all these numbers in it, then the only way Mr. Kennedy could have learned of them from you is you told him about it. Correct?

MR. E. MARTIN: That would have to be correct, yes.

MR. COFFEY: And – yes. And, therefore, but in doing so you would have to have had something, some source document, or carried it around in your head.

MR. E. MARTIN: I would say the latter.

MR. COFFEY: The latter being carried it around in your head?

MR. E. MARTIN: Yes.

MR. COFFEY: Okay, you would have – so based on source documents you'd seen at (inaudible).

MR. E. MARTIN: Yeah, I've done both that – I've done both of that, Commissioner. And that's why I was wondering about the attendees here too. I've done it both ways before, so I – it wouldn't bother me to say I had those figures in my head. That would be reasonable. And – but, oftentimes, and I would say the vast majority of times, I would have someone with me or, you know, there'd be other people in the room. I just don't know here.

MR. COFFEY: And you're in Mr. Kennedy's company enough, and I suggest to you to – you would have understood that he took notes?

MR. E. MARTIN: Yes.

MR. COFFEY: And would you have understood that he would have taken notes as a record of what he was being told, suggesting that he was going to rely upon what he was being told?

MR. E. MARTIN: I think that would go to follow, yes.

MR. COFFEY: Could you tell us please who of the project management team who told you that the DG3 schedule was achievable?

MR. E. MARTIN: A similar answer would have been a group, you know, comprising of Mr.

Bennett, Mr. Harrington and some others who would've sat down and gone through that.

MR. COFFEY: So did you ever ask them to document that that was the case?

MR. E. MARTIN: I can't remember, but that would not, Commissioner, be something that I would, you know, be doing. I would assume that they would handle that. I wasn't chasing – not chasing, but I wasn't demanding paperwork, I was being reported to.

MR. COFFEY: You've – and I stand to be corrected but I think your words were, sometime in the past two days: It got me back into the mindset that the schedule was achievable. We suggest that at some point your mindset was it was – it may not be achievable.

MR. E. MARTIN: I can't remember saying that.

MR. COFFEY: So – and you understood, you know, similarly – you already have told us that you understood that the schedule was aggressive or very aggressive, depending on –

MR. E. MARTIN: Depending on how you want to measure that.

MR. COFFEY: Right.

In the material, the 525 or so pages in the decision support package given to the board at DG3, why were – wasn't the board told, you know, that the schedule is aggressive or very aggressive?

MR. E. MARTIN: I don't know if it was in the document or not, but I would've discussed it with them.

And at the risk of repeating it again, you know, Mr. Commissioner, on that note, the types of discussions we were having about early works and those types of things, I mean that discussion was on the table and, you know, normal is a strong word, but weeks were moving by and, certainly, the longer you go, the tighter it gets, and we were constantly, you know, on that topic.

And, you know, it wasn't like a point in time that, you know, okay, let's talk today about schedule for the first time in six months. It just wasn't that way. It was certainly a total or a major, you know, focus for the –

MR. COFFEY: Well –

MR. E. MARTIN: – for the team and the board and such.

MR. COFFEY: To suggest that something was achievable and, you know, and mean different things, if you pair that with it, was aggressive or in very – or very aggressive, I'm gonna suggest to you that if someone heard the phrase: the schedule is very aggressive but achievable, might reasonably infer that it's not likely but we may do it, we may get there.

MR. E. MARTIN: Like, you know, I can't agree with that Mr. Coffey, because, you know, I just wouldn't describe it that way. I can't not say others might not; I just can't speak for that in terms of how people would perceive certain things entirely.

I think the value of constant and regular dialogue, Commissioner, was helpful to flesh that out; questions asked by the board, discussions, approvals. Once again, I think – I believe that through that, you know, ongoing discussions around those types of things, I'm – I would like to think that they at least came in a reasonable bound of understanding together.

MR. COFFEY: So if the board members didn't understand that there was a – based on probabilities, a probability assessment, you know, in the order of P3 for, you know, achieving first power in July 2017. If they didn't understand it, then their failure to understand that explicitly or certainly that it was a long shot, okay – instead of if – I want to use the word long shot instead of P3. If they didn't understand that, then the failure of them to understand that rests with you, doesn't it?

MR. E. MARTIN: Mr. Commissioner, I won't go on again about it. You know, I will make one quick distinction and refer back to the schedule, entirely different from the time risk analysis that the P1 and P2 are being referenced from my perspective. So, Mr. Coffey, I – you know, I believe – I feel that you're suggesting the schedule was a P1 or a P3 and I do not see it that way at all.

MR. COFFEY: Well, no –

MR. E. MARTIN: With respect to what the schedule could deliver, yes, it's my responsibility to describe to the board, in conjunction with others, in terms of how I perceive it and what I recommend and I did that.

MR. COFFEY: And if the board did not have a proper understanding, or an accurate understanding, then that rests with you because it's certainly not their fault.

MR. E. MARTIN: That goes without saying.

MR. COFFEY: Similarly, Government of Newfoundland and Labrador personnel, if they did not have an accurate understanding of this schedule and the parameters around it then that rests with you. It wasn't Gil's problem, it was yours.

MR. E. MARTIN: You know, two things. First off, you know, I'm not avoiding accountability here, Mr. Commissioner, on that type of thing, so that's not my point. But I – as you said it the second time, I did have an additional point to make, that – you know, accountable for describing it, you know, in my mind at the summary level, you know, with a good basis of information around it, my perspective and the company's perspective laid over it and give a view. I can't comment on the capacity of the people receiving that data to, you know, be able to assess that.

I think the people I was talking to were good people. You know, well qualified, don't get me wrong, but I just wanted to add that caveat. I didn't want – I'm not afraid of accountability. I didn't want to take it for how, you know, someone listens, perceives or digests. I can't be, you know, omnipotent.

MR. COFFEY: Well, final point then, in relation to both the board but in – particularly from my perspective, the government personnel – and this would include – I don't represent the politicians, but politicians as well as the civil servants, okay.

You consciously decided, did you not, not to put in writing to them – so there'd be a documentary record about what you knew about the schedule and – at DG3, and what you knew about management reserve estimates. You consciously decided that. Your organization would not convey that to either the board of which you were a member, and the government personnel – politicians and civil servants – who you knew were relying on you. You decided you were going to talk to them, but not put it on paper.

MR. E. MARTIN: There's no question in that what to – in filing – it's going to the board or the government, you know, is my decision; so let's put that on paper right away. But, I just want to test something, Mr. Commissioner, in terms of I believe it was – there were things in writing. You know, the schedules were on paper, costs were on paper. We made multiple presentations.

So, yes, I did have things on paper. My perspective of achievability of the schedule and the – you know, and the fact that my understanding and acceptance that the strategic risk identified, you know, mid-year was taken care of, you know, but there was additional risk afterwards. I can't remember putting that in writing, you know, but I didn't feel compelled to do that because of the reasons I've already talked about. But I was very clear in terms of how I recommended achievability of the schedule and what, you know, what the aggressiveness around that was and the things we had to do.

And I was clear on the costs and I was clear on the fact that over and above the 6.2 there was risk that we had to fund. And once again, the manifestation of that is a contingent equity letter from the province. For instance – so when you saw it in writing, you know, Mr. Commissioner – I just want to flesh that out that, you know, it wasn't that we had a group of people on all sides of the equation going around with no paper at sanction. I just felt that was a – once again – a bridge way too far.

MR. COFFEY: Well – one final question, and I'd just like to explore the whole order of magnitude thing. You've told us that at DG3, you know, overruns – you're thinking hundreds of millions perhaps – I think that's the –

MR. E. MARTIN: I'm hoping you're asking me that because I'd like to answer that.

MR. COFFEY: Yeah, well that is – oh yeah, I'm asking, yeah.

MR. E. MARTIN: Once again, it's phraseology, Commissioner. You know, if my expectation was we were going to have overruns of millions of dollars, that implies to me that I had felt there was certainty around that; I would have put it in the estimate. That might be – what we're talking about here is unknowns. You know, the strategic risk types of things as we're talking about them now. And I don't know what they would have been, but –

MR. COFFEY: Oh, I understand that.

MR. E. MARTIN: You know, but I, you know, I was trying to put caveats around it that – for anyone listening to me on a range – I wanted to make clear – and it's my accountability – but if anyone was receiving thoughts from me, I think intuitively I would be able to say that the, you know, the premiers and the ministers – I wasn't conveying to them billions. That's all I was trying to say. I know that.

MR. COFFEY: You weren't conveying billions, yeah, yeah.

MR. E. MARTIN: I know that. So I wouldn't want to put them on the spot saying that: I told you that it was this, you know. No, absolutely not. And I don't know the exact words, but I think intuitively that if I – if they were asking about the unknowns, I think I would have left them the impression, well you've probably got to be thinking – if it ever did happen, you know, in the hundreds, you know, would be something I would say.

And the only reason I'm clarifying that is I wouldn't want to suggest to anyone that I was telling and making informed – you know, informing the government people or the board – anything else – that this was going to be quite massive and you need to be really worried – I didn't do that.

I didn't believe it.

MR. COFFEY: Pardon me?

MR. E. MARTIN: I didn't believe it.

MR. COFFEY: And yourself, and on just that point – you in your heart of hearts believed that this would come in at 6.2, didn't you?

MR. E. MARTIN: Yes, I did, with the understanding that with the unknowns –

MR. COFFEY: Yes (inaudible) –

MR. E. MARTIN: – you know, we could get a bump there. I understood that as well.

MR. COFFEY: Yeah.

MR. E. MARTIN: But, you know, relatively speaking, yes, absolutely. If I didn't, I wouldn't say it.

MR. COFFEY: And you conveyed that to your board and to government.

MR. E. MARTIN: That's correct.

MR. COFFEY: Thank you.

Thank you, Commissioner.

THE COMMISSIONER: Okay, thank you.

Todd Stanley, Terry Paddon?

MS. VAN DRIEL: No questions, Commissioner.

THE COMMISSIONER: All right.

The Consumer Advocate?

MR. HOGAN: Good morning, Mr. Martin.

John Hogan for the Consumer Advocate, in this case representing the ratepayers involved.

I'm going to start with the excess energy agreement, which Ms. O'Brien took you through; had some back and forth with her on that.

I just want to know – you were in charge of those negotiations, were you?

MR. E. MARTIN: Um –

MR. HOGAN: You led them?

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay. And you hesitated a little bit – what does that mean, was there other people involved or –?

MR. E. MARTIN: Oh, absolutely, you know, I mean –

MR. HOGAN: Okay. Who else was involved?

MR. E. MARTIN: – I'm accountable for all of those things.

MR. HOGAN: Yeah, okay.

MR. E. MARTIN: Who else was involved? Mr. Greg Jones was a key player.

MR. HOGAN: Who's he (inaudible)?

MR. E. MARTIN: Mr. Jones – he's currently running the Energy Marketing group. I can't remember exactly his position at the time.

MR. HOGAN: He's with Nalcor?

MR. E. MARTIN: He's with Nalcor.

MR. HOGAN: Okay.

MR. E. MARTIN: And I believe Mr. Humphries was involved as well. And they would have had other staff members with them, Commissioner, you know, around that time. So I would have been giving them the lead to negotiate. But once again, make no mistake, I mean, they'd be running it through me.

MR. HOGAN: Okay. And we've heard evidence from you as well about the term sheet negotiations. Was this any different? Was this in Halifax, did this take place here, was this much quicker? What was the – just give us some context around that.

MR. E. MARTIN: I would say probably similar in terms of the location; we often traded locations. I was directly at the table constantly for the term sheet negotiations. And myself and Mr. Huskilson would have spent, you know, quite a bit of time face to face on that, with our – with supporting staff, obviously.

On the EAA, I would've given the point more to Mr. Jones and those, you know, to run the day to day, but myself and Mr. Huskilson were fully in touch and – you know, and once again accountable for it, but not at the table directly as much.

MR. HOGAN: Okay.

And how did you convey authority to your negotiators? Was it done orally, was there documents presented to them?

MR. E. MARTIN: It would have been within, you know, the normal framework of – as I mentioned before how I organized the organization – vision, values, goals, objectives. They would have had, you know, a set amount of approval authority and they would go on with that. But I think it's fair to say, though, in these types of negotiations, you know, I had to sign off on it at the end, as did many others coming up through. When the final analysis, I'd sign off on it, so they did not have carte blanche to deal.

MR. HOGAN: No, they would never have signed off on it.

MR. E. MARTIN: Absolutely.

MR. HOGAN: They would come back to you and say, this is what we have now. And you would say, go back – come back again.

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

MR. HOGAN: Yeah.

MR. E. MARTIN: And they would also – and this would be normal. Like, we would – they would come up and discuss with me where they're going, where they think it should be, you know, what they're trying to achieve and the strategy. I would go through that with them, with others and I would say: fellows – or guys and gals – okay, I got you. You know, if that's where you get to, go for it. If you don't get there, well, we got to go back at it and come back.

MR. HOGAN: Well –

MR. E. MARTIN: I gave them a framework to deal, obviously.

MR. HOGAN: A written framework or was it all oral discussions?

MR. E. MARTIN: I – you know, I don't know if they were writing it down. I did not write letters and stuff to people, no.

MR. HOGAN: Okay. You never said: here's your authority, what you're permitted to negotiate within this mandate?

MR. E. MARTIN: I told them verbally.

MR. HOGAN: Yes.

MR. E. MARTIN: They repeated it back to me. I'm sure they made their own notes because they wouldn't want to miss out, you know, in terms of what I was telling them, but I didn't write notes or send letters, no.

MR. HOGAN: And what about authority from the shareholder? Were they involved?

MR. E. MARTIN: On the EAA I believe they were, I just can't remember who. But I could stand to be corrected on that.

MR. HOGAN: Like –

MR. E. MARTIN: But that being said, you know, we would not proceed without government alignment as well.

MR. HOGAN: So even though it was your authority to sign off on the deal, you still would have had to get final authority from the shareholder on this.

MR. E. MARTIN: I did not have to, but I did.

MR. HOGAN: You did. Okay.

So I'm just – I'm familiar a little bit in the oil industry when negotiations take place. There's usually things called mandate letters. Are you familiar with those? The negotiating team would get a mandate letter, you know, from the owner to their executive to say: this is the authority you can –

MR. E. MARTIN: I've done a lot of negotiations on the oil side and I never saw one of those before.

MR. HOGAN: Okay. Actually, you – when Ms. O'Brien was asking you about your P50 decision with Petro-Canada, you used the term authority matrix. Maybe that's – you're familiar with that, obviously. Would you –

MR. E. MARTIN: Oh absolutely.

MR. HOGAN: So what would that be? Maybe it's similar to a mandate letter.

MR. E. MARTIN: It's not similar to a mandate letter.

MR. HOGAN: But would –

MR. E. MARTIN: Actually, I don't know what a mandate letter is, so I'll put that aside. So I shouldn't say that, Commissioner.

MR. HOGAN: Yeah, fair enough. So what would an authority matrix be?

MR. E. MARTIN: I was just about to get into that. It is – and I think there's an example on file that Nalcor has is very similar to what the – what I would have been – experienced in other organizations, but in – and, Mr. Hogan, you know, I may be – help you because I think there's an exhibit on it, but if you look for it, it was where, I think, I saw the board of directors had unlimited authority, Mr. Commissioner. I'm trying to, you know, help you jog your memory. And then it was –

MR. HOGAN: Is this for the numbers?

MR. E. MARTIN: Yes, this is the numbers. And then, you know, I had, you know, AFE authority and on down through there. That's the authority approval matrix.

MS. O'BRIEN: It's probably – sorry to interrupt, Mr. Hogan –

MR. HOGAN: No.

MS. O'BRIEN: – P-01542 that Mr. Martin is referring to. It's in tab 29 of his book.

MR. E. MARTIN: And would you like to bring it up?

MR. HOGAN: You can bring it up. I remember this from earlier this week.

MS. O'BRIEN: That's volume 2.

MR. HOGAN: But that was authority in terms of expenditures, correct?

MR. E. MARTIN: That's correct.

MR. HOGAN: Not in terms of negotiations, right? Yeah.

MR. E. MARTIN: Thank you very much. That's – when I say –

MR. HOGAN: Okay.

MR. E. MARTIN: – approval of authority matrix, just to be clear, that's what I'm talking about.

MR. HOGAN: No authority matrix, no mandate matter letter, no instructions from the shareholder to you with regards to your authority in the UARB EEA negotiations. That didn't exist?

MR. E. MARTIN: Well, I would – well, Mr. Hogan, I think that's what this is. You know, I have – this is the Lower Churchill Project, but we would have had an approval authority matrix, you know, as well for the company. But –

MR. HOGAN: But you're not spending company money when you're entering the EEA, you're making a decision about power sales and things like that. I mean, I don't think this would apply, would it?

MR. E. MARTIN: It would – actually, it would because the approval of the authority matrix, it covers different types of authority. There's a commitment authority and by that I mean – and that's probably the most important. You always look to commitment authority first because when you commit, you basically committed to expending money or causing something to happen that is irrevocable within the terms of a contract.

Also important but less to me, less of a challenge, is the expenditure authority. Because once you make a commitment, you sign a contract, you commit to a contractor – and say the value of that contract is worth $179 million, okay, that commitment is done and you're on the hook. And then when you expend on that contract, the contractor will send you an invoice. That invoice goes to the accountants. The accountants go to the contract and they tick off what that invoice is as per terms of the contract with associated, say, hourly time sheets. Then that goes to the person with expenditure authority.

So as you can see, there's not as much, you know, onus on the expenditure approver to approve because he's got – he just has to check the – that the accountants and the –

MR. HOGAN: So if –

MR. E. MARTIN: – contract is right. But on a –

MR. HOGAN: If you're saying –

MR. E. MARTIN: – commitment authority, Commissioner, that's the real deal because you're committing the company to something.

MR. HOGAN: What did you commit? Where would it fall under for the – you know, this is going a little bit beyond where I wanted to go with it, but if –

MR. E. MARTIN: Sure.

MR. HOGAN: If you're saying the EEA fell under this matrix, where would that fall under? How much money was being committed in the EEA? How much money was being spent, if you're saying that this is the authority that would apply to you in making that decision in those negotiations?

MR. E. MARTIN: Well, I think what – you know, first I'll back up for a second. I take – you know, I take your point. Now, this is –

MR. HOGAN: Yeah.

MR. E. MARTIN: You were asking me what an approval authority matrix is.

MR. HOGAN: If this doesn't apply, then that's fine. I'm not trying to – I'm just asking, you know –

MR. E. MARTIN: Oh –

MR. HOGAN: – where you got your authority to do negotiations?

MR. E. MARTIN: I understand what you're saying.

MR. HOGAN: Okay.

MR. E. MARTIN: In that context, I had my authority from the legislation, the *Energy Corporation Act*, that delegated the responsibility for running the company to the board of directors, who delegated to me to run those types of things.

MR. HOGAN: Okay.

MR. E. MARTIN: So, in essence, I could go ahead and do it on my own and commit on behalf of the company, but as a Crown corporation and with responsibility, I would never do that in the context of something that had this type of visibility.

MR. HOGAN: And – so you did go to the shareholder?

MR. E. MARTIN: Yes.

MR. HOGAN: So who – I'm not going to say signed off because they didn't have to, but who agreed? Was it the minister at the time, or was it the premier at the time, or both?

MR. E. MARTIN: I assume it would have had to been both. I would have run it up. I would have, as they say, run it up the flagpole.

MR. HOGAN: Okay.

Do you recall doing that or are you just – by standard practice that's what you would have done, specifically with regards to the EEA? I mean, just the –

MR. E. MARTIN: Yeah, I recall that.

MR. HOGAN: They were in the loop on that.

MR. E. MARTIN: Absolutely, and I think that's the point, as you say. They were – I would 100 per cent confirm that they were aware of what we were doing and what we did.

MR. HOGAN: And do you know how long those negotiations took place, over the course of a week, month?

MR. E. MARTIN: More than a month. I couldn't tell you more than that. It was, you know, low months probably.

MR. HOGAN: Yeah. Okay.

MR. E. MARTIN: If I think about it though now, Commissioner, we were also, I would say, months, low months by the time the UARB or decision came down and the time that it was completed. So I would say low months.

MR. HOGAN: I guess you started as soon as the UARB decision came out. Is that fair to say?

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

MR. HOGAN: Yeah, okay.

MR. E. MARTIN: And I would also note that Emera had approached us several times to do a similar deal way prior to the UARB issue. They wanted – you know, they wanted access to that power and, frankly, I was waiting for the right time to do that, you know, to give us – you know, put us in a good position.

MR. HOGAN: So the right time was after the UARB decision?

MR. E. MARTIN: After the UARB decision, yes, it had to be the right time then because we had –

MR. HOGAN: Well, that's my –

MR. E. MARTIN: Yeah.

MR. HOGAN: That's my question.

MR. E. MARTIN: Absolutely, but the point I was making there was that there were two willing participants here. And, you know, the reasons they wanted that UARB, they were – not UARB, the EAA they were keen to have that and wanted it badly. And from our perspective, it was a good thing for us, too.

MR. HOGAN: So if they approached you before the UARB decision, why didn't negotiations commence then?

Why wait 'til the UARB decision?

MR. E. MARTIN: I just didn't think we needed to do it.

MR. HOGAN: Okay.

MR. E. MARTIN: We had the power; we had markets. You know, I was waiting for how things unfolded.

MR. HOGAN: Just to turn back to this CDM issue again. I'm not gonna go over it all again, but I just have a few specific questions just so I can get clear in my mind what your evidence was, specifically in reference to the comparative analysis between the two options, okay?

And I think your evidence was you have to apply CDM equally to the Interconnected Option and the Isolated Option?

MR. E. MARTIN: My answer's yes, but I would just adjust the term equally.

MR. HOGAN: Okay, go ahead.

MR. E. MARTIN: I think you –

MR. HOGAN: What do you mean by that?

MR. E. MARTIN: Well, I think when you apply it, it depends. That's all. I didn't mean to confuse the issue. I just – I agree that you'd –

MR. HOGAN: Okay, well –

MR. E. MARTIN: – apply it to both.

MR. HOGAN: – let's just maybe – I'll follow up with these questions, and you can tell me if I'm right or wrong, 'cause if – my understanding, obviously, is the purpose of CDM is to reduce demand?

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay, so if we reduce demand on the Isolated Option, it means we're not gonna use as much oil, right? People are –

MR. E. MARTIN: That's correct.

MR. HOGAN: Right?

If we reduce demand on Muskrat Falls after it's built, we won't use enough – we won't use the same amount of electricity.

MR. E. MARTIN: That's right.

MR. HOGAN: But Muskrat's already built.

MR. E. MARTIN: Right.

MR. HOGAN: So it won't affect the price of building that project, will it? It will just mean customers leave the system?

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

MR. HOGAN: Okay. So, go ahead –

MR. E. MARTIN: I agree with that.

MR. HOGAN: – what's point B?

MR. E. MARTIN: Point B is that if you create additional energy that's not being used, you have a market for it; you can sell it.

MR. HOGAN: Yeah, I understand that.

MR. E. MARTIN: And you can apply that to the rates for the ratepayer, that's –

MR. HOGAN: Right.

MR. E. MARTIN: – point B.

MR. HOGAN: If you have extra energy you can sell it, and if we use CDM, we can sell more energy –

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

MR. HOGAN: Fair enough.

But the CDM only applies – if we use the CDM on the Isolated Option, and we only build to what we need, the point of CDM is that maybe we don't have to build as much, and we build up to our needs.

Muskrat Falls, we overbuilt in terms of domestic need. You agree with that, right?

MR. E. MARTIN: We built more – overbuilt is a pejorative term. We built a system that generated more energy, but it was still lowest cost.

And go back to your point on the Isolated Island. I think you're correct in what you're saying, in terms of it reducing demand, and I agree with that. I think –

MR. HOGAN: My point –

MR. E. MARTIN: – the point I made –

MR. HOGAN: Sorry.

MR. E. MARTIN: – quite clearly, Mr. Commissioner, is that my advice from the team was that we could not depend on that for planning the system on the Isolated side.

Our system's fragile. The experts, Mr. Humphries and others there, said they could not abide by using that in terms of how it worked in Newfoundland and Labrador from a – you know, from how effective it had been, and the fact we had such a fragile system, they could not depend on it for capacity.

That's what I was advised, and I agreed with that.

MR. HOGAN: I'll give you that. I'll take you at your word for that.

My point is, though, that the CDM would not affect both systems the same, is that it would have much more of an effect on the Isolated Option. Because, as you said yesterday, 60 – actually 68 per cent of the Isolated system is oil costs – price. Right?

MR. E. MARTIN: Yes, 60 –

MR. HOGAN: If we use CDM on the oil – we use less oil – the cost is going to go down?

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay. So they don't apply equally? 'Cause Muskrat Falls is nuts and bolts.

MR. E. MARTIN: I would agree with that. It's not equally – the impact on both of them not equally. If it was used.

MR. HOGAN: If it was used and it worked?

MR. E. MARTIN: Yeah.

MR. HOGAN: Okay.

MR. E. MARTIN: Yeah. I agree.

MR. HOGAN: If we could bring up – I just hate to go back to P-factors, but I'll be quick. P-00014. Page 9.

THE COMMISSIONER: P-00014. Tab 115, book 5.

MR. HOGAN: I'll just read this definition out of the P-factor. This is in the Grant Thornton report.

MR. E. MARTIN: What page again, please?

MR. HOGAN: Fourteen. Or 9, sorry.

MR. E. MARTIN: Nine.

THE COMMISSIONER: Thank you. Thank you.

MR. HOGAN: It's the second bullet point there. I'll read it out, and you can take some time to read. "Nalcor selected a P50 in calculating the tactical contingency included in their capital cost estimate ('CCE'). A P-factor determines the probability that cost overruns or underruns will occur. The higher the P-factor, the lower the likelihood of cost overruns (and the higher the capital cost estimate)."

Okay?

MR. E. MARTIN: Now, are you asking me a question?

MR. HOGAN: No. Are you okay with that definition?

MR. E. MARTIN: Oh, I'm sorry. Yeah.

Yes.

MR. HOGAN: Okay. So I just want to focus on the fact that P-factor applies to capital costs. Do you agree with that?

MR. E. MARTIN: I agree.

MR. HOGAN: According to this definition, it does anyway.

MR. E. MARTIN: I absolutely agree. It applies to many other things as well. And you agree with that?

MR. HOGAN: I don't know. What else does it apply to? I don't know.

MR. E. MARTIN: I understand. Well, I agree it applies to that. I just wanted to make the point that it's a statistical tool that applies to many, many, many things.

MR. HOGAN: Not just construction overruns?

MR. E. MARTIN: Actually, not just –

MR. HOGAN: Okay.

MR. E. MARTIN: – not just capital.

MR. HOGAN: Well, on this –

MR. E. MARTIN: And the key point – I just want to make sure that I'm putting on the groundwork – it certainly applies to oil in this context.

MR. HOGAN: Well, that was what I want to ask you about.

MR. E. MARTIN: Yes.

MR. HOGAN: Why does a P-factor apply to oil? Because we're talking about the risk of overruns in construction here, which is this definition. Why does it – and you get where I'm going, because you said a P-factor should be applied equally in the comparative analysis. Why does a P-factor apply to oil?

MR. E. MARTIN: Well, two points. You know, obviously, this is, you know, this is mathematical statistics and statistics can apply to, I guess, almost anything as a general rule. So from that perspective alone, it applies to oil, because it applies to almost any type of arrangement or thing that happens.

And moving on to the oil side of things, you know, what we're talking about here is measurement of risk – in statistics, is measurement of risk, is what we're talking about with P-factors. That's the bottom line here. And if I use the example of oil, and I use the – you know, one key factor of risk in definition and calculation is volatility. So the more volatile something is – by volatility, I mean the more it moves around –

MR. HOGAN: Riskier.

MR. E. MARTIN: – by definition is riskier.

And so I think we go back to oil now, and at least from a commodity perspective, in the world, if you look over the past 40 years, when the growth in demand for oil in the world has grown from 60 million barrels a day to about 98.5 to 99 million barrels a day today, so that's 40-plus years. If you look at the volatility of oil over that period of time, it's been – you know, it's been excessive. We've seen it recently as well, up and down, but you really can't look at oil in that framework.

So that's my first point, is that, you know, oil is extremely volatile and has a high level of risk.

MR. HOGAN: Mm-hmm.

MR. E. MARTIN: So from that perspective, you get back into using this type of analysis, then you have to be aware of that and aware that, you know, if you have a P50, you know, projection for oil, that's going to be more risky than a P75 as far as the low side or downside goes. So I'll stop there.

MR. HOGAN: Okay.

MR. E. MARTIN: So I wanted to make it – it's the same exact concept we're talking about here

MR. HOGAN: Right, so I'm not going to disagree with you that oil is volatile. I am going to disagree that – a P-factor shouldn't be applied to the oil, specifically in the Isolated Option, it's

6 billion out of 9 billion is the oil cost. I would have thought that you would apply the P-factor to the capital cost, as the definition requires, and you would apply a separate volatility statistical analysis to the oil, as you should because you pointed out it's volatile, but the construction factor wouldn't apply to the oil factor.

I'll let you answer that, and my follow-up question is – sensitivity analysis has already been done on the oil, so if you want to do the P-factor on top of it, now you've done two sensitivities on the oil.

MR. E. MARTIN: Well, I, you know, 100 per cent disagree with those two points you made. You know, I can't say it any other way, Mr. Commissioner. So I want to get that out, so I don't confuse the issue if I try to describe it.

You know, so on your first issue, you know, there's no – like, it's a mathematical – you know, it's a mathematical proposition, statistics. You know, there's not two or three ways to apply it; it is what it is.

MR. HOGAN: So where did you get the 50 per cent chance P-factor that oil would go up or down? What's that based on?

MR. E. MARTIN: Now, as I mentioned, you know, I – in the statistical world, if you look at, you know – I'm just – I don't want to get into too much detail, but if you, you know, if you look at the probability curve in the – with a general distribution – not normally, but we'll say a general normal distribution, and you'll see the P50 rests in the middle of that bell-shaped (inaudible) – bell-shaped curve. And what that means is that – in, you know, in that bell-shaped area – the area under the curve is much larger than on the ends, which creates a mathematical, you know, point that that's most likely to occur, because that's the area on the curve – equates to – the larger area under the curve, the more likely it's going to happen there.

So, from that – from that concept on a comparative analysis of two options in this particular case, the logic of using the most-likely case, in both cases, to me makes inherent sense for a comparison.

MR. HOGAN: Okay, but PIRA had given you – go ahead.

MR. E. MARTIN: After that, if you want to change that for whatever reason, no one can dispute that.

MR. HOGAN: (Inaudible.)

MR. E. MARTIN: But you need to change it in unison so that you're not comparing one situation with a very large area under the probability distribution curve of most likely to another area under the curve of a very, very small area on the tails – that is a low probability of occurrence. It just mathematically doesn't make sense to me.

MR. HOGAN: Okay. But there are two – you agree with me that there's two separate components of the Isolated Option: Oil and capital cost?

MR. E. MARTIN: 100 per cent.

MR. HOGAN: And you were then saying that P50 is applied to both?

MR. E. MARTIN: That –

MR. HOGAN: If you're going to compare it to another P50 project?

MR. E. MARTIN: I agree.

MR. HOGAN: Despite whether someone might – I might disagree with the risk of oil versus the risk of capital costs? That's the decision that was made, right?

MR. E. MARTIN: Now, that's up to you.

MR. HOGAN: Yeah, that's up to me. Up to you, in this case, you decided P50 for both, right?

MR. E. MARTIN: But if you – there's a rationale for it, but I think you want to get to a question, so if you want –

MR. HOGAN: Yeah, well –

MR. E. MARTIN: – the rationale, I'll do it, but if you want to go to the question, you can do that, too.

MR. HOGAN: Well, my question is: Some projects had to be riskier than other projects.

Is that fair to say?

MR. E. MARTIN: I think that's fair to say.

MR. HOGAN: I would suggest to you that Muskrat Falls is riskier and I can just think of one reason: We're going underwater – as opposed to the Isolated Option, which is all here.

So, why would you use the same risk factor for Muskrat Falls, which is riskier than the Isolated Option, which has less risk?

MR. E. MARTIN: But there's a fundamental flaw in that logic, okay? Mr. Commissioner, I'm saying a bit more. Am I going too far with this thing?

THE COMMISSIONER: No, no, that's fine.

MR. E. MARTIN: So, I mean, let me walk through the – you know, it's not a matter – you don't pick a P50 or a P70, you know, out of the sky. It's a similar discussion we were having yesterday with – remember, we were discussing some of the testimonies –

MR. HOGAN: I don't really care –

MR. E. MARTIN: – from Mr. Mallam?

MR. HOGAN: – what number was picked for each one.

MR. E. MARTIN: Yeah, but –

MR. HOGAN: Yeah.

MR. E. MARTIN: I know –

MR. HOGAN: But –

MR. E. MARTIN: You go ahead. Did you have another question?

MR. HOGAN: I want you to answer the question about – the P50 or the P75 or P10 or P90 for my question is not relevant.

The question is: Why would the same P-factor be chosen for one project when you compare it to another, when theoretically, those projects don't have the same capital cost risk?

MR. E. MARTIN: Okay, so I explained why I chose the P50 –

MR. HOGAN: Yeah.

MR. E. MARTIN: – I won't repeat that. And then if we – maybe I'll run through the process. So you break your – once again, you break your job then at the line items – you risk those line items by virtue of what could be low and what could be high – the experts are doing that.

So they're two separate projects now, different risk factors. So if there's a risk to your project over here, Commissioner, the people and experts doing that would put a wider range, maybe a lower, you know, go farther on the lower range than at a higher range, in that process. On the less risky job, they'll likely narrow the ranges over there. The purpose of – and when they do that then you're accounting for that risk. You're accounting for the difference in risk on those projects at that level.

Then you input that into the Monte Carlo analysis, and you run the Monte Carlo analysis. It yields an accumulative probability curve, the S-curve. And that S-curve then – the shape and the slope of that S-curve reflects the different risks. And what you would likely see is on the riskier project – the S-curve would be flatter. And on the less risky project – the S-curve would be steeper. And you can overlay them like that. And that's what they've reflected.

Then you have your two axis – you can have your X-axis and your Y-axis. And you come up and that's – if you choose your P50 there, it comes up; you go across – it chooses your cost.

But the fact that curves are steeper or narrower – that's what drives the actual contingencies. So your flatter curve will drive your contingency higher, and the steeper curve will drive it lower.

And I just wanted to explain it because that's the reason why, you know it's – the risk was accounted for in the process. So you just can't –

MR. HOGAN: As opposed to picking the P50 number?

MR. E. MARTIN: Yeah, you just can't come out and pick a P50 or P70, it just – it's not logical in the terms of how the process works.

MR. HOGAN: So somewhere in there, there were different risks assigned to those projects, just not necessarily at the P-level.

MR. E. MARTIN: That's correct.

MR. HOGAN: Am I being too simple when I just say the –

MR. E. MARTIN: Mm-hmm, that's –

MR. HOGAN: – the P-risk.

MR. E. MARTIN: – nothing. I could go for that.

MR. HOGAN: Yeah?

MR. E. MARTIN: Yeah.

MR. HOGAN: Okay.

Where do I look to see those risk analysis?

MR. E. MARTIN: (Inaudible.)

MR. HOGAN: Because you do agree the Isolated Option is less riskier than the Muskrat Option from a construction standpoint?

MR. E. MARTIN: Well, I'm glad you added construction.

I believe relatively speaking it is, and why I say relatively, Mr. Commissioner, is I think – if you're doing wind projects and if you're doing gas turbines on that kind of level, I think they're inherently less risky.

I think Holyrood refurbishment, I think would be much higher risk and would equate risk-wise, to the – to (inaudible) something like the Muskrat. And I believe (inaudible), you know, to a new plant, a large new gas plant – from my experience, you know, and the experience of other projects here in the province – that would be industrial, producing plants – Vale Inco, you know, Hebron production plant.

From those types of things I think that that type of plant would be as risky, that's why I say relatively speaking. It's a combination.

MR. HOGAN: Okay.

We'll move on from the P-factors now.

The question of purchasing power from Hydro-Québec – I believe you said your evidence was you didn't think it was possible or it wasn't possible because they had no capacity to sell.

MR. E. MARTIN: That's correct. That was one factor but that's the key factor.

MR. HOGAN: The key factor.

MR. E. MARTIN: Yeah.

MR. HOGAN: Can you just confirm whether or not you specifically went to Hydro-Québec to request that and they said: No, we don't have the capacity or was this just known to you through looking at – I think you said – the strategic plans to determine that yourself?

Was there ever a specific request?

MR. E. MARTIN: No, there wasn't. The strategic plan was clear.

MR. HOGAN: Okay.

That was what you based your decision on.

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay.

You also talked about risk of security of supply. Do you recall that phrase?

MR. E. MARTIN: That's correct.

MR. HOGAN: What does that mean security of supply? What's the security risk?

MR. E. MARTIN: It would be –

MR. HOGAN: Is it capacity?

MR. E. MARTIN: Hmm – well – it could be capacity at the end of it. But in between – just what I meant by security of supply is that if you are – you go back to the point that what we need, what we have to have here is certainty of being able to keep the lights on.

MR. HOGAN: Yes.

MR. E. MARTIN: So, whether it be – I don't want to reintroduce CDM, but CDM we're not comfortable with that like, you can't depend on that for capacity. You know, the planner of the system is in a different mindset than maybe someone who understand that CDM could be useful. The planner has to say: We're keeping the lights on.

It's the same thing with anything with security of supply. If the planners, you know, assess what's happening and say: We're going to make that decision in the future, this could happen. If they believe that the uncertainty of that happening at that particular time, is too uncomfortable for them to say that I can guarantee we'll keep the lights on at that point, then they would say: I can't move on that because I don't feel enough security of supply of that option and I will not risk the lights – I use the term the lights –

MR. HOGAN: You were talking about firm-power purchases in this case – having those contracts for capacity.

MR. E. MARTIN: (Inaudible.)

MR. HOGAN: And I may – I just wanted to know if that was the answer as opposed to there was a political security there with Hydro-Québec.

MR. E. MARTIN: I understand what you're saying, not from my perspective.

All that being said, I would have to say: You have to consider the political uncertainty as a factor in security of supply. It wouldn't be the overriding factor, Mr. Commissioner, but I mean – if you're looking at risks, yeah, you have to consider all of that. That would be a point to consider.

MR. HOGAN: That's part of the security –

MR. E. MARTIN: Of supply

MR. HOGAN: – matrix.

MR. E. MARTIN: Yes.

MR. HOGAN: Sure, okay.

And was that considered when the Hydro-Québec purchase was in your mind or was it purely –

MR. E. MARTIN: I did have that as an element in my mind, as well. So you added up the fact that the capacity wasn't there, and whether it would be the CF(L)Co option, we couldn't, like, you know, really nail down if – in that scenario, if CF(L)Co would be able to do exactly what we expected them to do. I didn't believe that could happen. And I guess some of that is political risk, Mr. Commissioner, because, you know, the Hydro-Québec members of the board –

MR. HOGAN: We've heard about this.

MR. E. MARTIN: – you know, would, you know, would obviously and – be thinking about those things as well. Not the overriding factor. But you asked me would I have considered that as a portion of it? The answer is yes.

MR. HOGAN: Mr. Commissioner, it's 11 o'clock. Can we take a break now, maybe, for 10 minutes, please?

THE COMMISSIONER: Yes –

MR. HOGAN: Is that okay?

THE COMMISSIONER: – okay.

(Inaudible) so we'll adjourn 'til – for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

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

MR. HOGAN: Thank you.

Madam Clerk, if we could bring up P-00087, please, page 7.

THE COMMISSIONER: 00087.

MR. HOGAN: Sorry –

THE COMMISSIONER: Again, mine and your books there, Mr. –

MR. HOGAN: This is the Electrical Power Control Act, which I assume you're familiar with?

MR. E. MARTIN: Yes.

MR. HOGAN: I'll just – just to read it out, section 3(b)(iii) which talks about – we've talked about already, you've talked about it: "… that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service …."

So we've have some debate, I guess, about least-cost option versus the lowest possible cost. The legislation obviously says lowest possible cost, so I'm just wondering if you have looked at that section in detail, specifically the reference to lowest possible cost.

MR. E. MARTIN: Yes.

MR. HOGAN: Okay.

And is there any guidelines regarding how that's interpreted within Nalcor?

MR. E. MARTIN: By guidelines you mean –

MR. HOGAN: You know, is there a document that says this is what this means, this is how it should be applied.

MR. E. MARTIN: Not to my knowledge but there could be.

MR. HOGAN: Wouldn't you know, though?

MR. E. MARTIN: No, I wouldn't be involved in that.

MR. HOGAN: Okay.

So what is your interpretation of what that means: lowest possible cost?

MR. E. MARTIN: Well, once again, in the context of the ratepayer being the most important, you know, people to consider, you know, I do view the ratepayer as the current ratepayers, the short- or medium-term ratepayers and the longer term ratepayers. So I put them all in one category.

And following that, the lowest possible cost would be just that, you know, an evaluation of how over the spectrum of, you know, the current and future ratepayers, what is the sequence of generation and transmission assets that would provide them with the lowest, you know, possible cost, which means, obviously, that when they wrote a cheque or a direct deposit for their power bills every month, you'd like to ensure that that is as low as possible.

MR. HOGAN: Okay.

So I mean this is a statute which is open to interpretation; if you probably get several different lawyers, you might get several different opinions on it. That's why I asked if there was any guidelines or rules regarding how Nalcor or the CEO should interpret it.

Because, you tell me if I'm wrong, the way it has been interpreted in this case is to take two options and compare those two options to determine what the lowest possible cost is, least possible option. And that would result in the lowest possible cost.

MR. E. MARTIN: I agree with that, yes, but I would like to just add a supplementary clarification to that –

MR. HOGAN: Mm-hmm.

MR. E. MARTIN: – which we, I think we talked about yesterday as well. When we say we compared two options, I agree with that 100 per cent. The Isolated Option, you know, has a series of inputs into it: wind, you know, smaller hydro, you know, et cetera, and rebuilding Holyrood and such. And that sequence of builds – generation and transmission builds – flowed from consideration of many other pieces as well that were screened out early.

MR. HOGAN: Okay, yes.

MR. E. MARTIN: So, yes, it's two options, but I just wanted to reiterate the point that there was a screening, so many, many options have been considered. This is the conflagration or the conglomeration –

MR. HOGAN: All the options.

MR. E. MARTIN: – of the lowest cost sequence of options –

MR. HOGAN: Including –

MR. E. MARTIN: – in the Isolated.

MR. HOGAN: Including gas, including 2041, including Hydro-Québec. I understand all that.

MR. E. MARTIN: Yes.

MR. HOGAN: Just a couple of questions on it though. So Decision Gate 1 for the Lower Churchill Project, I understand, was a decision to go it alone, as opposed to go with an external entity to build it or construct it or help with it, right? That was the point of Decision Gate 1?

MR. E. MARTIN: That's correct.

MR. HOGAN: And then Decision Gate 2, we're talking about here in this Inquiry, is the decision between the Isolated and the Interconnected Option?

MR. E. MARTIN: That's correct.

MR. HOGAN: Right.

So my question is then, if we're on a – if the Decision Gate process started with the development of Lower Churchill, Decision Gate 2 is not really related to Decision Gate 1. That's the part I'm confused about.

And I'm wondering if that's where the least-cost option came in, because all of a sudden we're developing Lower Churchill on our own and then – at Decision Gate 1. Decision Gate 2 becomes domestic choice between two options.

MR. E. MARTIN: You know, I take your point and I agree with you. There's two different things happening there.

MR. HOGAN: Right.

MR. E. MARTIN: I can just – are you looking for – I'm assuming you're looking for as brief a summary as possible.

MR. HOGAN: No, I want to know if you agree. I mean Decision Gate 1 was not to determine whether the Lower Churchill should be used for domestic use.

MR. E. MARTIN: One hundred per cent. We started off on the – with the Churchill to say we were going to develop one, either Muskrat or Gull and/or Maritime Link or through Quebec with transmission or some combination thereof to sell for profit for, you know, for the province. Exactly.

MR. HOGAN: Yes, right.

MR. E. MARTIN: And then we progressed that to a certain point. Things happened in Quebec, the transmission wasn't going to work for us, those things were coming together and at the same time then, within Hydro, they approached, you know, me to say that we also now need to make a decision on additional generation.

So around that point, as I said – I called it a juxtaposition – you know, yes, the focus did change in terms of what we were trying to achieve there, and we did turn our attention then to the provision of additional electricity and then, you're right, Decision Gate 2 –

MR. HOGAN: Became an option choice.

MR. E. MARTIN: – became an options choice for that.

MR. HOGAN: Okay.

MR. E. MARTIN: Is that what you were seeking?

MR. HOGAN: Yes, yeah.

MR. E. MARTIN: Mm-hmm.

MR. HOGAN: So just on that interpretation of lowest possible cost, I mean these projects were – the numbers were ran over a course of 50 years.

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay.

Now, I can take you to your transcript if you want – you may want to. Do you want me to read it out? I can just – you basically said that's the industry norm. Do you want to read it – do you want me to read it to you?

MR. E. MARTIN: I think I would prefer if you would, just to make sure I didn't have a nuance in there, but in essence, though, I agree with that, so maybe – why don't I let you proceed? And we'll see where it takes us.

MR. HOGAN: No, I'm gonna read it out, just to be safe: In the final analysis, I was very comfortable that we had done that with the flavour of not favouring one over the other – the two options – and then we ended up with these two options. And we – you know, Isolated and Interconnected that we reviewed – we ran the cost over those – costs of those over a 50-year period to do the CPW analysis. That was a norm in the industry.

So, again, I mean, I –

MR. E. MARTIN: I understand.

MR. HOGAN: There's no trick there –

MR. E. MARTIN: That's what I said, and I stand by that.

MR. HOGAN: Right.

So couple of questions on that is that the lowest possible cost wasn't talking about timelines. So while this may be the lowest possible cost over 50 years, where do you get the authority to make that decision? And when you say it's the industry norm, what industry are we talking about here?

MR. E. MARTIN: So, second question first – the utility industry. And my advice from that came from the Newfoundland and Labrador Hydro people who have been at this for many, many, many, many years. So I took my advice from them on that.

I believe, as well, that – I can remember – I believe that MHI, for instance, you know, validated that the period was acceptable, so that was helpful as well. That's the second question.

On the first question, I guess two points. One is the CPW analysis, which in essence, obviously, is, you know, a present-value analysis, is designed to compare different things and, to the extent possible, put them on the same level playing field in today's dollars.

And that's point A. So that's where, you know, the – I forget your words – the authority or concept or whatever came from –

MR. HOGAN: So I'm gonna put this to you. I think this is what you're saying, that, you know, the industry standard for building a hydroelectric dam would be to determine the cost over 50 years.

MR. E. MARTIN: Yes.

MR. HOGAN: That's the industry standard; that makes sense.

To compare it to the other option, then, to make it fair, you would have to use 50 years.

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay.

But I guess my point is that that, then, would determine, if the CPW – or whatever the CPW spits out does determine the lowest possible cost based on a 50-year projection.

MR. E. MARTIN: That's correct.

MR. HOGAN: But we don't know what the lowest possible cost is over the course of 20 years because that analysis was never done – or 5 years or 10 years or 11 years or 18 years. You were stuck with the 50 years because you had to use a 50-year comparison because that’s the length of the hydro project.

MR. E. MARTIN: So I see your point. So a couple of things there. First off, I just would like to note that there was analysis run on different timeframes.

MR. HOGAN: Okay, I haven’t seen that. Do you know –?

MR. E. MARTIN: And I’ll just – maybe I should refresh your memory. It was – you may remember it. There was – we were asked in – I think by the PUB, and possibly by some other person, to truncate the analysis at 2041 and – on the Isolated and Muskrat. So I can’t give you the reference off the top of my head, but it exists –

MR. HOGAN: Okay.

MR. E. MARTIN: – ’cause we – and I believe it’s in a PUB exhibit, and I believe the – on that truncated version, Commissioner, I think the CPW preference for Muskrat was around 1.1 billion, but – give or take. It would be in that range. We didn’t believe that was the right way to do it, but we, know, we were asked to do it and we did it. So that’s one point, okay? So there was a truncated analysis done.

The second point is – and I believe this is what you’re getting at, potentially. But when we did sanction Muskrat, the – it just happened at the time that the initial several years – when we compared both projects – were really close. So that was helpful because even for the short-term ratepayers, medium-term ratepayers, long-term ratepayers, it was the lowest cost, as an actual cost.

We had done other runs earlier than that where we had what they call the bump, where Muskrat Falls was higher for several years on the day-to-day rates for our current ratepayers than the Isolated would’ve been. And I would suggest now, with the cost situation on Muskrat, even if we applied some of that to Isolated, I believe there’s still going to be a bump now. I haven’t got the calculations, but it goes to follow, Commissioner.

And by bump, once again, I mean that, in the shorter term, current ratepayers will pay higher rates, somewhat higher rates than they would if we had done Isolated. But after a period of time, the curves cross again, and your more medium and longer term ratepayers will still pay less.

MR. HOGAN: Over 50 years?

MR. E. MARTIN: Over 50 years.

MR. HOGAN: Okay.

MR. E. MARTIN: So – and –

MR. HOGAN: That was really my question.

MR. E. MARTIN: And my –

MR. HOGAN: I just wanted to talk about the 50 years.

MR. E. MARTIN: Just my final point –

MR. HOGAN: Yep, go ahead.

MR. E. MARTIN: And I don’t mean to interrupt you.

MR. HOGAN: No, I interrupted you.

MR. E. MARTIN: But it is salient, at this point, I do believe, because we’re back to – when you talk about rate mitigation – now, there’s two types of rate mitigation. There’s a rate mitigation where you actually, you know, in essence, subsidize rates, which you could do here because there's cash available to close that bump until it splits again. So we have and can protect the ratepayers in the short term.

And there’s also methods to adjust the curve, Commissioner, with, you know – and it could be financing; it could be other things in terms of rate of return and such, or you can also adjust the curve, which is not necessarily a subsidy. It’s – you know, it would be more of what they would call a mitigation of that bump.

So in the numbers that we ran when I was there, and the documents are still on file, these options were looked at and – in, you know, in detail, and that’s why I’m familiar with the fact that this type of bump, if the province so desires, can be handled. And in that context, I was comfortable in saying that this is the and could be the lowest cost option for ratepayers in any scenario, whether they be short-, medium- or long-term.

MR. HOGAN: Okay. And just ’cause you – you brought it up about the mitigation, and it was put to you that why wasn’t the option to just build as need presented itself in smaller amounts used. ’Cause I’ll put to you that we built Muskrat Falls with 60 per cent is not needed by the ratepayer. You would agree with that, right?

MR. E. MARTIN: That’s correct – Mr. Hogan, again, not right away.

MR. HOGAN: Okay.

MR. E. MARTIN: Because we also show that, over the course of time, we ended up using 80 per cent of it.

MR. HOGAN: So my question is, why do the ratepayers have to fund the cost for bills that they don’t need? Why wasn’t it built to meet demand at the time to ensure that ratepayers are only going to pay for what they use?

MR. E. MARTIN: Two questions there, and I will take the second – now, I’ll take the second question first.

MR. HOGAN: Sorry, I have a tendency to ask two questions at once.

MR. E. MARTIN: That’s not a problem. That’s not a problem.

The second question was why would we build more, you know, build something that has more electricity than we need.

MR. HOGAN: Than the ratepayer needs.

MR. E. MARTIN: The ratepayer – and the ratepayer takes the hit.

MR. HOGAN: Yes.

MR. E. MARTIN: Or eats it, we’ll say, you know, eats the cost.

MR. HOGAN: Yes.

MR. E. MARTIN: Excuse the language, absorbs the cost.

MR. HOGAN: Yes.

MR. E. MARTIN: Absorbs the cost.

So that’s a very clear answer and very rational answer to that because – and, Mr. Commissioner, you know, what we did was we made that assumption that the full cost of Muskrat Falls would go into the equation and the ratepayer would have to pay the full cost of Muskrat Falls.

And we were being conservative in the terms of – it was suggested to me, Mr. Martin, why don’t you put the value of the excess sales in that equation to reduce the cost and make Muskrat Falls look better? And at the time, I said, well, I don’t think it’s right to do that because this is first and foremost a decision for the ratepayer. So I said include it as if no preference is given and we spill all that water. And that’s what Muskrat Falls was run on. And when we compare that to the Isolated Island, that’s what is cheaper by $2.4 billion.

So I would have to say to yourself and any concerned ratepayers, is that it is cheaper, and when we were analyzing this it was cheaper in the long run – short, medium and long term – to build Muskrat and spill all that water until we needed it, if we ever needed it. That was cheaper than the Isolated. That’s the way that analysis was done. Stand-alone Muskrat – all excess water not being used in electricity.

MR. HOGAN: Gravy.

MR. E. MARTIN: Not even gravy. I assume don’t even sell it. Let it run down the river. Get nothing for it. Nothing for it.

MR. HOGAN: Mm-hmm.

MR. E. MARTIN: So from that perspective, you know, it’s like – I guess – what’s the example? It’s like someone says: Well, you know, are you gonna buy that house in this suburb and pay X for it, say you know, 100,000? Or are you gonna buy that house over there that’s twice as big, in a similar neighbourhood, and you can get it for 80,000? And people would say: Well, you could rent it. Not even renting it – it’s still cheaper than the smaller house. So the logic is you buy the bigger house. That's your second question.

Back to your first question, which was: Why not build, you know, just as you need? But, Commissioner, that is – and Mr. Hogan, that is the very definition of the Isolated Island Option. That is exactly what the Isolated Option is. Because, you know – so the first thing you did on the Isolated side was, you say: What is the first piece we need to cover us for the shortest period of time that, you know – a combination of what asset could you put – could you build that was the cheapest, that could support what we needed in the least amount of time?

And I believe it started off as wind – I'm not exactly sure – you know, some more wind. And then the analysis is done, you go on a couple more years, and so that's fine for them. But you can't stop because the reality is something else is going to happen, obviously. So I think the next one was a smaller hydro, because that was the cheapest of all the available options at that time.

So that's exactly what the Isolated is, is that you're building one step at a time, just as you need it. So I just wanted to make that clear, because when you say – when anybody says: Why didn't you just build it as you needed it, a step at a time? That is exactly the Isolated Option. Exactly.

MR. HOGAN: I agree, and as you need– maybe you don't need, is the point. And you've lost the flexibility with that option now. Because population – I don't understand why people thought population was going up, it's been going down since we set foot here, really, and people are getting older and we all know that.

So as you – and things – technology changes, people are gonna start using batteries and, you know, we see reports now that hydroelectric dams aren't the way to go anymore. So we've lost all that flexibility as opposed to building as we need, or as we may not need. Do you agree with that?

MR. E. MARTIN: I agree that some flexibility is lost; I think that's by definition.

MR. HOGAN: Yes.

MR. E. MARTIN: But you also made a comment about population growth. And I'm going from memory here, Commissioner, and I believe it's on record, but my understanding is that the population growth that was used – I believe, now, I'm trying to think back. They used information outside of Nalcor from the provincial government, I believe, to plan population growth, whatever it was.

And for you to say you don't think that – you don't know why, you know, people think the population's growth is gonna grow. Well, the economic indicators suggest otherwise. And, you know, we cannot have planners sitting in Newfoundland and Labrador Hydro, you know, basically moon gazing and figuring out what they think. They got to base it on some rational logic, and that's what it was based on.

And when – my other recollection was when they had to extend that further than the data they had, what they did, they went back to the, I think, the point of lowest growth in the province's history – is my understanding – which was the cod moratorium, I believe, and used that as the longer term projection, which from my perspective, you know, seemed to be as conservative and reasonable as you could think.

Now, whatever that yielded, that yielded. So I just wanted to make that point as well.

MR. HOGAN: Okay. I ended – you know, the point is – and you agree – flexibility is lost, for better or for worse.

MR. E. MARTIN: For building it one at a time versus a large project. Yes. But there's other things than flexibility –

MR. HOGAN: No that's – I just wanted – that's the only question.

MR. E. MARTIN: I'll stop there.

MR. HOGAN: Yeah.

MR. E. MARTIN: So I've made my point that –

MR. HOGAN: (Inaudible.)

MR. E. MARTIN: – there are many other puts and takes.

MR. HOGAN: Yes.

MR. E. MARTIN: I'll stop there, though, Commissioner, rather than get into it. But I will leave that on record in case we might wanna – I may wanna –

MR. HOGAN: Well, we can go to other –

MR. E. MARTIN: – talk to it a little later.

MR. HOGAN: – puts and takes actually, now, at – this was P-00254. Ms. O'Brien took you to this yesterday.

THE COMMISSIONER: 143, book 7.

MR. HOGAN: And, Commissioner, I know you don't want to talk about the extra benefits, but the question is not about the benefits, it's about the decision-making.

So you went through this yesterday about all the additional benefits Muskrat Falls provides. Sorry – okay?

MR. E. MARTIN: Yes, I have it here.

MR. HOGAN: Yesterday you said that this drives your thinking and you couldn't justify another – you couldn't justify the Isolated Option because of these benefits, really.

So my question is: Why is that even in your thinking when your role as the CEO of Nalcor is to deliver the lowest possible cost? Your role is not to deliver economic benefits to the province.

MR. E. MARTIN: Well, I disagree with that –

MR. HOGAN: Okay.

MR. E. MARTIN: – viewpoint.

MR. HOGAN: Okay.

MR. E. MARTIN: I guess if I turn it around: if I wasn't thinking about providing benefits to the province I'd be in a lot bigger trouble. You know, I'm a CEO of a Crown corporation. I – you know, the Crown corporation was created as a policy device of the provincial government. We started – they started that policy advice with an Energy Plan, which we've run through many times here. That Energy Plan was quite specific about what was trying to be achieved, both from electricity low cost as well as benefits to the province – not only electricity, but other sectors. And the – an act was created to create the Energy Corporation, that flowed from the Energy Plan, and Nalcor was formed, the board was put in place and I was selected to be CEO of that. And make no mistake, you know, the mandate was clear and it definitely did include me having my eyes wide open for the benefits of the province as well.

But ratepayers first – additional benefits, we had to be calculating those and running them, 'cause we were impacting it across the board and it had to be done on an economic basis.

MR. HOGAN: Okay.

MR. E. MARTIN: So I just wanted to lay that out that that's why I disagreed with your comment.

MR. HOGAN: Okay, that's fair enough. But confirm these benefits have nothing to do with determining the lowest cost, lowest possible cost. Comparing A to B, right?

MR. E. MARTIN: Just to be clear, Mr. Hogan –

MR. HOGAN: The CPW's (inaudible) –

MR. E. MARTIN: Yeah, exactly. So the CPW is – but I would go on further than that to say, though – if I can just point out a couple of lines to you here?

You know, if I look at a dividend line, if I look at the export line and I look at the water rentals line – that's three examples. There's a net difference between the two of pure cash.

MR. HOGAN: No, but you even said today that you weren't gonna include that in determining the lowest possible cost.

MR. E. MARTIN: And we didn't.

MR. HOGAN: Right. So my point is that other than CPW, these have no – these should not impact your decision-making on determining the lowest possible cost. That's – yes or no?

MR. E. MARTIN: No. And the reason – I'm just gonna finish my thought – is that I believe that the province needs to consider these things, Mr. Commissioner.

MR. HOGAN: Yes.

MR. E. MARTIN: You know, that – and I would advise them strongly that these elements are available and when you're considering the lowest cost energy for – or electricity for the consumer, I would say, you know: Province, these net cash items are significant and if you so decide, in your wisdom, for the rest of the benefits that this project provides that you want to subsidize electricity rates – I was very clear in advising them that this was available.

MR. HOGAN: And fair enough, we –

MR. E. MARTIN: And so I believe that, from their perspective, would enter into the lowest cost rates –

MR. HOGAN: Hmm.

MR. E. MARTIN: – but not Nalcor. We cannot decide that. Newfoundland and Labrador Hydro can't get into that. But we have to advise the government.

MR. HOGAN: That's my point.

MR. E. MARTIN: Yeah.

MR. HOGAN: Any decision on an economic basis is not for you. It's for the premier of the day.

MR. E. MARTIN: Absolutely.

MR. HOGAN: If we could, please, turn to – I don't know if you're gonna have this, Mr. Martin – the MHI report at P-00049, page 198.

THE COMMISSIONER: You don't have that. It's gonna be up on your screen.

What page was that again, Mr. Hogan?

MR. HOGAN: Page 198.

THE COMMISSIONER: Thank you.

MR. HOGAN: This is an issue that's come up – I've brought it up; some other people have brought it up a few times – the issue of the scrubbers at Holyrood. Are you familiar with this issue?

MR. E. MARTIN: Yes I am.

MR. HOGAN: Okay.

I'll just read out a sentence here, page 198; scroll down a little bit.

Are you familiar because of the testimony at the Inquiry, or are you familiar because you were aware of it back in 2010, 2012?

MR. E. MARTIN: Because I was aware of it back in 2010, 2012.

MR. HOGAN: Okay.

So, I'll just read this first sentence out. "It is noteworthy that Nalcor has incorporated a large investment programme in the Isolated Island Option for reducing the environmental footprint of Holyrood." Now this is MHI speaking. "The question arises as to whether or not this is necessary, as switching to 0.7 % sulphur fuel oil has accomplished as much as is necessary to meet Provincial environmental targets for SO_x." Sulphur oxide.

So do you agree with that statement?

MR. E. MARTIN: Yes. I have no reason to disagree.

MR. HOGAN: Okay.

And were you part of the decision-making to leave that expenditure in the Isolated Option?

MR. E. MARTIN: It was part of it. It's a provincial decision, but by part of it I mean, you know, I would have given some viewpoints, I would have advised and I mean – and frankly, I'd have to say absolutely yes, because Nalcor, in their own right, made a call to lower the sulphur content of the fuel, you know, without, you know, PUB necessarily alignment, because as a corporation we felt that was important. But that being said at that time, even with that, we consulted with the province. But then the province –

MR. HOGAN: Made the decision.

MR. E. MARTIN: Made the decision with respect to the scrubbers and precipitators for sure –

MR. HOGAN: Okay.

MR. E. MARTIN: – but we would have recommended it.

MR. HOGAN: Who would you have spoken to at the province? Was it a ministerial decision, or a civil servant decision or a premier decision?

MR. E. MARTIN: Minister and premier, the decision would have landed with.

MR. HOGAN: Okay. And this is, I think obvious, but just to confirm, that obviously would have made the Isolated Option more competitive if that number had not quite been put in, correct?

MR. E. MARTIN: That's correct. But just to be clear though, you know I would have recommended it, so it's not like –

MR. HOGAN: No.

MR. E. MARTIN: – I was sitting back waiting for a directive and saying yes or no. I mean, I recommended it.

MR. HOGAN: Based on –

MR. E. MARTIN: Based on environmental and stuff. And that being said, I wouldn't want to say it was a sole recommendation. I mean the – what was going on in Holyrood at the time was very – you know, it was really at the forefront of what was happening. The – a lot of the Holyrood residents were, rightly so, you know, very upset.

There was a constant, you know, Nalcor NLH intervention. There was a lot of, you know, intervention from the Holyrood residents with the province and you know, the scenario that kept coming up, you know, which highlighted it, was people in the area would be regularly waking up with debris over their cars and things like that and – and I'll stop there, Commissioner, but it was a real issue for the area and we just didn't feel that it was a proper way to proceed.

MR. HOGAN: But it was a – it was a discretionary decision?

MR. E. MARTIN: It –

MR. HOGAN: It wasn't nuts and bolts engineering decision.

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay.

If we could turn to page 123 please?

Do you have that on your screen?

MR. E. MARTIN: Yes I do.

MR. HOGAN: So this is the same MHI report. This is talking about the transmission line so – do you want to just take a second and read that first paragraph, either to yourself or into the record?

MR. E. MARTIN: Sure. I'll read it to myself.

MR. HOGAN: Yeah.

MR. E. MARTIN: I've read it.

MR. HOGAN: Okay.

Just so I can read it into the record, so that people know what I'm talking about. Partway down, it says: "In this latter scenario, Nalcor should also give consideration to an even higher reliability return period in the remote alpine regions. MHI considers this a major issue and strongly recommends that Nalcor adhere to these criteria for the HVdc transmission line design. The additional cost to build the line to a 1:150 year return period is approximately $150 million."

Can you just explain that issue?

MR. E. MARTIN: At the highest level –

MR. HOGAN: Yes.

MR. E. MARTIN: – this would be something that would rest with the –

MR. HOGAN: The engineers?

MR. E. MARTIN: – project management team –

MR. HOGAN: Yeah.

MR. E. MARTIN: – as well as Mr. Humphries and his team and, you know, the pure engineering design. But this is obviously terms that really mean, you know, how robust are you going to make those transmission towers.

MR. HOGAN: How reliable?

MR. E. MARTIN: How – reliable, but robust is the term I like to use because –

MR. HOGAN: Okay, well, just –

MR. E. MARTIN: – that drives the return. Go ahead.

MR. HOGAN: – MHI used the words reliability, you use robust, okay.

MR. E. MARTIN: I agree.

MR. HOGAN: Okay.

MR. E. MARTIN: Let's make them interchangeable.

But I was trying to just make it clear that, you know, what you're talking about here is that in a major ice storm – obviously a major windstorm – combination, the beefier the towers are, the more reliable they're going to be. Plain and simple.

And these terms such as a 1 to 150 year reliability return periods and such, they're – they are technical and engineering terms, which basically use historical data, you know, throughout the country and they're engineering terms to say basically if you look at the type of event that could happen over 150 year period, how often the biggest event in 150 years could come over – could happen, obviously if you pick the most significant event, either from wind or ice, then you're going to really beef up the towers a lot to hit that.

That's in essence what's being said here, is that what you're asking?

MR. HOGAN: Yeah, yeah.

MR. E. MARTIN: So that's my understanding.

MR. HOGAN: Costs more money to make it more reliable.

MR. E. MARTIN: No question.

MR. HOGAN: No question, okay.

And this recommendation was made by MHI, your – who you retained – Nalcor retained at one point. Do you know if this recommendation was followed through on?

MR. E. MARTIN: I believe it was, but I think you need to check that with the engineers more so.

MR. HOGAN: Yeah. And again, you would agree that this was a discretionary decision? I mean the lines were there.

MR. E. MARTIN: No, I'm –

MR. HOGAN: I see (inaudible) –

MR. E. MARTIN: I know you people like me to speak fast, so I'm just trying to just –

MR. HOGAN: Oh no, sorry.

MR. E. MARTIN: – just give me one second for a thought there. I was trying to – you said is it discretionary?

MR. HOGAN: Is it discretionary to use one in 50 years as opposed to one in 150 years?

MR. E. MARTIN: I believe it is. The reason I was hesitating, Commissioner, is that there are Canadian standards out there and such. I – you know, it's discretionary but I think in the context of what the standards are saying is important too.

MR. HOGAN: Now, I'm going by memory here, but to be fair, I think what the decision of Nalcor was – I think – was that the one in 50 lines did meet Canadian standards and that's what Nalcor was going to go with. Does that ring a bell at all?

MR. E. MARTIN: I remember a discussion, but there was a deep, deep technical discussion around that. I was into it at the time even though it's not my specialty. But I would defer to the engineers on that because – just because. There's a lot of discussion in around what that one in 50 versus one in 500 – they're different.

I'm going to stop there, Commissioner, but I know enough about it that you'd have to get a much deeper technical description from – Mr. Bennett would be very good at it, Mr. Humphries would be good at it. But it's just not as clear as that and I'm not qualified to describe it here.

MR. HOGAN: Well I'll confirm for the Commission whether it was done or not, what lines were built. But I just wanted to get your understanding of it.

If we could please turn to P-01530.

MR. E. MARTIN: And –

MR. HOGAN: Yeah.

MR. E. MARTIN: If you pursue it though, I'd just encourage you people to check with the folks at the company. But the one – the 50-year return period and the 150 – I think they're –my memory serves me right, you need to clarify that they're talking about apples and apples there. I don't think they are, but I'd need to – you'd need to check that.

MR. HOGAN: Okay. Mr. Martin –

THE COMMISSIONER: 01530. You don't have a copy of this.

MR. HOGAN: – you don't have this document. So any sections I refer to, I'll certainly give you time to read. This is a report from Knight Piésold who was retained by the Consumer Advocate for the PUB hearings. So you're obviously aware of the PUB hearings. Are you aware of this report? Is this – that the Consumer Advocate had retained Knight Piésold?

MR. E. MARTIN: I'm aware they retained it. I've never seen this report.

MR. HOGAN: Are you aware because of these hearings, or are you aware because you knew at the time?

MR. E. MARTIN: I knew at the time.

MR. HOGAN: Okay. And you never saw a copy of this report?

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

MR. HOGAN: Okay. Have you seen it since?

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

MR. HOGAN: Okay. And how did you become aware that the report existed at the time?

MR. E. MARTIN: I don't know. I guess one of the fellows probably said that, you know, Consumer Advocate had retained – I'd heard this name. It sort of – the name sort of, is one that stick with you, I think. And they would have been – I guess that way. It wasn't a formal notification or anything.

MR. HOGAN: Okay. Are you aware it wasn't submitted and filed with the PUB?

MR. E. MARTIN: Pardon me?

MR. HOGAN: Are you aware that it wasn't filed with the PUB?

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

MR. HOGAN: Okay.

Did you ever ask to see a copy of this report?

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

MR. HOGAN: Why not?

MR. E. MARTIN: That would be something that I would let the – you know, the team handle. Not to make – belittle it or anything else, you know, there's a huge amount of data coming across the table and you have to be selective. And I would, you know, trust the folks, you know, in the project management team, and Mr. Humphries and others who were involved in this thing, to handle this.

MR. HOGAN: Handle this report for –

MR. E. MARTIN: Yeah.

MR. HOGAN: – in other words, for the hearings.

MR. E. MARTIN: Yes.

MR. HOGAN: Okay.

You weren't intimately involved with the PUB hearings, I assume, were you?

MR. E. MARTIN: That's correct.

Did you say I was not?

MR. HOGAN: You were not intimately –

MR. E. MARTIN: That's correct, yeah.

MR. HOGAN: So I'm gonna – I'm just going to turn to a few sections of this – I don't know if any of this has actually been referred to at the Inquiry yet – just to get your comments on it. And I understand, then, to be fair, you haven't seen it before. So it's your first time reading it, so I'll give you some time.

But if we could please turn to page 18? They're not new issues. Can you zoom in a little bit, please? Thanks. Just go down to the bottom?

So this – back to demand-side management issues again. Do you want to read that first paragraph and I'll turn to the next page?

MR. E. MARTIN: I understand. You can proceed, please.

MR. HOGAN: Okay, just – can we go to the next page? And you can maybe read all of that section, 3.2, to yourself.

MR. E. MARTIN: I've read it.

MR. HOGAN: Okay.

So the section I just want to read out: "Navigants … indicate that a realistic level of DSM could yield an annual savings of 750 GWh at the end of a 20 year period of aggressive DSM programs, regulations, codes and standards. 'Realizing this level of saving would require investing approximately $400 million in energy efficiency over 20 years.' Even at these costs the returns far exceed what can be achieved by traditional supply means. It is therefore recommended that DSM be presented as a viable supply that could meet a measurable portion of the forecasted demand growth."

So I've heard your evidence probably three or four times about your opinion on – this wouldn't be a good security of supply, right?

MR. E. MARTIN: That's correct.

MR. HOGAN: That's my (inaudible).

MR. E. MARTIN: That's correct.

MR. HOGAN: But you weren't – you obviously weren't aware of this recommendation in this report either.

MR. E. MARTIN: I wasn't aware of the recommendation in this report, but I had – I did see these numbers as a – now that I see them, as a sensitivity –

MR. HOGAN: Okay.

MR. E. MARTIN: – that was included –

MR. HOGAN: Where did you see those numbers?

MR. E. MARTIN: I think it was in the MHI report.

MR. HOGAN: Okay.

MR. E. MARTIN: I believe.

MR. HOGAN: So just in terms of the overall budget, though, I mean I'm going to put to you

$400 million over 20 years is not a big expenditure, is it?

MR. E. MARTIN: It's not a lot, no. Well, it's a lot of money –

MR. HOGAN: Yeah, now in –

MR. E. MARTIN: – but in the context of what we're trying to achieve here, it's a relative thing, right?

MR. HOGAN: Fair enough.

But, again, you would disagree with this recommendation based on what we've heard from you before, right?

MR. E. MARTIN: I would just –

MR. HOGAN: As a reliance mechanism.

MR. E. MARTIN: Absolutely, and you know, I based my – you know, my decision on the advice I received. And, once again, it's an Isolated system, fragile. And it's been explained to me before as well that strictly when the consultants, you know, come in to advise, that it is important that they understand the system. It acts – it's an Isolated system from the rest of North America, so there are some – you know, there are some differences that have to be accounted for.

But in any event, I agree with your statement.

MR. HOGAN: Okay, and if we could just turn to page 28, I believe. Yeah, just for the Commissioner's sake, I just want to bring him to this chart.

If we can scroll down a little bit, please, and I'll read out the last couple of sentences there under it: "The analysis shows that the preference is not particularly sensitive to an increase in Muskrat Falls and LIL project costs, but relatively sensitive to projected fuel costs. Aggressive conservation can play a … significant role in bridging the gap between the two options as well."

So we look at the last line in that table there, that column, the difference actually becomes zero if you have aggressive CDM. Do you agree with that – that that table says that? Also noting – because you said oil prices are volatile, I think it takes into account that issue as well.

MR. E. MARTIN: I haven't seen the report before.

MR. HOGAN: No, I understand that.

MR. E. MARTIN: And I'm not sure of the context. I, you know – what's giving me pause, Commissioner, is that this doesn't line up with the sensitivity analysis I've seen on this, so I'm not sure what I'm comparing here.

MR. HOGAN: Okay, I'll leave it at that. I just wanted to bring it to –

MR. E. MARTIN: So I really –

MR. HOGAN: – (inaudible).

MR. E. MARTIN: I can't say, but I can't see a zero difference because the sensitivity analysis didn't say this.

MR. HOGAN: Yeah.

MR. E. MARTIN: So I'm not sure what's being compared here necessarily.

MR. HOGAN: Okay, if we could turn to page 21, please? I just have a couple more examples for this report that I want to look at.

MR. E. MARTIN: (Inaudible.)

MR. HOGAN: Scroll down to the bottom, please? Optimization of the Isolated Island Options – you can read this, but I just want to read it into the record.

It says: "While reviewing the information provided by Nalcor, the question of whether the Isolated Island Option put forth was indeed the optimal and least cost option for an Isolated Island development was nagging. The recently released Navigant Report outlines the parameters leading to the proposed option and reinforces the options recommended by Nalcor."

So I guess what they're saying is that when you screened out all the options to come up with the

Isolated Option, that the Isolated Option may not actually be the best of those choices in terms of cost. Do you agree with – that that sentence says that? I know you disagree with what –

MR. E. MARTIN: Absolutely –

MR. HOGAN: Yeah.

MR. E. MARTIN: – I just want to read this more carefully.

And this is the same report, Piésold, isn't it?

MR. HOGAN: Pardon me?

MR. E. MARTIN: This is the Knight Piésold report still, isn't it?

MR. HOGAN: It is, yes.

MR. E. MARTIN: Yeah, yeah.

MR. HOGAN: And I just want to ask you some questions about some comments –

MR. E. MARTIN: Mm-hmm.

MR. HOGAN: – that they made about what was looked at by Nalcor in terms of the Isolated Option. So if we could just turn to page 22, please. Section 4.3 talks about hydro resources.

MR. E. MARTIN: Mm-hmm.

MR. HOGAN: And it says: "It may be worth revisiting the 1986 Study performed by Shawmont Newfoundland that identified 196 potential hydro sites to ensure there are no hidden assets."

So my question is: When was the last time those 196 potential hydro sites were revisited?

MR. E. MARTIN: I don't know.

MR. HOGAN: Were they revisited in 2010 prior to determining what the Isolated Option makeup should be?

MR. E. MARTIN: I don't know. I wouldn't have been part of that.

MR. HOGAN: Okay, so that information came from Hydro and filtered up to you?

MR. E. MARTIN: That's correct, yeah.

And did we – there were discussions at a higher level, you know, indicating – I obviously was, you know, thinking about any of the hydro sites. You know, Mr. Humphries and others would have indicated, no, these are the sites that, you know, we feel we can develop. They talked about, you know run of the river, they talked about – which didn't have much assistance for them. They talked about salmon rivers and the environmental stuff and their assessment was the ones they came forward with were the ones that they could, you know, depend on, potentially, to develop.

MR. HOGAN: Okay.

So to be fair then, what you're saying, I mean, this last sentence says: "This immediately raises the query as to why only three on island hydro … projects are considered in Alternative 2 …." So was that the three they would have taken to you: Round Pond, Island Pond, Portland Creek?

MR. E. MARTIN: That's correct.

MR. HOGAN: Do those ring a bell?

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay.

But so you had no knowledge about the other 193 potential hydro sites?

MR. E. MARTIN: No knowledge is a big statement, you know.

MR. HOGAN: Yeah.

MR. E. MARTIN: I knew there was lots of hydro around.

MR. HOGAN: Yeah.

MR. E. MARTIN: A hundred and ninety-six, wouldn't I – I wouldn't know, but I knew there was lots of, you know, potential. You know, I like to fish as much as anybody so it's an obvious thing in Newfoundland, right? But, no, 196, no, and that kind of stuff.

MR. HOGAN: Okay.

And I have copies of the studies for Round Pond, Island Pond, Portland Creek and they're not in evidence. I can put them in if necessary. But the reports are 1988 for Round Pond, 2006 for Island Pond, 2007 for Portland Creek. Do you know if these feasibility studies were ever updated?

MR. E. MARTIN: My understanding from testimony over this – course of this Commission, I believe they were.

MR. HOGAN: You don't know though, do you?

MR. E. MARTIN: Well, I do know because I heard it said here.

MR. HOGAN: Okay

So do you know what kind of detail went into those feasibility studies?

And I'll just read out page 50 of your transcript when Ms. O'Brien was asking you about this.

You said: My point was I understand –.

She said: My point was – I understand that work going on through phase 3 would have been much more work going on on the Interconnected Island Option, which was the preferred alternative. But there was still some work done on the Isolated Island too as I understand it. That work was really to kind of update the capital cost estimates, et cetera.

You say: That's correct.

She says: Going up to run the CPW analysis again at gate 3.

That's correct, you said.

Ms. O'Brien says: So it wasn't like detailed engineering was going on for Isolated Island but there was some updating on the estimates.

You said: That's correct.

So, can you just put that in context in terms of whether these studies were updated and how much engineering was done? Because it sounds like there wasn't detailed engineering done unto these options as opposed to just saying – it was X dollars then, we'll escalate it now.

MR. E. MARTIN: That's my understanding as well.

MR. HOGAN: Okay.

MR. E. MARTIN: So –

MR. HOGAN: So the updating you talked about was escalating costs as opposed to detailed engineering updates on these feasibility studies.

MR. E. MARTIN: I think that's – once again – a bit too far.

MR. HOGAN: Okay.

MR. E. MARTIN: So, I cannot say that.

I think I believe, although I do not have the facts but it went the – with my knowledge of how engineering and construction works and my knowledge of desktop type of studies that I've garnered over many, many, many years of working in this field – if you go out to an engineering firm to update, you know, a study – obviously, they just wouldn't escalate it because we could do that ourselves.

So, I would have a very high probability of understanding that and they would look at several elements of that, you know, look at recent work that had been done that they could help them update that and things like that.

But the reason I'm making that clear is that if it was just escalation, why would we send it out?

MR. HOGAN: Okay. Well, that's a good point.

MR. E. MARTIN: Pretty simple.

MR. HOGAN: Let's just look at 4.3.3 and it says: "… Simply put, it is likely that the proposed hydro … facilities could have larger installed capacities than those indicated though the amount is probably not significant when compared to the total increase in demand to 2067, but still worth consideration."

So, if these hydro projects – feasibility studies were updated as opposed to cost escalation – it's potentially possible that you would have actually found more capacity in these projects.

Do you agree or disagree with that?

MR. E. MARTIN: I believe the potential is there.

MR. HOGAN: Yeah.

MR. E. MARTIN: I think they're finding more capacity in Muskrat Falls right now – increased. I know Churchill Falls increased significantly after construction. So, I think it goes to follow that could happen.

MR. HOGAN: It could happen. Okay.

MR. E. MARTIN: But you plan on the certain standard. You know, you don't plan for a, you know, that these types of things are necessarily going to happen.

MR. HOGAN: Okay. We'll move on from that report.

Just a few questions about your project team where you said you – I don't want to put words in your mouth – you hand-picked.

Is that fair to say?

MR. E. MARTIN: I think –

MR. HOGAN: You used the word. You've (inaudible) –

MR. E. MARTIN: Yeah, and I think Mr. Harrington was hand-picked. The others went through a different process. But I think I also mentioned that a couple them, if they didn't go through the process, I probably wouldn't have hand-picked them.

MR. HOGAN: Okay.

Can I – I'm just going to talk about Mr. Bennett, Clarke, Power, Kean and Harrington. You knew them, and that's why you wanted to hire them 'cause you were –

MR. E. MARTIN: (Inaudible.)

MR. HOGAN: – comfortable with their abilities.

MR. E. MARTIN: You said Mr. Bennett.

MR. HOGAN: Yeah. Not him?

MR. E. MARTIN: I didn't hire him, and –

MR. HOGAN: Okay.

MR. E. MARTIN: – I didn't know Mr. Bennett before I came to Hydro.

MR. HOGAN: So, what was your – the other ones – yes, though, you agree?

MR. E. MARTIN: Yeah, I think you – and I think you did – you said Harrington – Harrington, you said –

MR. HOGAN: Clarke.

MR. E. MARTIN: – Clarke –

MR. HOGAN: Power and Kean or Kean or whatever.

MR. E. MARTIN: Power and Kean.

MR. HOGAN: Yep.

Though, let's just talk about Mr. Clarke first. How did you know him? What was your experience with him?

MR. E. MARTIN: Primarily at Petro-Canada – he worked for me for a period of time, and then he also reported to me because he was a Petro-Canada employee reporting to me, but seconded into the Hebron Project at Chevron. Chevron asked – Chevron agreed – asked – wanted him as commercial manager for the Hebron Project. So, he was seconded to Hebron.

So, day-to-day, he'd be working with Chevron in the Chevron organization on Hebron. And Chevron at the time, Commissioner, was the operator of Hebron before Exxon. They made the change to Exxon. So that's how I knew him, so –

MR. HOGAN: So, he reported directly to you in this job for how many years?

MR. E. MARTIN: I can't remember, but, you know, a year – a year or more.

MR. HOGAN: Mm-hmm.

MR. E. MARTIN: But I just want to clarify, you know. When you second someone into Chevron, you know, I would say to him: You report direct-line to me, yes, but you need your – you have to act like you're day-to-day, you know, Chevron employee on the project. So he would've been outside of the Petro-Canada office working in Hebron, but reporting to me, from a Petro-Canada perspective.

MR. HOGAN: For about a year? Yeah.

MR. E. MARTIN: Give or take. Give or take.

MR. HOGAN: Ron Power. What about him? Same questions.

MR. E. MARTIN: Ron – I would've known just from being around Ron, you know. He did not work directly with me – for me. He was, I believe, heavily involved in the Terra Nova Project, but I would've known him –

MR. HOGAN: Through the industry?

MR. E. MARTIN: – through the industry, through Petro-Canada, and that's as much as I can say.

MR. HOGAN: How long did you know him for before he was hired?

MR. E. MARTIN: Low years, I would say.

MR. HOGAN: Pardon me? Low years?

MR. E. MARTIN: Years.

MR. HOGAN: Five years?

MR. E. MARTIN: Yeah. That's (inaudible).

MR. HOGAN: I'll hold you to an exact number.

MR. E. MARTIN: Exactly.

MR. HOGAN: Mr. Kean?

MR. E. MARTIN: Mr. Kean – he worked for me. He worked in Terra Nova – in the Terra Nova Project for others and such. He came to work with me for a period of time, and I think low years again, if that's okay? And – so I knew him directly hands-on, you know, the type of expertise that he – and work ethic he brought to the table.

MR. HOGAN: Okay. And Mr. Harrington's the last one.

MR. E. MARTIN: Mr. Harrington never reported to me, I don't think – not directly. But in any event, we both worked on Hibernia, we both worked in the project team for a period of time, we both worked closely with similar, you know, leaders, you know, such as, you know, a gentleman, Van Zante and project manager Philip Bates and (inaudible). So we all worked a lot close together.

And in addition to that, when I – I believe around the same time I went back into the operating company as either treasury and risk manager and then CFO – around that time, Mr. – if I can remember correctly, Mr. Harrington was also commissioning start-up, you know, heavily involved in that, which is an overlap with operations as well.

So over a period of years, you know, we had worked around each other.

MR. HOGAN: Okay, thank you.

I just want to talk a little bit about the red-meat theory, okay. The theory being that you don't let people know what your budget is because they'll have access to it somehow, right?

MR. E. MARTIN: Well, two things: you don't let them know, and/or you don't assign it to them in the project management team world, you know. You don't put it in their, what they would call, their control budget.

MR. HOGAN: Now this situation is different than private companies. This is a Crown corporation, Government is footing the bill for this.

You agree?

MR. E. MARTIN: Yes, in the long run – the people, ratepayers and such, yes.

MR. HOGAN: Well, I just sort of flipped the red-meat theory around a little bit, because you obviously were aware that – were all aware that the government signed a guarantee to complete and fund the project, right?

MR. E. MARTIN: That's correct.

MR. HOGAN: So I see the red-meat theory working negatively in this context in that the budget is – and we've heard this word used before by Terry Paddon – is a blank-cheque budget. So really it's irrelevant what numbers were out there, because this project was going to be completed. To me – that's red meat.

What's your comment on that?

MR. E. MARTIN: I'll break it down again, you know. My first and foremost focus was the project management team –.

MR. HOGAN: Okay.

MR. E. MARTIN: – in terms of not giving them budgets that they could spend, you know. Because once I assign it, as you can see by the authority limits in the project team, they have authority to spend it. So I, you know, I just would not do that. It's been my experience in projects of (inaudible).

MR. HOGAN: You're somewhat protecting them from making those decisions if they don't have that money to spend.

It's a very specific issue, isn't it?

MR. E. MARTIN: That's a way to put it.

MR. HOGAN: Okay.

MR. E. MARTIN: Pretty nice way to put it, but – for them – but, I just –you know – anyway, I've talked about that before. So that's point a.

And then point b – putting numbers out there, you know, publicly – and I think I've talked about that already about the commercial sensitivity, and I won't go back into that – unless you so wish. And so that's where I am on that.

As far as the, you know, the financing contingent equity letter, we did what we could there. I think we tried to link that to the, you know, to the financing and I don't believe we made, you know, a very public case out of that, but that was something that had to be managed, and we tried to link it, I believe, to the, you know, to the financing arrangements which – and it would be a normal financing, commercial financing arrangement where the lenders are not going to provide, you know, long-term bond issues unless they have some idea of that, and that's my comments there.

MR. HOGAN: Okay.

So, on that note, when you did talk to government and you – I'm not gonna go through it all again, but 6.2 was the number with possibly hundreds of millions in overruns. Did anyone ever say to you, tell us a max, and then maybe the completion guarantee would be up to that number?

'Cause now there might be some confusion in your mind and government's minds as to what was discussed in terms of total numbers. Worst-case scenario: If it had been put on paper, listen, this is the max budget, you go do it for this, maybe we wouldn't even be here.

So what – was a max number ever discussed and that put into the guarantee as opposed to a blank cheque?

MR. E. MARTIN: Not to my recollection.

You know, as I mentioned before, we approached it from what value was available to deal with overruns, and –

MR. HOGAN: I guess that's the problem. The value is the government as opposed to Petro-

Canada or X-company or Y-company. It's a much different scenario than you'd see in the private world for –

MR. E. MARTIN: You know, different – I don't see it that way.

MR. HOGAN: Okay.

MR. E. MARTIN: I don't see it that way.

You know, I think the principles are exactly the same, and you can never give a finite number. I mean, you know, that is a cardinal rule because you, frankly, if you did that, you know, it would not be right, 'cause you can't do that, by the nature of it.

So, I would never, you know, give a guarantee. I would never say this is the number, and I'm comfortable, having been discussed many times with government, having been pursued publicly on it many, many times, that I was crystal clear that I would never give a guarantee, so I just wanna make that point.

But I have gone on to talk about, you know, I would have left impressions, in terms of general discussion with the premier and the minister and stuff, and I admit that for sure.

MR. HOGAN: Yeah, I'll leave it at that. That's fine, thanks.

At some point this week, Ms. O'Brien was asking about risk reports that were – there were edits made to it, and you said you wouldn't be concerned with that if the project team was handling it because that happens, that's standard, and that's fine. You also said throughout the week you believed in delegation within a framework with the company, correct?

MR. E. MARTIN: That's correct.

MR. HOGAN: So I just wanna know is there a framework for reports being viewed and being moved up the line if necessary?

Like, would the project team say: Okay, I have this report. Here's the protocol to deal with this report. I – you know, it's within my authority to make a decision on it or it's not and I have to go to my manager, my manager has to go to the VP, the VP has to go to the CEO.

How are those reports being handled internally because not everyone is seeing every report, which is a bit troubling? So was there not a framework to deal with that situation?

MR. E. MARTIN: You know, once again, a couple of points there. Troubling – I don't find it troubling –

MR. HOGAN: Okay.

MR. E. MARTIN: – I mean the volume of just, you know, the understanding of what's happening in that organization and the volume of –

MR. HOGAN: I shouldn't put a subjective word –

MR. E. MARTIN: Okay.

MR. HOGAN: – on it. Let's talk objectively about –

MR. E. MARTIN: All right. Thanks for that.

MR. HOGAN: – how the reports should be dealt with.

MR. E. MARTIN: So, no, I can't think of a framework. But that would not be the norm either. I mean –

MR. HOGAN: Okay.

MR. E. MARTIN: – the overall framework, as I mentioned in terms of how things rolled up; they have that, they have their approval authorities, you know, they obviously grew up, we all grew up, we all worked in systems where, you know, the expectation is you bring forward the key issues, you know, and, Commissioner, you know, part of that comes with experience. That's why you put senior people in roles, who have been through this thing before and, you know, and they look at it through a particular lens and that's the way it works. And –

MR. HOGAN: So it's within –

MR. E. MARTIN: – the people I had around me, you know, came up through a system that I would, you know, be comfortable that we were aligned in terms of what key issues would be. And they would raise them.

And, you know, it goes back to when we hired new people, we'll say, that were hired in another process and I'd meet with them for the first time and they would ask me that question. They would say: Well, how frequently should we meet and, you know, what's your protocol?

And my answer to them was: Well, I don't know you, so let's err on the side of meeting frequently. If you have a – in your – if in your mind, I would tell them, you're saying should I or should I not. If you're saying I – no need to talk to Mr. Martin about that, I'll say you're good. And if you said: I need to talk to Mr. Martin, I'd say you're good.

If you're in this thinking should I or shouldn't I. I say count that as should. And I said let's do that for 6 to 12 months, and I said my experience has been, by that time, we get to know each other and understand and trust each other, and then you'll have more carte blanche.

MR. HOGAN: So the framework, I'm gonna put it to you, was trust in the person who would have received the report to make that decision on whether it should get elevated above them or not.

MR. E. MARTIN: That's correct.

MR. HOGAN: Okay.

Just a few more questions, Mr. Martin. I'm almost done here.

Yesterday, you talked about the benefit of the fact that we're not using the Isolated Option, all those costs, the oil costs, which is a huge component of the Isolated Option, is not going to oil companies. You remember that statement?

MR. E. MARTIN: Yes, I do.

MR. HOGAN: Now, we're faced with a large bill for Muskrat Falls where we have massive loan payments which are all going to banks. So that's not great either, is it?

MR. E. MARTIN: Well, you know, once again let's put it in context. You're right down to the rent versus buy decision on a House.

MR. HOGAN: Okay.

MR. E. MARTIN: So, you know, the question becomes do you want to spend – you know, do you want your relative or yourself to spend $1,000 a month on rent, you know, where will that leave you after 35 years; or would you like to spend it on – to own a house and, obviously, even though you're – at the upfront, in particular, you're paying interest and such but you are also paying principle and that spread widens at more and more principle over time and at the end of 35 years you own the house, it's the same discussion.

MR. HOGAN: Okay.

MR. E. MARTIN: One thing for sure, if you're renting, you're not owning it. That's a guarantee. On the other side, you know, you're guaranteed you're going to own a huge, very significant asset outright for many, many, many generation and that's exactly, you know, what was a –

MR. HOGAN: Yeah –

MR. E. MARTIN: – key consideration here.

MR. HOGAN: – so those payments, you feel, you're comfortable with because of what the end result is?

MR. E. MARTIN: No question. Rent versus buy decision.

MR. HOGAN: I just want to talk about the backup plan. What's the backup plan if there's issues with Muskrat Falls?

MR. E. MARTIN: When you say Muskrat Falls you're talking about –

MR. HOGAN: When we're getting our power from Muskrat Falls –

MR. E. MARTIN: Yes.

MR. HOGAN: – if there's an issue with that, where – what's – is there a backup plan?

MR. E. MARTIN: Yes, there is.

MR. HOGAN: Okay. What is the backup plan?

MR. E. MARTIN: Once again, I'll have a second point to make very briefly after that, but the backup plan, you know, is essentially, you know, you can buy from the market. So that's why I asked, Muskrat Falls you're – first off there's generating plant.

MR. HOGAN: Yeah, okay.

MR. E. MARTIN: Okay? So if you have problems with the generating plant and your transmission is still up, Commissioner, you can access energy from the market, you know, through Quebec back into the – through the Labrador-Island Link. Okay? It's not okay, you can.

MR. HOGAN: Yes.

MR. E. MARTIN: I shouldn't put you on the spot like that, but, you know, as well as on the other side, now they're linked up both ways. We can also go up to Nova Scotia and New Brunswick and into New England and we can bring power in that way.

So if the generating station goes down, we have two avenues now to bring in supplementary power to keep us moving.

MR. HOGAN: Okay.

MR. E. MARTIN: If the transmission goes down, well, you know, once again, the Maritime Link and LIL are on different sides, you know, so you have a built in geographic difference there because if the transmission goes down with respect to the LIL, then you have the Maritime Link to bring it in and vice versa.

And one other point, and I think it's important to note that the robustness of this Labrador-Island Link, Commissioner, make no mistake, if the Labrador-Island Link goes down in an ice storm anywhere near the Avalon Peninsula, that's the least of your worries because those things are so doggone robust that the rest of your distribution system and the rest of your smaller transmission system will be flattened, so LIL won't be the problem if you got a big ice storm in that area, I can tell you that right now. The rest of the system will be flattened according to what LIL could provide.

And my final point is that this was looked at quite – you know, obviously it was an important thing, and Mr. Humphries commissioned the report by Techmont – outside company, expert in this area – and that report asked that question. You know, they compared the reliability of the system now and if we went Isolated, if that happened, and the reliability of the system if we brought Muskrat Falls to the Island.

And my memory serves me correct, the last read I had of that report was that – I believe it was an order of magnitude difference, but I stand to be corrected on that, but I will say it was hugely in favour of the Muskrat Falls-LIL system being much, much, much, much more reliable then the Isolated system. When you put the Maritime Link on top of that, it became even more reliable, and it was all driven by the fact of, you know, essentially of Holyrood over the next 10 to 15 years, in essence, the reliability is absolutely at risk.

But that report exists, Commissioner, to answer that question.

MR. HOGAN: So, fair enough. I don't mind the context. The long answer to the question is the link is the backup plan, the links – power through the links?

MR. E. MARTIN: That's correct.

Yeah, I was just going through the options there. That's correct.

MR. HOGAN: Where does that power come from? Where are we buying that from?

MR. E. MARTIN: Well, it could be – if we take, example, Nova Scotia and New Brunswick and New England, it's new for us, because now we're linked both ways. It's a new world, but if you go into the North American world, I think I'd be comfortable in saying every jurisdiction – or certainly not every. Would be the majority of them – have agreements in place, so New Brunswick and Nova Scotia, New Brunswick and Quebec, all these adjoining – and Ontario and Quebec – would have agreements in terms of sharing resources in emergency situations.

MR. HOGAN: That's my question. That's really where I'm going. I want to know where the firm power is coming from the backup and if – does Nalcor have that agreement to say if we need it, as a backup, you can promise us or guarantee us, because there's an executed contract, X number of megawatts of firm power.

MR. E. MARTIN: I believe you need to ask the current Nalcor people –

MR. HOGAN: Okay.

MR. E. MARTIN: – that question. When I left, that was – it had been – it's on a list, and it had been discussed, and I think it had commenced, but that's two and a half years ago.

MR. HOGAN: Why wouldn't that have been dealt with before, because I understand Holyrood is the backup now, closing Holyrood that was part of the decision in 2010 to proceed with Muskrat Falls, so why wasn't the backup plan dealt with at the same time as sanction because you made the decision to close Holyrood? See, if you close Holyrood as part of your decision, you need a backup plan to replace Holyrood.

MR. E. MARTIN: I was just describing the emergency –

MR. HOGAN: Yeah.

MR. E. MARTIN: – arrangement. That doesn't mean you can't access power.

MR. HOGAN: No, but I wanna know if there is guaranteed access to power.

MR. E. MARTIN: I would say, yes. You know, we have the ability to buy in the market; we have the transmission capacity both ways.

MR. HOGAN: We can't guarantee a way to get the power here. If there's no power to sell – let's say New England has an ice storm at the same time and they're all their power for whatever reason, and they don't have power to sell us, then we have the ability to get it, but we don't have access to it?

MR. E. MARTIN: Well, that can happen with agreements.

MR. HOGAN: Okay.

MR. E. MARTIN: I mean, that's no different – I mean, the whole place could be flat and everyone's lights are (inaudible) – well, that's the nature of the system.

MR. HOGAN: Right, but we don't need an agreement if Holyrood is the backup, do we?

MR. E. MARTIN: Well, I think you – I think if you use Holyrood as a backup, you'd better have agreements, 'cause that thing's not lasting very long – number one.

And number two on Holyrood as backup, I mean, you got Holyrood – Holyrood takes a long time to get a unit up, Commissioner. So it's not like you're – you know, you're sitting there flicking your fingers and you're rolling Holyrood up. That's been a problem every year since I've been there – getting those units up after the summer. And it takes days.

So you got the big storm, and you got an issue, and you're waiting two or three days to light up Holyrood for that power. I mean, that would probably have no use to you; you'd have the transmission line fixed before that.

MR. HOGAN: Okay.

I just – one little note I wanna go to; I forgot when I was at the P questions. If we could just turn to P-00135, please?

You might have this; I'm not sure.

THE COMMISSIONER: No, you don't.

MR. HOGAN: Oh.

It's a slide, so just – page 43, please?

I know you've been back and forth on 50 and 75; I'm not gonna go there again.

THE COMMISSIONER: P-00135 coming up?

CLERK: Do you want the slide show?

MR. HOGAN: I want page 43 of the slide show. Is that possible?

MR. E. MARTIN: And, Mr. Commissioner, I'm just thinking – back to one of the previous questions about, you know, supply in the event of a storm; we can access the markets. Agreements will be helpful, but I do believe – I'm searching my memory banks now, but I believe, as well, in the agreements that we have with – currently with Emera, there are emergency provisions that we can pull that power back.

We need to test the details on that, but I'm – usually when –

MR. HOGAN: Pull what power back? Our own power back?

MR. E. MARTIN: Pull the power we're giving Nova Scotia back.

MR. HOGAN: Right – our own power, yeah.

Well, power that we –

MR. E. MARTIN: Yeah, that we sold them. So – and I'm gonna stop there, but usually when something triggers in my memory, it's something worthwhile –

MR. HOGAN: Forty-three.

MR. E. MARTIN: – checking out.

So I think there's opportunity there, as well.

MR. HOGAN: Yeah.

Just to confirm this – so P50 contingency was calculated to be 368. So you would agree that P75, obviously, contingency and capital cost estimate would increase by that number. Capital cost would've been 7.5 if we'd used – you had used P75 instead of a P50.

MR. E. MARTIN: I agree that it would be larger. The only – I'm gonna ask for some context on what this presentation is.

MR. HOGAN: This is a Grant Thornton presentation in relation to their report.

MR. E. MARTIN: Commissioner, my thinking is this: I know – and I mentioned the other day – that if we'd gone to a P75, I had suggested it would be about $7.1 billion.

MR. HOGAN: Okay.

MR. E. MARTIN: And Ms. O'Brien at the time said she thought it was 7.5.

MR. HOGAN: Billion?

MR. E. MARTIN: Million.

MR. HOGAN: Well, maybe this is where Ms. O'Brien got the number.

MR. E. MARTIN: I would suggest so, and I'm not saying, you know, there's a right or a wrong here. I'm just saying is that one was in the – the 7.1 was back in 2012, and I think the 7.5 was escalated to current time was the point I wanted to make here.

MS. O'BRIEN: Sorry, Commissioner, I have just risen to say that that 7.5 number was also in the papers prepared by the project management team. So that is the other source of it that I am recalling right now.

MR. E. MARTIN: Yeah, so I'm not saying it wasn't there, Commissioner. But in my mind, at the time, I was in the 7.1 world because of that, and that's what I would've compared the CPW to. The 7.5 is also correct, but it's been escalated to 2018.

MR. HOGAN: Okay, right.

That's all the questions I have, thank you.

THE COMMISSIONER: All right, thank you.

I don't believe Ms. Ledoux has made it yet for the Innu Nation; I think she's having flight issues. Is there – am I missing anyone back there?

Okay, so the next one would be the NunatuKavut Community Council and – 15 minutes, but you can go on, obviously, after lunch as well, Mr. Ryan.

MR. RYAN: Good morning, Mr. Martin. My name is Victor Ryan, and I'm counsel for NunatuKavut Community Council, which, for many years during your involvement with the Lower Churchill Project, was referred to as Labrador Metis Nation. So some of the documents will refer to that name or both. And NunatuKavut has limited standing before the Inquiry, so my questions for you are gonna be quite focused.

My understanding of your evidence this week was that you delegated the vast majority of Nalcor's Indigenous consultation efforts to Gilbert Bennett and staff operating under Gilbert Bennett. Is that accurate?

MR. E. MARTIN: That's accurate.

MR. RYAN: And I believe you said that your rationale for this decision was that the breath of work involved and the knowledge base required meant that you personally as CEO of Nalcor just wouldn't have the time to personally oversee the work and so there needed to be a point person. Is that accurate?

MR. E. MARTIN: That's accurate.

MR. RYAN: I'm interested in how this delegation happened. So how did you – how did it come to be that Mr. Bennett was delegated this role? Did you sort of have a meeting with him and inform him that he was to be this person?

MR. E. MARTIN: That's in essence it. You know, we would have sat in a meeting, yes, and talked about it. And I would say: Gilbert, you know, just to be clear, this is your accountability.

MR. RYAN: Right.

Mr. Bennett's evidence is that this – how he came to be the lead person from Nalcor was sort of an organic exercise that happened because Mr. Bennett had quite a bit of autonomy within the organization to determine what areas needed his oversight. And as the – Nalcor proceeded to the environmental assessment process, essentially a determination was made that this was going to be an area that required a lot of work.

So is that – is that inconsistent with how you view the delegation of the Indigenous consultation work to Mr. Bennett?

MR. E. MARTIN: I think I could clarify it. I understand your point and it's a good one. I would have – I'm going to come – I'm going to pull back a little bit and say it would not likely have been the impression I left is I called Mr. Bennett in to say you are responsible for Indigenous, you know, affairs and the consultation.

I think it would be more of – it did evolve organically, but I would have been clear to Gilbert I'm not going to be involved in this. So, you know, it's in the Lower Churchill Project and you are the point person, you're the accountable person in that project, so in essence you need to handle that. How that evolved after that would have been in his hands.

MR. RYAN: Okay.

Mr. Bennett's evidence is also that he had no experience working with Indigenous people on consultation issues prior to his work with the Lower Churchill Project, and he had very little experience working in Labrador. But he did, through his work at a telecommunications company, have some customers that were based in Labrador.

Does this line up with your understanding of Mr. Bennett's experience at the beginning of the Lower Churchill Project?

MR. E. MARTIN: That sounds correct.

MR. RYAN: Mr. Bennett's evidence is also that the role of leading consultation efforts with Indigenous people is a complex job that requires subject matter expertise. And to be fair to Mr. Bennett, this is a question I put to him that he agreed to. Do you agree with that assessment?

MR. E. MARTIN: I do.

MR. RYAN: Given that both you and Mr. Bennett agree that it's a complex job that requires subject matter expertise, and given that both you and Mr. Bennett agree that Mr. Bennett had no experience dealing with Indigenous peoples on consultation issues, did you have confidence at the time in Mr. Bennett's ability to lead these efforts on behalf of Nalcor?

MR. E. MARTIN: I did. My rationale was, you know, I had – Gilbert has a, you know, a strong intellect and his capacity to absorb complex issues in other areas I'd worked with him was large. And he was a very motivated individual from a work perspective and he also had the ability in his role to access, you know, the true expertise he would need to – excuse me – to back that up. And it was also clear that in addition to expertise in dealing day-to-day, you know, with the issues and the relationships, that it was the seriousness and breadth of the issue that legal assistance was necessary to guide us and I was aware that he obtained that as well. So I felt comfortable in that combination that it was acceptable to have Mr. Bennett look after that. That was my view.

MR. RYAN: Yeah.

Now, your evidence this week to Commission counsel is that you did not play a large role in Nalcor's Indigenous consultation efforts. But my understanding is that you did say that you led negotiations on behalf of Nalcor with respect to the New Dawn Agreement or the Tshash Petapen Agreement. Is that correct?

MR. E. MARTIN: That's correct.

MR. RYAN: Okay.

And so my understanding is also that Mr. Bennett was involved in those negotiations as well. So I guess if you could just please explain: Was there a negotiation team from Nalcor that participated? Did you lead those efforts? Were you the lead for the majority of those efforts?

MR. E. MARTIN: There was a team and it was a joint Nalcor, you know, Province of Newfoundland and Labrador team. Mr. Don Burrage was – we were side by side in leading these negotiations. And Don – or Mr. Burrage, you know, he had the lead on several aspects of – you know, once again, can I just step back for a second?

Tshash – the New Dawn Agreement was comprised of redress for the Upper Churchill, it was the actual negotiation of the terms of the land claim and it was the IBA, the Impact and Benefits Agreement with respect to the Innu and Muskrat Falls and other things, so you can see why we were jointly in there. I mean, the redress for the Upper Churchill, that would be a – you know, to a point CF(L)Co – but that really landed in the province's lap, I believe.

The actual land claim situation would eventually be a federal government issue. But, you know, the relationship – in terms of how it evolved – you know, the federal government would want the province to be on board, you know, with the land claim allocations, before they would have pursued it. So the province was involved in that piece. And then obviously the IBA with Muskrat Falls would be a Nalcor situation.

So in that context, Mr. Burrage took a lot of the lead on the actual land claim pieces and dealt with the government and bureaucrats and politicians on that. I took the lead on the IBA stuff. And I actually had Gilbert doing a lot of that as well.

And on the Upper Churchill redress, I took the lead on that. You know, I was CEO of CF(L)Co as well. And then a combination of both of us working at it – myself and Mr. Burrage who led that – I guess you'd have to check with Mr. Burrage – but I would say that, you know, I had the hammer in the final analysis; and I would keep the premier and the minister informed. But both Don and I would be there. But that's a description of how it unfolded.

MR. RYAN: And can you just please explain why you felt it was important for you as CEO to be involved in the negotiations?

MR. E. MARTIN: Well, I just felt that the actual attempt to finalize those arrangements absolutely meant everything to the Innu, obviously. I thought that it had gone on for a long time. I thought the leadership on the Innu side was strong. And I felt that – frankly, that, you know, a lot of the Innu mindset matched up to Newfoundland and Labrador's mindset in terms of how we interacted with Canada in some areas, and how the Innu felt they were interacting with Newfoundland and Labrador.

And I just thought to myself that – I thought it would need, you know, the full attention of myself and the corporation to try to close this because of the importance of it. I didn't think going through another rounds of having a broad array of people maybe with not as much, you know, ability to move things along, wasn't gonna work. And so I made the decision to go to the table myself.

MR. RYAN: Mr. Commissioner, I still do have maybe 10, 15 minutes more of questions, and I just note that time – is this a good time now?

THE COMMISSIONER: Okay.

So, is this a good place for you to break?

MR. RYAN: It's a good time for me, yes.

THE COMMISSIONER: All right.

Well, let's take our lunch break here now and come back at 2 o'clock.

Just so that we know the order – if Ms. Ledoux is here by then, she'll go before you, Ms. Urquhart. If not then you'll have to be ready to go.

Okay?

Good.

CLERK: All rise.

Recess

CLERK: This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

Mr. Ryan?

MS. O'BRIEN: Sorry, Commissioner, to interrupt.

THE COMMISSIONER: Oh.

MS. O'BRIEN: Just before we begin, I am seeking to enter one new exhibit. It's P-01657, and what this is – this is a Commission prepared transcript of certain key pages of Jerome Kennedy's notes. The transcript has been verified by Mr. Kennedy. And so it's one exhibit going in, and the other exhibits that it is the transcript of is referenced within P-01657.

THE COMMISSIONER: Okay.

All right, Mr. Ryan, when you're ready.

MR. RYAN: Good afternoon, Mr. Martin.

Before we broke for lunch we were discussing your involvement in the negotiation of the New Dawn Agreement and if I can maybe just summarize what I believe the evidence was so far. You took a role in a – in your capacity as CEO because you thought it was an important negotiation to participate in and you did have – you weren't the only representative of Nalcor participating in those negotiations, but you did play a key role and you were a participant in the negotiations. Is that correct?

MR. E. MARTIN: That's correct.

MR. RYAN: Okay.

I don't know that for the purposes of my questions that we need to go to the Exhibits, but I'll explain what I'm referencing and then if you wanna look at the documents I can certainly ask Madam Clerk to call them up.

But there's been evidence in documents before the Inquiry that the Innu Nation were wary of other Indigenous groups participating in the Lower Churchill Project and that the provincial government was aware of that concern and factored it in to – if not their ultimate negotiations with the Innu, it was something that they bandied back and forth in determining how to best move forward.

My question to you is: In your capacity as one of the negotiators for the New Dawn Agreement, do you have any recollection of that topic being brought up in the course of the negotiations?

MR. E. MARTIN: I'm not – not that recollect.

MR. RYAN: Okay.

So just to clear: You have no recollection of Nalcor or the provincial government or the Innu

Nation bringing up the Labrador Métis Nation, NunatuKavut, or the Quebec Innu in the course of the New Dawn negotiations?

MR. E. MARTIN: I would think the topic came up, you know, but I can't put a specific reference on it. So I – you know, I'm just trying to recollect, Commissioner.

It would – I can remember some discussions about things such as that and, you know, tying to understand the Innu – Labrador's needs, you know, about land claims and interrelationships with other groups and such. But it really wasn't, you know, something that I could point to a particular, you know, negotiation or whatever, but – so some recollection, but not much data for you.

MR. RYAN: Right. So maybe I'll put it to you then that that weariness came up in the negotiations, but it sounds like you're saying didn't play – or wasn't a large factor in any one particular point in the negotiations.

MR. E. MARTIN: That's a fair representation.

MR. RYAN: Okay.

And so those are all my questions regarding the New Dawn Agreement, Mr. Martin.

I just wanted to now turn to the environmental assessment process. And your evidence, as I understand it, is that you didn't really play a large role on behalf of Nalcor in the environmental assessment process; that was part of the – Gilbert Bennett's purview. Is that correct?

MR. E. MARTIN: That's correct.

MR. RYAN: Yeah.

Can you please just describe, very briefly, the extent of your role? Did you receive briefings from time to time from Mr. Bennett? Did you ever step into the weeds on the environmental assessment process?

MR. E. MARTIN: It would be more of the former, you know, some updates from Mr. Bennett. I did not step into the details of it.

MR. RYAN: Okay.

Did anyone at Nalcor ever raise with you a significant problem with the environmental assessment process regarding the relationship between Nalcor and the provincial government?

MR. E. MARTIN: Could you repeat that again, please? Between Nalcor and the – maybe I'll let you repeat it. I'm sorry.

MR. RYAN: Well, I will repeat it, Mr. Martin. But I am thinking of a particular document and so maybe I'll just ask Madam Clerk to bring it up and that may help me –

MR. E. MARTIN: Yes.

MR. RYAN: – ask my question. It's Exhibit P-00097 and it's page 65.

So, Mr. Martin, this is the Decision Gate 2 Project Risk Analysis and I'm particularly interested in page 65 which is strategic risk R14 and it's about the environmental assessment. And so I've asked a few questions about this to a few different people; it's not clear to me who is the author of this document. It seems as though it might be Todd Burlingame, because he's the lead. But I don't think that that's confirmed.

But the Risk Description here is: "As a result of a lack of information in the Generation EIS, a legal challenge to the EA by Hydro Quebec, or Aboriginals claiming insufficient consultation, could result in a schedule slippage for achieving EA release and hence a delay in Project Sanction."

My question relates to the fourth root cause of this risk, which you'll see here under Specifics and Root Causes. The fourth root cause is: "Inaction, indecision and political interference as a result of conflicts between Nalcor and Province's mandates. We are encumbered."

When I read "We are encumbered," I take that to mean that Nalcor, as the author of the document, is encumbered by the conflict and mandate between Nalcor and the provincial government.

So my first question is: Are you able to shed any light on what this might mean?

MR. E. MARTIN: No, I can’t.

MR. RYAN: Okay.

So then my second question would be: Did anyone at Nalcor ever raise an issue akin to this root cause with you during the environmental assessment process?

MR. E. MARTIN: Not to my recollection.

MR. RYAN: I’ve asked Gilbert Bennett about this and he – the fairest recollection I can have is that he didn’t know what this referred to but that he thought it might mean that certain members of Nalcor were willing to move quicker on stakeholder engagement even if that meant expending money, but that that stance was not Nalcor’s stance, specifically, but was certain people within Nalcor’s stance and it conflicted with the government’s stance.

Is that something that you would have seen in your role as CEO during the environmental assessment process?

MR. E. MARTIN: Not to my recollection.

MR. RYAN: Okay.

Are you concerned at all that this issue – which in – well, perhaps I’ll ask this first: Do you consider this root cause here to be a serious issue?

MR. E. MARTIN: I guess it’s somewhat of a hypothetical that, you know, if it wasn’t mitigated and dealt with, yes. If, you know, if it was – which I’d expect it to be, I guess identifying the risk and dealing with it would be normal process, and if that happened I would not be concerned about it.

MR. RYAN: Right.

MR. E. MARTIN: If you see what I’m saying, but, you know, identifying it is good, not dealing with it would not be.

MR. RYAN: Right. I suppose at the time that this is being written, it’s in the present tense, I assume that it is referring to an ongoing issue that we don’t have any evidence as to whether or not it was resolved or not. But, I guess, my question is if you can step back in time and consider yourself CEO in 2009 or ’10 or whatever, and you become aware of this, do you consider this a significant issue or do you consider it a minor issue?

MR. E. MARTIN: I would consider it a – two things: I would consider it a significant issue, but my focus would be on what, you know – the solution. That’s what I would have – if I had been involved in that, and I think my team – my trust would say that that’s how I would approach things, is minimal time on identifying the problem. I mean, the least amount of time and the most amount of time and what are you doing about it.

MR. RYAN: Right. Should you have been made aware of this issue or are you comfortable with the fact that this was never brought to your attention?

MR. E. MARTIN: I’m comfortable with that fact, but it (inaudible) –

MR. RYAN: Obviously, so long as it was dealt with.

MR. E. MARTIN: Exactly, yes, Sir.

MR. RYAN: Okay. Just one more set of questions.

I’d just like to turn briefly to the actual JRP report, which was released August 2011. It’s at P-00041, Madam Clerk. Obviously, Mr. Martin, you’ve had a chance to review this document before?

MR. E. MARTIN: What –?

THE COMMISSIONER: P-00041.

MR. E. MARTIN: P-00041.

THE COMMISSIONER: On the screen.

MR. E. MARTIN: Yes, I have.

MR. RYAN: It’s hundreds of pages long.

MR. E. MARTIN: Yeah, and I should qualify that, I didn’t read hundreds of pages, but I am familiar with the document.

MR. RYAN: I'm not sure actually if I've heard your evidence correctly earlier in the week, so I just wanted to clarify. I thought that Ms. O'Brien, Commission counsel, asked you what your response was to the release of the JRP report. And I had written a note down that basically you didn't – you personally didn't really have a response to the report because that was something that Gil Bennett and his team would've taken the lead on, and so, obviously, you were aware of it, but it's not something that took up a great deal of your time. Is that a fair reflection of what you're thinking is on that?

MR. E. MARTIN: Yes, it is. Jogging my memory, I think I may have commented on this publicly at the time but that would've been, you know, on a short-term basis, I would've definitely turned it, you know – assumed that Gilbert was dealing with it and his team.

MR. RYAN: Well, that is precisely what I just want to finish off by asking you about, Mr. Martin.

And so if we could just bring up P-01534, Madam Clerk, please. And this is an email to a couple of people from within Nalcor, and I believe Charles Bown, and it appends what looks to be a draft copy of a speech you gave or speaking notes that you had in a meeting after the JRP report is released.

So, if you see here it's from Dawn Dalley to Glenda Power, Milly Brown, Heather Maclean and Charles Bown. And it's entitled: Ed's notes from this afternoon.

MR. E. MARTIN: Mm-hmm.

MR. RYAN: And if we just go down to the next page, Madam Clerk.

So it says here: Check Against Delivery, which leads me to believe it's speaking notes, it's not a reflection of what you actually said, it's your notes from before the meeting. And you can see here: "Good afternoon. Welcome everyone

"Let me begin by discussing the Environmental Assessment process …."

And if we could just go to the next page, Madam Clerk. A little bit further down. Yeah, okay, so maybe, yes, thank you.

So here you say: "Now, let's turn our attention to the Panel's report." You give a little summary of the recommendations, and I'm interested in the last bullet here, so I'll just read this out. "As an opening perspective, there is no question that I am surprised and disappointed in the tone of the report in these areas." And when you say these areas I take that to mean the JRP's recommendations on purpose and alternatives for the two projects, which is the bullet above.

Are you seeing this?

MR. E. MARTIN: Yes, I'm just reading through to make sure that –

MR. RYAN: Okay.

MR. E. MARTIN: – I'm checking my memory.

It appears I'm dealing with two of the 83.

MR. RYAN: Yeah. And, if we could just go to the top of the next page, Madam Clerk.

It says here: "The Nalcor team is comprised of hardworking, dedicated, professionals who have prepared detailed analyses and are totally committed to the right solution for Newfoundlanders and Labradorians.

"I do not believe the tone of the report, particularly the Executive Summary, is appropriate in such a context." And then you go into discuss the substance of it.

So, are you able to explain to the Commissioner now what precisely in the JRP report left you so disappointed and surprised?

MR. E. MARTIN: I don't believe I can. I think I'd have to read the executive summary again, frankly.

MR. RYAN: Okay.

MR. E. MARTIN: But I – other than that the words seem to speak for themselves. However, it was presented, it certainly, you know, struck a chord with me that the tone was inappropriate.

But, Commissioner, I can't give you much more than that now, I think about it, unless I went back and read it again.

MR. RYAN: So, I've thought about that. The executive summary is, I believe, in excess of 30 pages –

MR. E. MARTIN: Yes, it is.

MR. RYAN: – because it's such a large report. So, I don't think it's a good use of our time to have you sit here and re-read the executive summary, but I'll just put it to you that the tone of the executive summary is quite neutral in my view and so, at the time, did you think that the work of Nalcor was immune to critique so long as your staff was working hard and they had the right intentions behind them?

MR. E. MARTIN: Not at all.

MR. RYAN: Okay.

The JRP report recommended that in the interest of transparency and openness that the federal and provincial governments publicly release responses to the JRP, and so they both agreed with our recommendation and publicly released responses. The panel didn't recommend the same to the proponent – to Nalcor – and I've looked through the documents, I don't think I've ever seen a public response to the JRP from Nalcor. Is that – does that reflect your understanding? Are you aware of a public response to the JRP report from Nalcor?

MR. E. MARTIN: I'm not aware of that.

MR. RYAN: Nalcor identified four principles that guided the Lower Churchill Project consultation process and the first two were open communication and honesty and trust. Given these principles, did you – were you ever involved in discussions about whether Nalcor should publicly release their response?

MR. E. MARTIN: Not to my recollection. However, Commissioner, I mean, I – it would probably be something I, you know, I would because (inaudible) I just cannot recollect it.

MR. RYAN: Okay. Right because this is a values – high level –

MR. E. MARTIN: Yeah, and it's a public thing. So, I apologize, I just can't recollect it but I would think it could be likely that it was discussed with me.

MR. RYAN: I haven't been able to find any documentation reflecting that.

Okay. Those are my questions. Thank you, Mr. Martin.

THE COMMISSIONER: Thank you.

Is Ms. Ledoux here? Yes, okay.

MS. LEDOUX: Yes, I'm here, Mr. Commissioner.

THE COMMISSIONER: Would you have any questions for the witness?

MS. LEDOUX: I have no questions.

THE COMMISSIONER: Okay, thank you.

MS. LEDOUX: Thank you.

THE COMMISSIONER: Thank you.

Grand Riverkeeper Labrador/Labrador Land Protectors?

MS. URQUHART: Good afternoon, Mr. Martin.

Caitlin Urquhart.

MR. E. MARTIN: Hi.

MS. URQUHART: And I'm representing Grand Riverkeeper Labrador and Labrador Land Protectors. I expect you're familiar with them. But in the event you aren't, they're citizens organizations based in Labrador that are intended to preserve the ecological integrity of the Grand River which is the traditional name of the Churchill River.

So a fair bit of ground has been covered and – very well by Commission counsel as well as – I know some of the issues that we are concerned about were covered by counsel for the Consumer Advocate, so I won't sort of delve too deeply into any of those things that have been addressed. But I do want to – Madam Clerk, if we may, P-00087? And I know we keep coming back to this document.

This is the Electrical Power Control Act and I understand that you've now been referred to this a number of times in the past couple of days. But given that you've had an opportunity to read it, I'm just going to sort of paraphrase essentially at – I don't know what page it is, but it's section 3. We keep – it's the same one that we've been going to there.

That's it there, yeah. So 3(b) and so this is just referring to all sources and facilities should be managed and operated in this manner. And so to paraphrase, essentially the most efficient production, transmission and distribution, providing equitable access to adequate supply, lowest possible cost for reliable service, and then it goes on to talk about priority for the utility and open non-discriminatory access.

So with that sort of as the backdrop, right, this is the policy, this is the legislation that is guiding the utility, Nalcor, in their work. So I want to understand – and I know you did speak to this with Mr. Hogan, but I wasn't fully clear on your understanding of the objective of Nalcor as a Crown corporation.

MR. E. MARTIN: So I'll just break it into a couple of pieces if that's okay. You know, when we refer to the Electrical Power Control Act, my mind turns to Newfoundland and Labrador Hydro –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – which is a subsidiary of Nalcor.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: So from Newfoundland and Labrador Hydro's perspective, I think this does summarize it that that would be, you know, the entity that's responsible for planning the system, you know, providing, you know, the majority of generation for the province, I think the majority of the transmission and the portion – rural portion of the distribution of the electricity into the rural areas. And I could – you know, I could pick some adjectives here such as, you know, equitable access, most efficient, but that type of thing would be the role of Newfoundland and Labrador Hydro.

MS. URQUHART: But as it applies to Nalcor, how would you view the role of Nalcor in this?

MR. E. MARTIN: So from a Nalcor perspective – comprised of six divisions of which Hydro is one of them. If we take Muskrat Falls as obviously the focus of what we're talking about here, I mean I view that Newfoundland and Labrador Hydro – and this is my view – and Muskrat Falls are, if not one in the same – you know, Hydro plans the system, they seek more generation and from my perspective, you know, they would have an integral relationship with Muskrat Falls. And, for me, Muskrat Falls would fold into Hydro as another plant in transmission in their system once in operation.

So that's two of the entities. And then on the other side is, you know, it's the energy marketing, the oil and gas, Bull Arm and Churchill Falls (Labrador) Corporation. So Nalcor then would also be responsible for running those operations separate and distinct from Hydro and Muskrat Falls, except another strong link is with CF(L)Co, obviously, because of the linkages with the transmission and such, but obviously a different entity.

MS. URQUHART: And so – but when we're talking about power and we're talking about the power policy, within the framework of the power policy, I guess, I'm taking your evidence to be that essentially it's – the two main objectives of Nalcor are Hydro and Muskrat Falls?

MR. E. MARTIN: They're two of the key objectives of Nalcor and there's several others, though, I would have to add to that with the development of oil and gas and such. And I can tell by looking at you I'm not answering your question.

MS. URQUHART: Yeah, so what I'm trying to understand is when I read this policy I don't see anywhere in here export markets, you know, anything relating to developing, as Mr. Hogan put it, over – you know, overbuilding which – now not to say from a business perspective that there isn't a reason to build something – you said a big house – build a big house so you have extra rooms or whatever; to each their own. But I'm trying to understand, within the policy, where the directive for Nalcor to develop export markets comes from.

MR. E. MARTIN: I understand somewhat better, so I'm gonna try it this way.

So Newfoundland and Labrador Hydro, you know – responsible for planning the system; more electricity is required. Something has to be built to accommodate that need. And then, you know, from that perspective, we go back to the Electrical Power Control Act and it – you know, it is required to be the lowest cost option for – with respect to the ratepayers, what is provided.

So we – Newfoundland and Labrador Hydro, in conjunction, you know, with Nalcor, as a subsidiary of Nalcor and in conjunction with Nalcor, that was the first priority. So as we talked about, we took a series of options, came up – you know, obviously moulded them down into an Isolated Island Option, which contains many things, and Muskrat Falls, obviously. And we did that assuming that any excess power, or any excess water as we called it, would not be utilized.

So we understood that there would be more electricity than required if it was built.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: But we assumed that we would get no value for that electricity at all in the comparison for the Newfoundland and Labrador ratepayer. Okay?

MS. URQUHART: So – go ahead.

MR. E. MARTIN: Go ahead, yeah.

MS. URQUHART: No, no – sorry, if you're not done, continue.

MR. E. MARTIN: I was going to try to get us in to Nalcor and tie it together as fast as I possibly can.

So that was made in – the first decision was made in the context of what's good for the ratepayer. And we assumed we spilled all the water; we had no linkages, no Maritime Links, no nothing; extra electricity was gone.

In that analysis – even in that analysis, Muskrat Falls was the better option by $2.4 billion. And if we stopped there and did nothing else – no Maritime Link sold, no power and you let all the water run down the river and be spilled – Muskrat Falls was still the better option. If we stopped there, that was it. It would be a normal – not normal, it would be a provision of power by NLH to the province and we would have moved on.

Once that decision was taken, then, the obvious thing would be for Nalcor, you know, just to say, okay, that decision is made and we're done. But there is excess power, so we have two choices for the province: We can either find a way to monetize that – and, you know, for the benefit of the people of the province, or we can just let it, you know, carry on down the river, and obviously, we made the choice to find a way, if possible, from an economic perspective, to monetize that.

And Nalcor, I think, to your point – it's all somewhat integrated with your point – Nalcor and the Energy Marketing group and, you know, those entities would be more focused on that end of the business –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – and take over, you know, the dealings with the excess power and the interconnections and those types of things. And Hydro would still be ensured that they had enough of the electricity coming from Muskrat Falls to service the ratepayer.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: Is that of any help?

MS. URQUHART: Yeah, that's – I mean, I think you've explained your view on it. So in terms of – so you've indicated that, as I understand it, Hydro says they need more power. You need to build supply. Nalcor or whoever needs to build supply.

And I think that Commission counsel pointed out one particular type of supply, which is conservation and demand management, which a lot of utilities use. They build it in as a type of supply. So that was an option that was not – that was not on the table in your view, and I just want to clarify that that's the case, because you've said that you didn't think statistically – you didn't – your understanding was that we couldn't do it. Conservation and demand management cannot be considered as supply in this province under an Isolated Option.

MR. E. MARTIN: That's a broad statement, but generally correct. And I think we're in the same mindset that, even if it was, it would be a, you know, a relatively small portion of the capacity needs, but I won't go there. I agree with your comment.

MS. URQUHART: Okay.

And when you say you were doing comparisons to determine what was the lowest cost for ratepayers, I understand you to say based upon the risk – you know, based upon the risk analyses and the cost estimates that have been provided at DG2 and DG3, based on those numbers, your – you believe that this is the best cost – or the lowest cost option for the province?

MR. E. MARTIN: I do.

MS. URQUHART: And understanding that those numbers don't integrate things like the impacts on Labradorians, the travel impacts, the methylmercury, concerns over North Spur and those type things in a dollar – there's no sort of ecological valuation. We haven't put a dollar sign on how much is lost from the Grand River.

MR. E. MARTIN: I – you know, I believe that was the framework – my understanding of the environmental assessment process was – you know, was designed to look at, you know, the broad array of those types of things incorporated with other – you know, with everything else. And at the end of the day, the provincial and federal governments approved the Gull Island and Muskrat Falls to proceed.

So from that perspective, my understanding is the federal and provincial governments did consider that and made the decision to move ahead.

MS. URQUHART: But there was no dollar figure attached to any of the ecological services that are provided by that, by the river?

MR. E. MARTIN: Could you help me with ecological services – do you mean by that things that Nalcor might do to help alleviate some of the issues (inaudible)?

MS. URQUHART: The benefits that people who live in the area or people who visit the area would obtain, the benefits that the fauna and flora obtain from a natural flowing river?

MR. E. MARTIN: Commissioner, I can't recall, you know, a specific number being put to that, but I'm hesitating to just answer a yes or a no because –

MS. URQUHART: Well, I can tell you I've not seen any. I've been looking –

MR. E. MARTIN: I see.

MS. URQUHART: – for it, and I've never seen any number attached to any of those things.

MR. E. MARTIN: So I understand that; I just wanted to make the point I would have to take some advice, 'cause I'm not sure of – if allowances were made in other areas or if there was, you know, trade-offs made in terms of agreements with, you know, some people in the – peoples in the area. I just don't know that piece of it.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: But to my recollection, I don't see any number – I don't recall any number or see a number in an economic analysis, but I'm not saying there's not something there.

MS. URQUHART: So, I mean, I think that that – in terms of the risks, if continue along this sort of path. So one of the risks that I think is well-known now, at least, and was certainly understood at the time, is the risk of a catastrophic failure of the North Spur or a catastrophic failure of any of the dams.

So folks who live downriver in the valley and Mud Lake, these people are in the flood path, and were a catastrophic failure to happen, they would lose their homes; they may or may not be able to get out in time, and there may be a loss of life in those communities. That's a risk that was known at the time, and in your view, it's – you know, it was still – it's still the best option to proceed with Muskrat Falls in the face of that?

MR. E. MARTIN: My answer is yes. But, you know, you're correct. You know, the risks of – with – in regard to the North Spur and the dam itself were heavily considered and deeply engineered and checked and rechecked by, you know, a myriad of experts in the area – I can't name them all; I think others have – and based upon, you know, those assessments, the experts, the continued review and the advice I received, you know, I'm comfortable that risk has been taken care of.

MS. URQUHART: So if we can go, please, Madam Clerk, to P-00130 at page 161 and 162.

THE COMMISSIONER: Tab 105, book 5.

MS. URQUHART: So this is the DG3 risk analysis – project cost and risk analysis. And so here we're looking at risk 23, which is geotechnical risks, and if we continue to scroll, please, Madam Clerk, it indicates here – it's the third from last point on the last column: "Largest risk exposure remains in North" –

MR. E. MARTIN: Sorry to interrupt you –

THE COMMISSIONER: Tab 105.

MR. E. MARTIN: – because I'm not listening as I'm trying to get –

MS. URQUHART: No, go ahead, by all means.

THE COMMISSIONER: Tab 105, but unfortunately it's only the one page, so you are going to have to look at –

MR. E. MARTIN: Binder 4, tab 16.

MS. URQUHART: Look at it on the screen.

MR. E. MARTIN: I'm actually close.

THE COMMISSIONER: In common exhibits.

CLERK: (Inaudible.)

MR. E. MARTIN: And what page – 162?

MS. URQUHART: Yes. Correct.

MR. E. MARTIN: Okay. I'm here.

MS. URQUHART: Okay.

So it's indicated here, the third from last point – bullet – indicates: "Largest risk exposure remains in North Spur – geotechnical program planned for spring 2013 – exposure covered under Tactical Risk."

So – and my understanding of the evidence is that the tactical risk was – didn't have necessarily – or at least when it was sanctioned, there wasn't a dollar figure attached to that. Is that correct?

MR. E. MARTIN: I think on the tactical risks there was a dollar figure attached to that.

MS. URQUHART: Okay, so it was –

MR. E. MARTIN: As part of the – 6.2 billion is the number we've used.

MS. URQUHART: Okay. And when I review this document, there are a number of – and I don't have the page reference here, but there's – there are a number of points when it refers to the North Spur, and the only references that it has where there's dollar figures attached are mitigation or stabilization. There's nothing in there for the – indicated what the cost would be for rectifying a catastrophic failure.

MR. E. MARTIN: I don't know that for sure, because I haven't seen it, but it would make sense to me that – you know, that would not surprise me. I would think that that would probably be true, but I don't know the numbers. I haven't seen them.

MS. URQUHART: So, you wouldn't want on – you know, you're the Gatekeeper. You're the one who has to make a decision at the end of the day. You're aware that there's a risk that there could be a loss of life, a loss of property. There could be a catastrophic failure of this – of the one of the dams, which would have a significant impact on the project as a whole, I would put to you. You didn't feel that it was necessary to have an idea of what the cost of that might be to the project at sanction?

MR. E. MARTIN: I'm not sure if there was a cost put together for that, so I have to say that first, there may have been. But, you know, from my perspective, I would be – if you're asking me, I would say: Well, you know, that work that has been – it's been identified as a risk.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: As I mentioned, there was, you know, a very, very, very significant amount of engineering effort – checks and balances put in place, and as advised to me by the teams, you know, the risk of this happening was removed. And, so, I would be comfortable in saying: Well, I can't put a number – you know, the probability of that happening was not on a radar screen, so to put money against it happening wouldn't be something I would do.

MS. URQUHART: So, I mean, you're the CEO, you're the Gatekeeper, you're the person, at the end of the day, who has to be satisfied with these things coming through and – with what's put before you, so that's why I'm asking you the question rather than somebody else. And, so, what I'm understanding you to say is that these risks were, in your view, removed. Is that correct?

MR. E. MARTIN: Yes, that's correct. Mitigated is the word, but, in essence, yeah, removed.

MS. URQUHART: Okay. So you don't believe that this is a – that this remains a risk?

MR. E. MARTIN: I believe it does not remain a risk, but, you know, I have to caveat that, I guess. In life itself you can never, you know, remove every element, but for all intensive purposes, Commissioner, I believe this risk has been retired, and we proceeded on that basis. I did that on the – you know, on the advice and recommendations of the experts and the team that was reporting to me.

MS. URQUHART: So, Madam Clerk, if you can, please, go to P-00041? And this is the Joint Review Panel report, and you'll see at – page 250, please?

MR. E. MARTIN: That's in a different binder, I take it, isn't it?

THE COMMISSIONER: Yeah.

MS. URQUHART: I can't help you with that, unfortunately.

THE COMMISSIONER: (Inaudible.)

CLERK: Page 250?

MS. URQUHART: Yes, please.

THE COMMISSIONER: It's in the – one of the common exhibit binders I don't have. Maybe counsel can help?

MR. E. MARTIN: Commissioner, I'm prepared –

MS. URQUHART: You can scroll down –

MR. E. MARTIN: – to have a try at this –

MS. URQUHART: – Madam Clerk, please?

MR. E. MARTIN: – if it's not too –

MS. O'BRIEN: Sorry, it would be common exhibit binder 1, tab 2.

MS. URQUHART: You can probably keep that on your desk because I'll refer to it a couple times here.

Madam Clerk, if you could please scroll down to the bottom of the page. Oh, you know what, I think I have the wrong page. I'm using the document page number, just let me see if I have the –

THE COMMISSIONER: So did you want 250 in black? Is that –?

MS. URQUHART: Yes, yes, please.

THE COMMISSIONER: Okay, so that's at page –

UNIDENTIFIED MALE SPEAKER: Two hundred and eight-five, I think.

MS. URQUHART: Yeah.

THE COMMISSIONER: – 284, I think.

MS. URQUHART: Two hundred and eighty-four, 285? That's perfect, right there.

So I would ask – Mr. Martin, could you please read that last paragraph there under: Dam Failure; just the last paragraph.

MR. E. MARTIN: "In particular, the Panel was not convinced that two hours warning of flooding resulting from dam failure would in all circumstances be adequate to ensure no loss of life, especially in difficult circumstances (for example, during the hours of darkness, in poor weather). This places even greater importance on the need for thorough emergency planning, adapted to each community and a wide range of scenarios."

MS. URQUHART: So this was one of the concerns, and there are two actually recommendations from the Joint Review Panel, 14.1 and 14.2, that are specifically aimed around, you know, discussing dam failure and catastrophic failure and what that would mean for the people who live downstream.

And so despite the fact that your team believes that they've mitigated this risk away, it's obviously was something that still was a concern for the Joint Review Panel, so much so, that they in fact had a number of recommendations around that. So – but you don't find that concerning at all?

MR. E. MARTIN: Concerning that the panel – well, try to understand that this is the panels, you know, recommendation and then we, you know, Nalcor and all the engineering group did what we just talked about.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: And I've already commented on that. I do believe – I'm going a bit from memory – but I do believe there still is emergency procedures in place –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – and those types of things. So from that perspective, I, you know, I was comfortable in what I heard, that the team was handling it and putting procedures in place that would meet the needs of this particular recommendation.

I don't have the detailed knowledge to where to point you to on that or the details of it, but I've heard that and discussed that before in terms of emergency response from a dam perspective.

MS. URQUHART: So would you – I don't know if you're aware of this, but for a community like Mud Lake that doesn't have easy access or like road access in – to and from, at all times of the year, there would be times of the year where, if a catastrophic flood were to occur, the only way to get people out of the community would be by helicopter, and so that was, you know, that's a concern, and people in that community and in the valley live in a continuous state of fear that this – that the dam's gonna break and that they're going to lose their houses and that people will die.

And so, you made an analogy of around this project that it's, you know, you could buy a smaller house that's more expensive or a bigger house that's less expensive, and, you know, why not buy the bigger house? Well, when you buy a bigger house you got to clean all the rooms in it, and you have all of the expenses that are bigger carrying costs. And in this case you, you know, had this been a run-of-the-river project, had this been a project on the Island, we – people – these people wouldn't be living in this situation. People wouldn't be impacted in this way.

So, in your view, is it still worth – is it worth the risk to the life – the lives of the people of Labrador?

MR. E. MARTIN: At the time, it, you know, for all the reasons we talked about, we'd assessed the risks and dealt with them, and I was comfortable to proceed.

And since I've been away from the company for 2½-plus years, so I can't speak for, you know, what's happening in the company right now. Knowing the quality of the people who worked with me there, that being said, before I made a further comment on that I believe I'd have to understand the extent of the emergency response and what happened. I really don't know what the procedures and policies are.

You mentioned roads and helicopters and those types of things, I just frankly don't know what the policies and procedures are there right now, so I can't comment on that.

MS. URQUHART: And I think we'll get into that probably somewhat more in the next phase when we're talking post-sanction, so we can save that discussion.

Madam Clerk, if we can please go to 00352.

MR. E. MARTIN: Do you think we're finished with this one?

MS. URQUHART: Just for the moment. Just –

MR. E. MARTIN: Okay.

MS. URQUHART: – keep it –

MR. E. MARTIN: Thank you.

MS. URQUHART: – close at hand.

THE COMMISSIONER: So P-00352?

MS. URQUHART: 00352, which is the Grand Riverkeeper paper to the Commission of Inquiry.

THE COMMISSIONER: It's not – it's not there.

UNIDENTIFIED MALE SPEAKER: No.

THE COMMISSIONER: Okay, we can bring it up on the screen then?

MR. E. MARTIN: Thank you.

MS. URQUHART: So this is something that I've spoken to a number of – sorry, Madam Clerk, I believe it's page 55. My pagination's a bit – might be off. Yeah, this is the one, thank you.

So we have addressed this issue with a number of folks and so I want to get your take on it, give you an opportunity to respond. As I've indicated, this is the Grand Riverkeeper Labrador's paper to the Commission. And one of the issues that's addressed here – if you actually could read paragraph 232, you'll see it's a part of the transcript from the JRP hearings.

So, and for the record – you can read it aloud or I can read it aloud, whichever you prefer.

MR. E. MARTIN: You proceed, please.

MS. URQUHART: Sure. So it's "Nalcor 'vetting' scientists work. GRK" – which is the acronym for Grand Riverkeeper Labrador – "was advised that during the JRP hearings, Government scientists and representatives were required to provide any submission … presentation to Nalcor in advance. Ms. Blake-Rudkowski addressed this to the JRP."

She indicated in the transcript: "I think this is more of an observation, if I may be allowed. Considering that Nalcor is a crown corporation, it's important that the corporate message isn't diffused or undermined. So I would think that they and their political masters would take a keen interest in what various government departments have to say here. And there's a gentleman in our midst from Justice Department who appears to be orchestrating everything in respect to those presentations; and that's just an observation."

We don't have any evidence to that and it goes on to say that "GRK members attending the hearings observed an individual, whom they believe to be employed by the Government of NL" who was reviewing the presentations.

And so I've asked this to a number of individuals and I'm going to ask you whether you have any information that Nalcor was being provided or anyone within your staff was being provided with Government of Newfoundland and Labrador scientists' presentations, submissions, or anything in advance?

MR. E. MARTIN: Not to my knowledge.

MS. URQUHART: And would that include anyone who was a consultant or – we understand that, for example, Perry Trimper from Stantec was assisting with the JRP hearings.

Would he – have been somebody who would have received those types of submissions?

MR. E. MARTIN: I don't know.

MS. URQUHART: Then not to your knowledge.

MR. E. MARTIN: Not to my knowledge.

MS. URQUHART: Okay.

And Madam Clerk, if you could please go to page 29? And scroll down, yes, please. Thank you, just a little bit further.

So – and I believe it was – just check the date here – so this – again this is in the submissions from Grand Riverkeeper to the Commission, that they essentially uncovered or became aware of a report from a company called LGL Limited that was dated January 17, 2011. It was a report that was commissioned by Nalcor regarding the joint review – as part of its – sorry, and I'll read this into the record.

So the – "As part of its direction from the Joint Review Panel, Nalcor Energy (Nalcor) is required to address downstream effects in more depth than in previous Nalcor submissions. […] LGL Limited environmental research associates (LGL) was retained by Nalcor and concluded that the aquatic and the aquatic components of the 'terrestrial' Assessment Area should include at least Goose Bay and possibly inner Lake Melville of central Labrador."

The report then goes on to indicate the survey area they think is appropriate when addressing impacts from Muskrat Falls.

And this report was never filed with the JRP and if I can – I got to find the date here that it was released – actually in March 10 of 2018, the author of the report released it publicly online and we've heard other evidence that that certain reports or information weren't necessarily being passed up the chain.

So my question to you – and I think, you know, you discussed this somewhat with Mr. Hogan about these frameworks for how reporting – how – you know – whether you expect documents to be reported up to you. Do you have any – you know, so why wouldn't something like this – so this is a pretty significant chain, it's a pretty significant contradiction to what was Nalcor's position at the JRP up until that point.

Why wouldn't these types of things have been released to the JRP?

MR. E. MARTIN: Well, the couple of questions there I think – one is the framework to –

MS. URQUHART: Yes.

MR. E. MARTIN: – of the report to head to me and the second – why wasn't it released.

In the second question – I don't know, I'm not aware of this report and I don't know, you know, if it was considered for release or not. So I can't comment on that.

As far as the framework reports, you know, folding up through me, I briefly discussed that earlier today, you know. But it would be somewhat limited reports, you know, heading up onto my desk – sheer – because of the sheer volume and I would be, in general, depending on my direct reports to, you know, filter that within their own organizations and make the decisions, you know, as to what might flow up to me.

There's no written documentation of that, or no written process that I can come up with. It would be dependent and – upon, you know, the various decisions and knowledge and expectations that were being handled within each organization – in this particular case, Mr. Bennett.

MS. URQUHART: So – when I read the JRP report and the PUB report, there's a sort of indication that often Nalcor wasn't providing all the information that was requested. And I know that you've read the executive summary and it says things to that effect in of the Joint Review Panel report. And I guess I'm now – well actually – this was released in August, 2011.

So when you received that, when you reviewed that report, were you concerned by the fact that it indicated that Nalcor wasn't being forthcoming with information?

MR. E. MARTIN: I'm not sure of what report, again, you're referring to. The?

MS. URQUHART: The Joint Review Panel report, so the environmental assessment report.

MR. E. MARTIN: My understanding was that Nalcor did provide information as requested. I think the timing and, you know, on, of that was an issue, which we've acknowledged. Nalcor's acknowledged, and I certainly wrote a letter on it myself from the PUB perspective. But I'd have to be pointed to areas where we didn't eventually, you know, provide the information, because, you know, that was, I think, I believe that, to the extent possible, we had a reputation of responding and providing information – many, many, many examples of that, so –

MS. URQUHART: Though not this report.

MR. E. MARTIN: I'm just not – I'm just not familiar with this report, and I can't comment on it. I don't know if it was received – I just don't know about this report.

MS. URQUHART: So I'm going to actually ask you to go back to the Joint Review Panel report, which is, Madam Clerk, P-00041, please? And at page 185.

So the Joint Review Panel has indicated that they anticipate that there will be a significant adverse – effects on land and resource use – oh, sorry – there is the potential of effects on fishing and seal hunting. And they said that were – consumption adversaries necessary that – I think I'm looking at the wrong page – but were consumption advisories necessary, that there would be significant impacts on the people of Labrador.

So – when you –

MR. E. MARTIN: (Inaudible.)

MS. URQUHART: – when you read that report, what was your reaction to those – it's pretty –

MR. E. MARTIN: I was just trying to follow along. Did you say we were on the wrong page?

MS. URQUHART: I think that this is – this is the – this isn't the site that I'm looking for, so just give me one second.

MR. E. MARTIN: I apologize that I was looking while you were reading, so I wasn't paying attention.

MS. URQUHART: That's okay.

I'm probably speaking too quickly anyhow, so give me one second here. 185 at the bottom …

MS. O'BRIEN: 185 at the bottom, 219 in the (inaudible).

MS. URQUHART: 219, please, Madam Clerk. Thank you.

Oh wait, that's not –

MS. O'BRIEN: (Inaudible.)

MS. URQUHART: I think I have the wrong – oh, sorry, yeah, it should be 189 at the – if you go down –

MR. E. MARTIN: Yeah, 189 at the –

MS. URQUHART: – a number of pages.

MR. E. MARTIN: – in red?

MS. URQUHART: No, sorry, it will be –

MR. E. MARTIN: Page 189 –

MS. URQUHART: Just, yeah, Madam Clerk, if you don't mind just scrolling down.

MS. O'BRIEN: 223.

MS. URQUHART: 223. Apologies I printed my copy before we had the numbers on it.

So if you can please just read into the record what's in the box there.

MR. E. MARTIN: "The Panel concludes that the Project would cause a significant adverse effect to culture and heritage after mitigation particularly with respect to the 'loss of the river' as a highly valued cultural and spiritual landscape. This effect would apply to a large proportion of the river between Churchill Falls and Goose Bay would be irreversible and would last for the duration of the Project."

MS. URQUHART: So this passage speaks to sort of – very sort of concisely to the impact that will occur for Labradorians. And if you have an opportunity to read the Grand Riverkeeper's paper they go into quite a bit of detail around issues with navigating the river, no longer being able to navigate the river, cabins and hunting sites that will be under water following the impoundment, the challenges with winter travel. And then one of the significant impacts that, I think, has more media attention is the methylmercury bioaccumulation in fish and water fowl and ultimately in seals.

And so when – you know, it's hard to sort of overstate the impact of this type of a project on the people of Labrador. So when you read this report I'm wondering: What was the reaction for you to seeing some of these significant concerns that were being raised?

MR. E. MARTIN: You know, an acknowledgement of the concerns, and as you spoke about them again, you know, they are obvious and important. You know, that's a lifestyle that people have lived, and so I – you know, I've felt the importance of that. I certainly did not dispute it. It was in the context of the full EA process that, you know – and my understanding is an evaluation of the balance of these things.

So not to belittle this for sure, not at all, but on balance, from Nalcor's perspective, the federal and provincial governments, you know, assessed on balance and provided approval to proceed.

So that's what I have to say about that.

MS. URQUHART: So the ends, in essence, of building this big house, justified the means of despoiling Labrador and the impacts on Labradorians.

MR. E. MARTIN: I'd have to say no just because of the phraseology.

I – you know. But I do believe on balance for all affected, you know, parties and stakeholders and natural life and those types of things, I accepted the federal and provincial governments' approval of their view of – on balance this should, you know, should and could proceed.

MS. URQUHART: Did Nalcor provide the federal and provincial governments with a true run-of-the-river option for developing Muskrat Falls?

MR. E. MARTIN: Not to my knowledge, but I would doubt it very much.

MS. URQUHART: And, when you say, on balance, I've heard you to say that Muskrat Falls is the better option by $2.9 billion dollars. So that's a dollars-and-cents calculation. We're not talking about people's lives; we're not talking about the impacts that this project has on people's abilities to feed their family – on their ability to live and feel safe in their homes. Is that correct?

MR. E. MARTIN: Once again, you know, on balance includes a lot of things. What you're speaking about is critical – critically important. I mean I have to say that, you know, up front it means so much. I understand that.

I have mentioned the $2.4 billion. I – you know, I make no – you know, make no mistake, I have. But I've had an opportunity, as well, to speak of some of the other benefits, and I think, you know, we've done that some here. From my perspective, possibly not enough, but we have done some of that here.

And on balance, again, I don't want to discount what you're saying as my issue here, but I do want to, you know, note that there are many other things being considered here in terms of, you know, the opportunity for people to work in Labrador, to train in Labrador; you know, the Indigenous groups, the training programs we put in place. These are for instances. These are not offsets.

I'm just wanted to use those, Commissioner, and not go on too long, but there are a myriad of other benefits that relate – and I'm going to say – directly to Labrador in this case because this is obviously what we're talking about. That I –

when I say on balance, I think all of those things have to be considered. And that's what I believe did occur in the – within the approvals from the federal and provincial government.

So that's what – I'm trying to just point out the fact that I take your point, but there are – when I say on balance, there's a lot of other benefits that I just can't, you know, lay them all out with respect to Labrador and, particularly, some of the Indigenous groups as well.

MS. URQUHART: So, Madam Clerk, if we can go, actually, to P – or sorry, not P, page 59 of this document, of P-00041. So – and, again, I'm going to have to confirm that that's –

MR. E. MARTIN: Is that the black page number?

MS. URQUHART: I think it's the black numbering.

I apologize, Madam Clerk.

Oh, maybe it is (inaudible).

UNIDENTIFIED FEMALE SPEAKER: Page 59?

MS. URQUHART: Oh it's – no, it is the black page – or, sorry, not the black, the red page 59. I had the numbers up to that point in my (inaudible). Sorry about that.

And if you could please read the bolded passage there.

MR. E. MARTIN: "The Panel concludes that, in light of the uncertainties associated with transmission for export markets from Gull Island, Nalcor has not demonstrated the justification of the Project as a whole in energy and economic terms.

"The Panel further concludes that there are outstanding questions for each of Muskrat Falls and Gull Island regarding their ability to deliver the projected long-term financial benefits to the Province, even if other sanctioning requirements were met."

MS. URQUHART: So the Joint Review Panel, they're saying that they don't see that the economic case has been made in this circumstance.

MR. E. MARTIN: That's what the words say. Now, I will point out that – if we look at Gull Island and Muskrat in this context, reading this, I believe that what they're considering here is transmitting the electricity to export markets, most likely through Quebec, I believe, here. Now, I'd need to check that, but this is not the – in reference to the Muskrat Falls option of providing – being the option to provide power to the Island.

MS. URQUHART: That's right. The Labrador-Island Link was assessed separately.

MR. E. MARTIN: That's correct.

MS. URQUHART: Right.

MR. E. MARTIN: So I don't know if that changes your point there, but this is, you know, this is not this – you know, referring to the configuration that was eventually undertaken.

MS. URQUHART: I mean, at this point they were aware that it was gonna be a Muskrat first – or Muskrat first project, scenario. And I believe that the Labrador-Island Link was already – I mean, it had already been – it was started through the environmental assessment process, so they would've been aware that, I expect, that that was the configuration that was intended by this point.

Madam Clerk, if you can please go to page 68 of this same document? If you can scroll down, please – that's perfect.

And again, Mr. Martin, if I can please ask you to read what's in the box there?

MR. E. MARTIN: "The Panel concludes that Nalcor's analysis … showed Muskrat Falls to be the best and least cost way to meet domestic demand requirements is inadequate and an independent analysis of economic, energy and broad-based environmental considerations of alternatives is required."

MS. URQUHART: So again, the Joint Review Panel indicated they think that what's been provided is inadequate. And they go on and have a later recommendation around integrated resource planning, which I know Commission counsel do discuss with her a fair bit. But this is another case, where we're saying, you know, this is not – we've not yet seen the evidence that this is the actual best scenario to meet the demand.

So what was your reaction when you saw that?

MR. E. MARTIN: Well, first off I thought that we had. But so be it. You know, there's a recommendation here, you know, I wanted it dealt with. And it would've been turned over to Mr. Bennett, you know, to deal with.

And, Commissioner, I'm gonna – I have to stop there because my memory is failing me a bit about how it was dealt with, you know, what the mitigation was and where it ended up. I could offer some opinions, but I don't think it would be worthwhile right now. I know – I'd like to read what the response was to refresh my memory.

MS. URQUHART: Madam Clerk, if you can please go to P-01534. And Mr. Ryan brought you to this document earlier.

So this is, again, notes that were attached to an email from August 26, 2011. So you'll recall that the Joint Review Panel released its report August 25, 2011. So the following day you made these remarks.

Do you have any recollection of this – of making these remarks?

MR. E. MARTIN: I do.

MS. URQUHART: Can you – so where – what was the context?

MR. E. MARTIN: Context – well –

MS. URQUHART: Of these remarks.

MR. E. MARTIN: I was – it was responding to the EA process, obviously. And I, you know, I think the words speak for themselves. I'm not –

MS. URQUHART: Where were you when you –

MR. E. MARTIN: – understanding the question or the context.

MS. URQUHART: Where were you when you made these comments? Who was present? What was the – like, who was the intended audience?

MR. E. MARTIN: The press was there. The audience was, you know, the public as well as others. And I can't remember where it was.

MS. URQUHART: Okay, so this was sort of – this was for a press, media scrum type of thing?

MR. E. MARTIN: I'm almost positive it was, yes. But – yes, it was.

MS. URQUHART: And there's a later press release that addresses some of these issues, in any event, so I expected that's to do with that.

So, Madam Clerk, if you can please scroll down – sorry, actually –

Well, Mr. Ryan brought you to the same paragraph and I was interested to know – again, it says – you said: "… there is no question that I am surprised and disappointed in the tone of the report in these areas." And that was referring to what we – the two sections we just looked at, the economic justification and whether or not it's the best option to meet the demand.

I wonder if you were also surprised by the tone which indicated that Nalcor wasn't – you know, didn't have all the information; wasn't necessarily providing it in a timely manner – was that something you were concerned about?

MR. E. MARTIN: Um –

MS. URQUHART: I mean, it's saying that their –

MR. E. MARTIN: What –

MS. URQUHART: – information was inadequate, right?

MR. E. MARTIN: In – that's with respect to the domestic demand requirements you're referring to?

MS. URQUHART: Well, there's a number of places in which they say we – Nalcor refused to provide information on X, Y, Z or Nalcor didn't have information on X, Y, Z despite being asked – you know, asked for it. So it's throughout the document, but this is one we just looked at. So it's easy to – you know, it's kind of easy to point to.

MR. E. MARTIN: Well, you know, I can't entirely recall, but – exactly how I felt about that. But I will say that I would expect I would also be disappointed in that because my understanding was that we had contracted some very experienced people who had been through this in other jurisdictions so that we had the expertise brought in to get ahead of it. I know that we prepared a tremendous amount of information and it was vetted through strong legal counsel.

And other processes such as that, Commissioner, where, you know, from my perspective as – on the outset, I understood that those – that framework was being put in place, and I was comfortable and I turned it over to the team. I know that the volumes of information and the work that went into it – I knew that was substantial because it was obviously chewing up massive resources.

And then there was an extended pairing process, which I did not attend but I was certainly following and understood just how many, you know, of – how many people were involved in that. And so, you know, some of my comments there – I wouldn't have expected some of those comments based upon the framework that was out laid there.

MS. URQUHART: And so you really sort of dug in on those two issues: the economic justification and whether or not it was the best option to meet the demand. But I know that you actually didn't highlight any of the other concerns that were laid out by the Joint Review Panel, and I wonder why that is?

MR. E. MARTIN: I can't remember my thinking at the time. But once again, how I do think: I would be looking to try to focus on the key – you know, the most key things from my perspective as CEO. And I think to get – to stand up in front of a group or the general public and respond to anything with, you know, a huge list of things would not be effective, you know. So I was in the mind – I'm sure I was in the mindset of, you know, okay, what are the two key – whatever – key things here that I truly, you know, am disappointed with and I would've approached it that way.

MS. URQUHART: Madam Clerk, if we could please go to P-00093 at page 64.

THE COMMISSIONER: Tab 71, book 4.

MR. E. MARTIN: Book 4. Is it common – no, that's not common.

MS. URQUHART: Sixty-four, please.

Thank you, Madam Clerk.

And if you could scroll down please – great, that's it. Perfect. Yeah.

MR. E. MARTIN: Binder 4 and tab 74. No –

THE COMMISSIONER: Seventy-one.

MR. E. MARTIN: Mmm.

THE COMMISSIONER: Seventy-one.

MR. E. MARTIN: Seventy-one.

MS. URQUHART: Seventy-one, page 64. Just to be (inaudible).

MS. O'BRIEN: P-00093 –

THE COMMISSIONER: Oh no, that's only one document.

MR. E. MARTIN: Hmm.

MS. O'BRIEN: It's – P-00093 is in common Exhibit binder number 2, tab 8.

MS. URQUHART: So, this is the Lower Churchill Project Gate 2 Decision Support Package. It's dated November 17, 2010.

And it's page 64, please?

MR. E. MARTIN: Which tab again, I'm sorry?

THE COMMISSIONER: Tab 8.

MR. E. MARTIN: Tab 8. Tab 8, page –?

MS. URQUHART: 64.

MR. E. MARTIN: 64. Yeah, I'm there.

MS. URQUHART: Okay.

So it's a – as I was saying, this is the Gate 2 Decision Support Package, and number 9.4 here is Energy Conservation. And it states here that the – essentially, that the takeCHARGE program is now under way, you've had a commercial lighting program underway since 2009. And, Madam Clerk, if you could please scroll down to the top of the next page? Thank you.

So, I'm just going to read into the record the last paragraph here. So "…in 2009 Hydro partnered with the … Department of Natural Resources to deliver a community based energy efficiency program in two Coastal Labrador communities. This project was a pilot to explore the impact of community based interventions on energy efficiency. It was very successful, providing efficiency tools, local job opportunities and promotions and awareness to increase the knowledge base and assist residents in taking immediate action on efficiency."

So this was a program that created jobs, that provided efficiency, that worked towards that CDM stream. This is something that's in your package, and I'm wondering why more of these types of programs weren't undertaken, or weren't part of the process?

MR. E. MARTIN: That's – certainly not to be dismissive, but this would be handled, you know, within the Newfoundland and Labrador Hydro portion of the company, and I just don't know. I wouldn't be heavily involved in that.

MS. URQUHART: When we're talking about, you know, the benefits to Labrador –

MR. E. MARTIN: Mm-hmm.

MS. URQUHART: – right? So what are the benefits that you – the benefits you've indicated are work opportunities and training, so this is a program that was piloted – that created a new a new supply line, which is, you know – CDM is – creates supply – creates capacity within the system, and – or builds supply, however you want to say it – and it's also providing jobs. It's something was very effective in coastal Labrador communities.

So I'm wondering, you know – this is included in your own package – this is something that was – you know, you're highlighting here and yet it wasn't considered as part of the program for how can we avoid these catastrophic – or these hugely damaging impacts for the people of Labrador from the project of Muskrat Falls and do something different.

MR. E. MARTIN: So a couple of questions that you may be able to help me with. And – because I'm just not familiar with these – with what two coastal Labrador communities – were they isolated communities, do you know? Isolated –

MS. URQUHART: I expect so, yeah.

MR. E. MARTIN: – isolated from the grid?

MS. URQUHART: I expect it was –

MR. E. MARTIN: I think they would be, wouldn't they?

MS. URQUHART: – it was diesel, yeah, communities.

MR. E. MARTIN: So I think that's a point to consider, to put in context, Commissioner, that these are not interconnecting (inaudible). These would be communities that are receiving their power through diesel generation.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: The second point I note here, it's a pilot –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – to explore the impact. And as you said, it appears to be successful.

Now, I'm not sure what happened after that, is my problem. Usually a pilot, you know, is there to pursue. So you're telling me that there was not any more of these things or any more of these programs. I can't answer that. I would like – it would be nice to get some advice from the folks who were running this program, you know, to see what actually was the follow-up there. I just don't know.

MS. URQUHART: Oh, (inaudible) we didn't say let's pump the brakes on Muskrat Falls and let's try running this program in a number of communities across the province.

MR. E. MARTIN: No we didn't – well, I shouldn't say no. I think we're back to the – how we considered, you know, CDM and those types of things. And I've already addressed that. The direct linkage with the coastal communities from Muskrat Falls – because they're not interconnected, there wouldn't be a direct link there. I mean I could see the pilot programs here potentially continuing, but that wouldn't be in the context of Muskrat Falls.

MS. URQUHART: But I guess that brings me to my next point, is that coastal Labrador communities aren't connected and they're not intended – you know, there's no plan to bring the benefit of Muskrat Falls to those communities.

MR. E. MARTIN: Well, there was always review of that, on a consistent, constant basis.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: And in my tenure there – I don't know how many times exactly, but several times –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – on a regular basis, Commissioner, the numbers were run in terms of – simply, the cost of transmission to connect the coastal communities was run against the cost of isolated electricity, diesel and such. And in my tenure there, there wasn't one time when it made economic sense to run the lines down. Certainly we were providing electricity. And certainly that wasn't, you know, that wasn't the point at all.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: But the idea of connecting the coast was always under consideration, but the economics never worked.

MS. URQUHART: So in –

MR. E. MARTIN: When I was there.

MS. URQUHART: In those isolated communities – in these Isolated Island islands, sort of – of their own it's more – it makes more sense to run pilot projects to reduce demand and to continue buying diesel fuel as you had done. The numbers don't work – to connect.

MR. E. MARTIN: That's correct.

MS. URQUHART: Madam Clerk, if we can please go back to P-00130 at page 159. So, again, this is the DG3 analysis. Let me just see if I can find it here.

MR. E. MARTIN: Are you just going to refer to a specific section here?

MS. URQUHART: Yes.

MR. E. MARTIN: I might try that first and see.

MS. URQUHART: Okay. Thank you. You can scroll down. Move left. Actually, sorry, Madam Clerk, do you mind scrolling up as – I'm just trying to see if I have – I may not be able to read my own writing.

Oh. Sorry. Actually – scroll up a little further and get me to the page before. Oh. That's correct. That's the one. Sorry.

Risk R19. So, "Non-governmental organization/stakeholder protest" is the risk that is being addressed here and if you can please just read what's – read aloud what's in the second column there.

MR. E. MARTIN: "As a result of a lack of proactive stakeholder engagement, stakeholders may be misinformed on matters relevant to them, leading to/resulting in adverse community relations and protest against the Project."

And could you – would you mind rolling up – what is the name of that column? That's the description (inaudible). That's not saying it's happening. That's the description of what –

MS. URQUHART: Of the risk.

MR. E. MARTIN: – the risk is. What it could be.

MS. URQUHART: Yes.

MR. E. MARTIN: Is that correct? I believe it is correct. I shouldn't be asking you.

MS. URQUHART: I was going to say –

MR. E. MARTIN: I wanted to make it clear, though, that that's not saying it's happening.

MS. URQUHART: So the description of the risk that Nalcor's concerned about is that, as a result of the lack of proactive stakeholder engagement, there may be protests, essentially.

MR. E. MARTIN: That's correct.

MS. URQUHART: Okay.

And so, I know you discussed with Commission counsel the idea of integrated resource planning. And I just wonder why, you know, if you're concerned that organizations and stakeholders aren't sufficiently engaged and there may be protests, why not engage in a process like an integrated resource planning process to ensure that you have – everybody is proactively engaged?

MR. E. MARTIN: Well as I pointed out that – what I just read into the record was the description of a potential risk; but if you go to the risk response plan that is how it – how the – what was the plan to do that and it goes on to say: "Develop and fully implement a stakeholder communication and consultation plan."

MS. URQUHART: Madam Clerk, do you mind just scrolling up a little bit so we can see the whole piece? Thank you.

Yeah, go ahead – go on.

MR. E. MARTIN: And it goes on, you know: "Avoid risk through: Develop and fully implement a stakeholder communication and consultation plan. … Mitigate impact by: Focusing on getting Nalcor's message out on the benefits of the Project" you know, et cetera. There's a series of mitigations there. And that is what would have been pursued. An IRP arrangement could be another, you know, option but I just wanted to make it clear that there was a, you know, a risk response plan, you know, a strategy.

MS. URQUHART: Including "Leverage Quebec versus NL debate to rally support for this venture"? That's one – that's there in column three at the bottom.

MR. E. MARTIN: Column three?

MS. URQUHART: And I'm, you know, I'm not going to comment on it but just in terms of the way in which that we're –

MR. E. MARTIN: Oh, I see.

MS. URQUHART: – addressing this, rather than say, you know, we're going to have a fulsome, you know, holistic approach to how we deal with this project. You're – you know, we're talking about let's have a communications plan and let's leverage the tensions between our provinces to get people to buy in.

MR. E. MARTIN: That's one element but, you know, let's – I mean, if you look at: "Develop and fully implement a stakeholder communication and consultation plan." They're pretty powerful words as well. I mean, that's not just – you know, we're not just talking about communicating. When you say consultation plan, I think consultation is the key word there. And that's what has to be focused on and then you're getting into, you know, what were the plans? What happened? What developed as far as Nalcor? And doing the consultations, you know, with the stakeholder's including Indigenous people and such, and, you know, there's a broad array of consultations that occurred when I was there and I assume there's a substantial amount continuing.

MS. URQUHART: We have evidence – the Commissioner has evidence about how stakeholders believe those consolations were run. So that's already before the Commission.

Madam Clerk, can you please go to 00373 – P-00373? It's just one page, it'll – I think it should be fine to show I on the screen there. And page 50, please.

So this was a – formed part of release that Todd Russell, who was the Labrador MP at the time, this was released on February 9, 2011, and – that's perfect there Madam Clerk – and it indicates here if you could please read on the second column, the first two questions there.

So this is, just for context, this is the results of a survey that was prepared by and circulated by Mr. Russell and he had, in this particular survey, there were, I believe, 200 respondents. He did a follow-up, what was called a town hall where people called in or emailed in their responses, and there were over 2,000 respondents. And he indicated that the results were consistent with these results. So we can sort of take these to reflect both.

So if you can please read those two questions and the responses there.

MR. E. MARTIN: Yes, I will, I'm just catching up on the reading here a little bit, please.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: "Q1. Does the proposed Muskrat Falls development provide enough benefit for the people of Labrador? – 83% NO.

"Q2. Are you concerned about the environmental impacts of the proposed Muskrat Falls project? – 78% YES."

MS. URQUHART: So a significant number of Labradorians are indicating in 2011 that they have concerns about this project and that they don't believe that the people of Labrador are going to benefit from it. And I understand that you indicated yesterday that there were opinion polls that were regularly done by Nalcor. Were you aware that this poll was done?

MR. E. MARTIN: I was not aware, and I would add, you know, it's difficult to comment on it. I see some phrases here in the second paragraph from the bottom on the left-hand side, for instance: "While not a random sample, the size of the response is as large or larger than the number of Labrador residents interviewed during" the "province-wide public opinion surveys" – as an example. I'm just not sure of the statistical significance of this. I'm not aware of it. I don't know if, you know, if I can comment on if these numbers, you know, are reflective of an actual statistically competent survey. So I just wanted to point that out as well.

MS. URQUHART: So, I mean, this is – the MP for Labrador has sent out by mail to his constituents this survey, and they've responded back with these numbers. And, again, there's on the phone, the town hall, there were over 2,000 responses, which is pretty significant, given the size of the population of Labrador, and particularly the size of the population of the affected area.

MR. E. MARTIN: Yeah. So, I mean, you have information, I'm just not sure, I mean, I look at the last paragraph in the first column. It says: "More than 200 submitted surveys have been data-entered so far." I'm just not sure how that relates to your 2,000 number. So I just want to let you know that it's difficult, I'm just pointing out I'm going to have difficulty commenting on these numbers because I'm just not sure of the significance of them. I'm not saying they're right or wrong; I just don't know.

MS. URQUHART: And I'm putting it to you just because you indicated previously that you'd done surveys and I've not seen that, you know, that Nalcor regularly engaged in public opinion polls; we've not seen those. I have no information as to what the public opinion was, but I put to you that the public opinion in Labrador, as it's reflected in this survey, let's say – you don't have to accept that that's necessarily accurate but that the folks who responded to this survey are largely against this project.

MR. E. MARTIN: According to the information here, which I cannot, you know, justify or agree to, but the – you know, according to what's shown here, I understand what you're saying.

MS. URQUHART: And you can understand that, for them, the balance that you believe exists, for them it's not worth it. For Labradorians –

MR. E. MARTIN: Well, I should –

MS. URQUHART: – it's not worth it.

MR. E. MARTIN: – a couple things I'd like to say is that I was – I probably went too far in commenting on the statistical significance. I mean – so let's put that aside for a second. That's not the main point here. The main point you're making is that there's certainly a group of people who, you know, do have issues and are not satisfied with the economic environment and other aspects of the proposed project.

And, you know, Commissioner, I'd have to, you know, I'd have to acknowledge that – definitely. And that's a concern. And, as far as all Labradorians, I can't comment on that, but I know there's a split, you know, in terms of that feeling, so I will acknowledge that.

And I'm just gonna go back to some of my previous comments about on balance with respect to the EA, and I don't want to repeat that, but I do want to acknowledge some dissatisfaction, definitely, and not devalue it, but say, from our perspective, we went on balance from a recommendation for us to proceed from the EA. And the federal and provincial governments gave us the ability to proceed.

MS. URQUHART: That's all for me.

Thank you, Commissioner.

THE COMMISSIONER: Thank you.

All right, so I think this is a good spot to break. Next will be Emera Inc.

Mr. Noel, are you going to be asking questions?

MR. NOEL: No questions, Mr. Commissioner.

THE COMMISSIONER: Okay.

Former Nalcor Board Members?

MS. G. BEST: No questions, Mr. Commissioner.

THE COMMISSIONER: Okay, so next up: Newfoundland Power?

MR. KELLY: No questions, Commissioner.

THE COMMISSIONER: Okay. So next up, then, would be Nalcor?

MR. SIMMONS: No questions, Commissioner.

THE COMMISSIONER: Mmm.

All right, so, Mr. Smith, you'll be up after we come back.

MR. SMITH: Thank you, Commissioner.

THE COMMISSIONER: Okay, 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Mr. Smith?

MR. SMITH: Thank you, Mr. Commissioner.

I think my client knows who I am, so I'll dispense with that.

I'd like to begin by indicating that I will be quite brief, it's only a few points. And I'd ask for P-00255, page 14.

THE COMMISSIONER: Okay. That's one that's going to be on your screen too, unless it's in the general exhibits.

MR. SMITH: And first of all, we'll stop there for just a second. This is the strategic plan of Hydro-Québec, which is available to the public, from 2009 to 2013 – and page 14.

THE COMMISSIONER: That's 20

MR. SMITH: 14.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Okay, do you have a bottom page number? Maybe we could go that route?

MR. SMITH: No, no, that's it.

THE COMMISSIONER: That's it? Okay.

MR. SMITH: Yeah, that's page 14. Yeah – thank you.

Do you see that there, Mr. Martin?

MR. E. MARTIN: Well yes, I do.

MR. SMITH: And I'm referring to the graph on the left side of the page.

And could you indicate to us how does that work with respect to your understanding of no capacity in Quebec Hydro to be looking to Quebec Hydro to buy power?

MR. E. MARTIN: So this is a fairly self-explanatory table that is published in Hydro-Québec's strategic plan. They do that fairly regularly, at least when I was involved with the company. And it simply – simply put, obviously, across the top are years in double sequences and they're talking winter. And on the side is capacity needs. So they basically outlined their capacity needs as they see them with relevant offsets and additions and they come up, with respect to their planning perspective – Hydro-Québec's planning perspective – in terms of the additional capacity that they require, rounded off to the nearest 10 megawatts.

And as you can see on the bottom as you move out from 2010 onward, it grows from a shortfall of 60 megawatts to approximately 1,580 in 2016-2017.

So this is what, you know, obviously shows that they, in the winter time, need to do something themselves to cover off on winter capacity over that period of time.

MR. SMITH: And was this information available to you in 2009, '10?

MR. E. MARTIN: Yes, it was.

MR. SMITH: Now, if I can, I'd ask for P-01160.

And this appears to be –

THE COMMISSIONER: (Inaudible) screen.

MR. SMITH: – an email from Westney to Mr. Harrington in July of 2012. And says – it says: "… latest version of opinion letter – please confirm receipt. Appendices" – could you scroll down please?

There it is. There – July 16, 2012.

And could you identify that document, Sir?

MR. E. MARTIN: Yes, I can.

This is the document related to the request that I had made to seek some advice with respect to, you know, what would be the proper statistical representation of the oil price that we should be considering to use in the CPW analysis.

MR. SMITH: Scroll down, please.

Excuse me.

Would you go up a little bit please? A little further. Okay. Right there. Just above the heading "*Discussion*," okay?

Could you read that paragraph?

MR. E. MARTIN: "A well-established global provider of project risk management consulting services, Westney Consulting Group has been requested to provide an expert opinion on which of the PIRA forecasts is most reasonable for use in the CPW calculations."

MR. SMITH: Is there any suggestion in there, in this report, that Westney are not expert in doing what they said they were doing?

MR. E. MARTIN: Not that I had found.

MR. SMITH: So Mr. Westney apparently testified that this was not their – they had no real expertise in this area.

Does the report reflect that?

MR. E. MARTIN: Not in my estimation.

MR. SMITH: Scroll down please? Towards the end – it's only a four-page document, so … Okay. No, back up.

Okay, there it is: "In our opinion…"

What's it – what are they – what's their opinion that they expressed to you in their document?

MR. E. MARTIN: "In our opinion, the Expected Value price forecast is the one that represents the most reasonable choice at Decision Gate 3. We understand Nalcor's CPW analyses require forecasting the price of oil for the next 50 years. Since the Expected Value price forecast represents the full range of outcomes, we consider it to be a more appropriate basis for predicting prices over this long time horizon than one based on a specific scenario. Moreover,"– comma – "assuming PIRA's Expected Value price forecast is a reasonable analog for the mean value of future oil prices," – comma – "it is likely that it will more closely track actual prices than the Reference price forecast will. As the years go by," – comma – "actual outcomes would be more likely to cluster around the Expected Value price forecast than around the Low," – comma – "Reference," – comma – "or High price forecasts. Finally, we note … the use of the Expected Value price forecast is consistent with our experience with a variety of clients and conditions."

MR. SMITH: I take it then that the Westney people who represent themselves as experts in this area recommended that you use the expected value?

MR. E. MARTIN: That's correct.

MR. SMITH: And did you?

MR. E. MARTIN: No, we did not.

MR. SMITH: And what did you use?

MR. E. MARTIN: We used the reference value.

MR. SMITH: And what was the difference between the reference value and the expected value?

MR. E. MARTIN: In exact numbers, I can't give you, but it was in – from a CPW impact, it was between $550 and $600 million.

MR. SMITH: In favour of …?

MR. E. MARTIN: In favour of Muskrat. It would've increased the Isolated by that much, which would have increased the preference for Muskrat from $2.4 to $3 billion.

MR. SMITH: Can I have P-00087?

THE COMMISSIONER: Screen again.

MR. SMITH: Scroll down to 3(b)(iii). It's been referred to quite often during the course of your testimony, Mr. Martin. Oh, no, 3(b) – yeah, 3. Thank you.

Thank you. Now, this is the Electrical Power Control Act, okay, and I'm wondering whether or not – looking at, in your mind – and you're just giving your views of it. It's up for other people to conclude conclusively. But in 3(b)(iii) it says we are required to look at "… sources and facilities for the production, transmission and distribution of power in the province should be managed and operated in a manner …

"(iii) that would result in power being delivered to consumers in the province at the lowest possible cost consistent with reliable service."

So is the lowest possible cost the only criteria that the legislation speaks to?

MR. E. MARTIN: No is, I think, the obvious answer with emphasize on – in addition to lowest cost – on reliable service, Commissioner.

And I won't belabour the point, but it does – it is a salient point with respect to a lot of questions I've been continuously asked, properly so, about CDM or things that we cannot, you know, depend on from – say Mr. Humphries, who is responsible for delivering the power. He would consistently respond to this element, as well as lowest cost, and felt both had to be balanced on an equal amount, with emphasis on reliable.

MR. SMITH: And as between the two projects, what's your view of the reliable source?

MR. E. MARTIN: I believe that we wouldn't have consistent reliability over time on either one, so, you know, we would design the Isolated system in such a manner to deliver the required reliability of service, and we would do that for Muskrat Falls. And we would take a consistent approach in both with respect to that, so things we have excluded in one or the other would be done for the right reasons to bring those to what we would see a reasonably equivalent reliability.

That being said, internal to Hydro and Nalcor, I think, we always had, you know, a relative sore spot with respect to Holyrood, in particular, as well as some of the gas turbines and such that we had that were running out of useful life as well. So I think, intuitively, reliability, the same, but you know, Holyrood we would watch from a much closer perspective.

Now, that being said, a different question – and if I could, Mr. Smith – a related question is when we compared Muskrat Falls with our current system, like today's system – not the Isolated system, today's system – we did find a very significant improvement in reliability comparatively speaking which is useful, I think, for the ratepayer and the people of the province to understand that they can expect a more robust system with Muskrat Falls.

That being said, they could expect a more robust system with Isolated as well, but you can never get past the not-being-connected piece. You know, it is very difficult to top that, that we're not connected both ways in the Isolated system. You know, there's always an inherent difference there compared to other systems.

MR. SMITH: Okay.

Now, I'd like to take you to the Emera negotiations, which has sort of dominated several areas of investigation by Commission counsel and others and ask you to try and walk us through in a bit more of a narrative as to how and what happened from your perspective in relation to the Emera negotiations. How did they get started? And we'll follow up from there.

MR. E. MARTIN: Well, we had had discussions throughout eastern North America, you know, throughout the buildup to Muskrat Falls, as we've discussed. At one point, we had thought about going direct to market, and then, as we've discussed several time this week, a need for power came to the forefront, and we pursued that. So we had relationships somewhat built throughout the region.

As I also mentioned, we did the economics for Muskrat Falls assuming we spilled all the water, from a need-for-power perspective, and obviously Muskrat Falls still came out ahead by 2.4 – and I say obviously, because I have said it many times. That being said, we made that decision; there we are, so now we have excess power so obviously we try to monetize that.

We approached and had, you know, had some discussions with Emera. So they – the first, I guess, approach was for us to suggest to Emera and Nova Scotia that, you know, we would build the Maritime Link and they would buy the power from us in a long-term PPA.

And that resulted in limited or no interest from Emera, and – which didn't totally surprise me because Emera the – you know, they're a good company. There's, you know, I guess – how could I put it. You know, there's no rate of return on that for them, as such. So we had further discussions, and you know, the concept arose that, you know, they would like to construct the Maritime Link. And from that perspective, we weren't fussed either way – talk to us – and obviously they could build it and earn a return on it, put it into the Nova Scotia rate base – earn a return on it.

And I said, well, how would that work for the province, you know, for Newfoundland? And, well, the concept was this: is that to build a 500-megawatt line, Emera would build it; they would put it into the Nova Scotia rate base, the cost of that. And provided the cost of that was, you know, similar or close to or the same as what they would have to build otherwise to meet their environmental standards, they felt that they could, you know, bring that forward to the regulator and it would work for them.

From our perspective, we wanted access to that line. We needed about 300 to 350 megawatts to handle our needs. So that, when you build a 500-megawatt line, they said, well, we'll build it, you give us a terawatt hour of power per year and that will take up about 170 megawatts on that line, 16 hours a day, seven days a week and you can have access to the other 330 megawatts for free – that's yours, in essence. They would, in theory, own it, but we would have full access with no cost, and after 35 years, with the arrangements we made, which we did, you know, provide some value for, it would become ours for a dollar.

And just for clarity, Mr. Commissioner, there has been discussions out there about Emera getting power for free, which is nothing further from the truth. But I've been trying to think of an analogy, you know, that would ring true to people.

The best one I could come up with was something like, you know, if you have a new Ford pickup, and your friend has a new Chev pickup – same year, same vintage – and if you give your friend your Ford pickup, and he gives you his Chev pickup, and then someone says, you know, he got a Ford pickup for free and you say, well – you know, no way because I got a truck back in return and then, bang, you get it, it's a trade. So we gave a terawatt hour of power – we gave a Ford terawatt hour of power and in exchange we got a 330-megawatt Chev lion as an exchange.

And that's why in the UARB they valued that at a – what they'll call, you know, a levelized cost we will come back to, but they could put a cost on that to the ratepayer and that's what they pay for the terawatt hour of power.

MR. SMITH: These negotiations, when were they again? Do you recall?

MR. E. MARTIN: In the 2008 time frame, I believe.

MR. SMITH: Okay.

MR. E. MARTIN: And I'm losing track of the time here right now.

MR. SMITH: Yeah.

MR. E. MARTIN: It was early – it was January of a year – I'm losing the – a little bit of memory. We started the first discussion around us selling them power in January of, I think, possibly 2010. I'll have to come back to that. My recollection is it was an early year discussion around the possibly building – of us building it and selling and that didn't work. In mid-year of that year we re-engaged to talk about this arrangement that I just described.

MR. SMITH: And the term sheet was signed sometime in 2010. How would that relate to your –

MR. E. MARTIN: That's exactly – 2010 is the year exactly and would be the first of that year, and then mid-year we dealt – we went in to deal to see if we could come up with a section with the second option.

MR. SMITH: Could you explain, if you could, exactly how in – the fall of 2010, or late summer, whatever – how it – the negotiations proceeded. You – we've heard about the teams from either side, but we haven't heard an awful lot about actually how the negotiations proceeded.

MR. E. MARTIN: Well, we got together and discussed the concept and I realized early that they were quite interested in this. It worked for us if we could get the numbers right. And I – we briefly talked about the mechanics and what was included in the potential cost. And I know at that time I decided – you know, we put the – and it was our numbers we were dealing with and we put the capital cost of 6.2 billion on the table.

MR. SMITH: Was that the same number that was being discussed here in Newfoundland?

MR. E. MARTIN: It was exactly the same number but I should clear up some confusion before we get there.

MR. SMITH: Yes.

MR. E. MARTIN: This is 2010. So the 6.2 I'm talking about is not the 6.2 we sanctioned on. The 6.2 we sanctioned on was Muskrat Falls, the Labrador-Island Link – no Maritime Link. This 6.2 was back at the time when we had 5 billion for Muskrat Falls and the Labrador-Island Link and 1.2 for the Maritime Link which we were looking to build as well. But that was a different 6.2. So when I went in I put 6.2 billion on the table for the capital.

MR. SMITH: For the entire project.

MR. E. MARTIN: For the entire project. That's the numbers we provided. Because we had done the numbers; Emera had not done the numbers at that point. And I put that number on the table at that time and, you know, based upon some short discussions, I felt that was going to be acceptable, that was our bottom line. And I explained to Mr. Huskilson that, you know, that was it. You know, if we don't get that we can't go.

He understood that and thought – he said: I think I can work with that. But he said: We have to go a little further than that; we have to discuss some things now. And I said: Good, as long as you're locked in on that 6.2, I'm wide open. And then he said: Well, I need – we need to turn the discussion now – put that capital aside for a second. He said: You know, I got you on that, we'll come back with that and then that's what it will be.

He said: Now, he said, we need to turn that number, plus other numbers, into what they call a levelized unit electricity cost – LUEC. And I understood that concept and that's the concept that their UARB used to compare alternatives.

MR. SMITH: So did you arrive at an acceptable LUEC through negotiations?

MR. E. MARTIN: We did, and just maybe I can take –

MR. SMITH: Yeah.

MR. E. MARTIN: – 30 seconds. I'll try to get to quickly, Commissioner, about what that is. But if you take all of your, you know, costs of generation, transmission, whatever you're building, operating costs, the whole – similar idea to starting to build up a CPW over a series of years, you add up all those costs, then you divide into that – you divide into that the amount of electricity that you're – that that is supplying, you come up with a dollar-per-megawatt-hour number. So, really, it's pretty much the same as the overall total cost that you would see on a buildup over 50 years on a CPW, but they just turn that into a dollars per megawatt hour.

And usually, you know, a cost of service means it starts high and comes this way, or you start low and come this way. But whatever you're doing they call it levelize it. And that means you run a calculation so that it is the same number every year for 20, 30, or 40 years, whatever you decide. There's a mathematical way to levelize that number, and what you're trying to do is get a flat number every year. And it's another method to be able to compare two different options – one at 20 years or one at 30 years. It's just another way. And that's what levelized unit energy cost is and that's what Emera wanted to use because that's how they would go in and compare to their Public Utilities Board.

So that number is made up of several components, not unlike what we would do or other jurisdictions would do. It's made up of the capital component. And you'd take that 6.2 that we had there and turn it into a capital LUEC. And then you'd have to add operating costs, obviously, interest and financing costs.

In this particular case, we had to talk about line losses – getting alignment – aligned on line losses. And several other different things would be considered in that.

And Mr. Huskilson, at that point said, you know – I'm ball-parking. He said – you know he used the term – it will come to me in a second – notional. But I think what he meant is that, look, we're thinking around $125 per megawatt hour LUEC is what, you know …

He said what do – you know – let's see if we can work that. And, obviously, I said, well, let's work it and I said the 6.2 is not changing. He said I got that. So then we worked on operating costs. We thought through that, line losses, other things. And at the end of the day, to make a longer story short, it ended up that it landed at about $137 LUEC at that time.

MR. SMITH: Yeah.

And what was – at the time of the signing of the term sheet, what was the capital requirement?

MR. E. MARTIN: 6.2, that had not changed.

MR. SMITH: Not changed.

MR. E. MARTIN: It had not changed throughout that. You know, he was true to his word and that didn't come up again.

MR. SMITH: Okay. So –

MR. E. MARTIN: Now –

MR. SMITH: You got the LUEC where both parties were satisfied?

MR. E. MARTIN: That's correct.

MR. SMITH: And a term sheet was signed.

MR. E. MARTIN: Non-binding term sheet –

MR. SMITH: Okay.

MR. E. MARTIN: – was signed.

MR. SMITH: Yeah and then in – at some point in time it had to be sanctioned. What was the LUEC at sanction?

MR. E. MARTIN: Yeah, so then that also led to the 80-20 program, Mr. Commissioner. That principle was, you know – was, you know, enshrined in the non-binding term sheet. And then we proceeded down and, obviously, from DG2 to DG3 things changed, but the principle remained.

And although we were thinking – or he was thinking – for his regulator that it was about 137 at DG2, it ended up being – they ended up going in to their regulator at 160. And that was generally a reflection that we had gone to 6.2 plus, I think, about 1.6, which was the – you know, 6.2 for Muskrat Falls, LIL and then 1.6 at that point was what the Maritime Link was expected. We added those two numbers up, did the 20 per cent, and that yielded about a $160 LUEC.

And that's what they went in with.

MR. SMITH: And – looking at – the evidence and we tread on a track with some trepidation, but you were asked by the Commissioner that if you thought of additional benefits – he didn't want to hear whether not – a repetition of all the benefits that you had previously described, but you were asked if that there were additional benefits that he would be interested in hearing what they were.

So have you had an opportunity to think about it and determine if there are additional benefits that you hadn't mentioned in your testimony yesterday?

MR. E. MARTIN: I have thought about that, and I have four more. So I won't repeat what I said before – might be overlap in one, but I want to make sure I have it on deck.

The first one is the storage. And with the Maritime Link in place, Mr. Commissioner, as I mentioned, the deal was to give Emera their power 16 hours a day, seven days a week for 170 megawatts. That leaves us 330 megawatts for seven days a week, 16 hours for sole use. But it also gave us the nighttime hours – and this is an example – eight hours in the nighttime, which was ours.

And if you look at, taking Bay d'Espoir, for instance, with storage – and this goes on across the country, and it happens everywhere, once you're connected – the ability to potentially go out in the nighttime when prices are the lowest throughout other jurisdictions and you can buy power there and bring it home. And when you bring it home and using it during the night, you can close up, you know, some of the bay doors at Bay d'Espoir and store water. Of course with stored water is electricity, because the next morning, if fortune smiles upon you, you can open up the gates and the water you stored that night, because you paid very cheap rates for it in other jurisdictions, you can sell it back to them at breakfast time or lunch time or supper time when their rates skyrocket again – or, you know, go up high during peak times.

There's value there, I just want to –

THE COMMISSIONER: Okay.

Can I just – I just need to understand a little bit more.

So what you're saying is you store the – during the nighttime do you actually transact power at night or do you just store power at night and then sell it in the morning or do – ?

MR. E. MARTIN: You transact power. You take power from say New Brunswick –

THE COMMISSIONER: Right.

MR. E. MARTIN: – and you bring it back across the Maritime Link and it lights our houses.

THE COMMISSIONER: To Newfoundland?

MR. E. MARTIN: To Newfoundland.

THE COMMISSIONER: Right.

MR. E. MARTIN: That means you can shut the Bay d'Espoir down a little bit and that means the water builds up.

THE COMMISSIONER: Okay.

MR. E. MARTIN: And the next morning, you stop taking that, you open the gates at Bay d'Espoir and you produce more electricity than you normally would. But you take the extra and you give it back to New Brunswick but at that time – or any jurisdiction, particularly New England – breakfast time demand goes up, price goes up.

So you might get it for an – I'm just going to use small numbers – you might get it for a dime in the nighttime, you might sell if back to them for 15 cents the next morning and you make your spread on the storage, right?

MR. SMITH: Well, that was one?

MR. E. MARTIN: The second one – we've talked a lot about demand and such but, you know, the mining opportunities are beginning to raise their heads again in Labrador and we do have firm power available, which was the intent. And once again, the view of not transacting that firm power in a hurry was always the thought. So that we could assess – the province could assess, you know, mining needs for instance, as they come up. So there is firm power available and the mining is a good example of how that could be utilized.

THE COMMISSIONER: Primarily from Muskrat Falls or –?

MR. E. MARTIN: Yes. Primarily from Muskrat Falls.

In the third one – in the third additional one is optionality, economic development optionality. And what I mean by that – by virtue of being hooked up both ways, we have much more options in terms of economic development. So now, if we think about developing Gull and we try to do an arrangement on Gull, if it doesn't work for us – fine or works for us – fine. It has to be right.

But the fact that – if you're really thinking economic development, you can put the economic development a little bit on the backburner. Because if you don't do a Gull, say, with linkages both ways, there's a series of really nice projects, which would be a combination hydro – smaller hydro wind projects you can do together. So you might do a Portland Creek with a wind farm that (inaudible) up the wind. It might be, you know, 50, 60, 70 megawatts. I'm not sure on the numbers.

But with the capacity available on lines going both ways, you can choose to do those three developments overtime, you know. They're very – they're big projects, make no mistake, they're not tiny projects. And it just gives us an optionality to say, you know, once again if we wanna – instead of doing a Gull or something else – if we wanna stage three or four of those types of arrangements over the next 20 or 30 years, that's economic development. That could take the pressure off trying to do something else.

And frankly, when it comes to the Upper Churchill negotiation – this is my fourth – this is my three and a half, okay? And when it comes to Upper Churchill negotiations, which I've mentioned from a leverage perspective, those – ability to do those extra projects for profit, it just puts us in another – it just gives us another point of equality with our, you know, with our Quebec friends.

To say that once again: Folks, we'd like to do this and we'd like to do that, but we don't really have to – we have another portfolio that we can deal with.

Now, Mr. Commissioner, that's it, in addition to the other ones.

MR. SMITH: And that's it for me.

Thank you, Mr. Martin.

THE COMMISSIONER: All right – redirect.

MS. O'BRIEN: Thank you.

Mr. Martin, my first questions are just coming out of a few questions that Caitlin Urquhart asked you on behalf of the Grand Riverkeeper Labrador and the Labrador Land Protectors. She asked you about surveying and the results of surveys. You had mentioned it in your direct testimony with me that you were surveying every six, eight, or ten months prior to sanction.

Do you – did you get survey results that were broken out between Labrador versus the Island of Newfoundland?

MR. E. MARTIN: I can't remember.

MS. O'BRIEN: Okay, that's something that perhaps we can check on.

Generally speaking, do you remember what the results of the surveys were that you did do prior to sanction?

MR. E. MARTIN: Yes, we generally stayed in a range of 60 to 63 per cent in favour of the project.

MS. O'BRIEN: Okay, and do you have any recall whether there was any difference in those numbers between Labrador and Newfoundland?

MR. E. MARTIN: I don't recall.

MS. O'BRIEN: Okay, so we can look at that. Thank you.

The other series of questions I have for you is – has to do with some questioning by Mr. Budden. And I just want – this is an area I'd just like to get some clarification from you on. So as I understand it, in response to – Mr. Budden was questioning you in particular about some of John Mallam's testimony.

And what I understand you saying was that, you know, you raise some concern with Mr. Mallam's testimony, or you didn't agree particularly how he was using P-factors. And you said he seemed to be – it confused you, it didn't make sense, he was plucking, you know, P-factors out of the air based on a gut feel. To me that's not how it's done and it's not reasonable – I've got a draft of your transcript here.

So do you recall generally your testimony there?

MR. E. MARTIN: Yeah – generally, yes.

MS. O'BRIEN: Okay. So then you'd also, in response to Mr. Budden, talked about how it is done and I just want to make sure I'm clear on that – excuse me. So in terms of how it is done, I'm just gonna read – you covered it a couple of times. I'm just gonna read a couple of passages here: If we're talking about risk analysis, my understanding is you would go to each line item and you would put a range against it and 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 a level of contingency you're looking at overall. So I didn't understand the point that he was making – John Mallam – it didn't make sense to me, is my point. And then you go on to say a little later: But the very purpose, Commissioner, of the risk analysis process that we followed was to let the curve be produced and then to select a P-value off it.

So from that I took it that you were saying that that's the proper process for selecting a P-value. Is that a fair understanding of your evidence?

MR. E. MARTIN: That's a fair understanding.

MS. O'BRIEN: Okay.

So we also have heard you, you know, speak a number of times about the importance of an apples to apples comparison, that if you're gonna use P50 for the Isolated or, you know, the Interconnected Island, you'd need to use P50 for the Isolated. If you were gonna use P75 for one, you'd need to use P75 for the other.

And what I'm – what – and I believe you've said this already, but just to confirm – we have not found for the Isolated Island any evidence that a P-factor analysis was ever done as the type that you – we just went through there with the Monte Carlo and the curve and whatnot. And I understand you've said before that was consistent to your understanding as well.

MR. E. MARTIN: Are you talking on the construction capital?

MS. O'BRIEN: Well, let's talk about all of them, actually, but let's start with the capital construction. We haven't found any evidence that any, you know, probabilistic analysis, et cetera, was done to enable you to pick a P-value for the Isolated Island.

MR. E. MARTIN: That would be my understanding as well.

MS. O'BRIEN: So when you say that you used a P50 for the Isolated Island Option, how – if you didn't do the analysis that you've said is the proper way to do it, how did you – how can you confidently say here that you used a P50 for the Isolated Island capex?

MR. E. MARTIN: I can't say specifically P50. If I have, I'll give you my rationale in terms of the range. And I was confident that, you know, first off, I'm gonna go back to the desktop study arrangement or the, you know, the amount of engineering that would be done with respect to the Isolated side construction versus Muskrat; we'd be clear on that, would be nowhere near the same level.

You know, from a – not from a probability analysis, but from an AACE analysis, you know, it would be on the lower end of a class of estimate versus Muskrat. And my experience would be that, as you move up the class of estimates, the pressure is usually on the costs. And, from that perspective, I felt very comfortable that we were certainly not favouring Muskrat by virtue of – my understanding is that the Isolated costs were on the lower end of the class and likely to rise, in my mind. So, we were not – I didn't feel we were stoking up the cost and the capital on the Isolated side.

And, from that perspective, you really can't put a P-value against it. In my mind, I was – you know, I felt comfortable that it would be on the lower end of that, and – but it wouldn't fuss me too much because when I look at the comparative analyses between both options, on the Isolated side, my biggest focus would be on the oil. And, from that perspective, there is probability analysis available, and the impact of the oil increase on that perspective would dwarf the capital.

MS. O'BRIEN: So you can't point to a P-value for the capex for the Isolated. I know for the oil – again, I think you've said it before, but there's no P-value tied to the various PIRA curves. Is that fair to say?

MR. E. MARTIN: I believe there is.

MS. O'BRIEN: Okay.

MR. E. MARTIN: Yes, there is.

MS. O'BRIEN: So – oh, no, I'm sorry, you did cover it, and there's a document that we're looking for.

MR. E. MARTIN: Yes, there is –

MS. O'BRIEN: You're right.

MR. E. MARTIN: – a document, yes.

MS. O'BRIEN: Okay, so we will follow up on that one.

Okay. The other one is with respect to schedule. That's the other place where we saw that you did a QRA, and you did an analysis, you know, a Monte-Carlo-type analysis to pick a P-value, that's for the time risk. And we know that the June 2017 first-time date, that is the date that went into the CPW analysis. So, that's the one – if we look at whatever P-factor analysis was done for that, it seems to be the most – the latest one was the P3 that we looked at.

So, when you're looking at the comparison of how – what schedules you used to evaluate the costs of the items that would be required for the Isolated Island – again, we haven't found any evidence that any time-risk analysis was done for those schedules.

So, would it be fair to say that you can't put a P-value to schedules that would be – in terms of the build-out schedules for the capex expenditures on the Isolated Island?

MR. E. MARTIN: I think that's a fair comment, but, once again, I'm not – Commissioner, you know, I'm making a distinction between the schedule and the time-risk analysis. I won't go there again.

MS. O'BRIEN: Okay, okay.

Okay, the last area of questioning I have here is arising out of questions from Mr. Smith. So we – I had questioned you about the Emera agreement – I'm not sure if it was Monday or Tuesday, the transcripts will show it – and the negotiations that went on, and you gave evidence then.

Last Friday, my co-counsel interviewed Chris Huskilson who is the former CEO of Emera. His transcript, I understand, was circulated to parties yesterday, the transcript of his interview. Did you have an opportunity to read that?

MR. E. MARTIN: Yes, I did.

MS. O'BRIEN: Okay. So you read that sometime between yesterday and today?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay.

So I just want to go over – in your evidence now coming from Mr. Smith, I understand you to say: I went in with one capex amount and I came out of the negotiation with the same capex amount.

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay, so that didn't change. So what you've said was where there was some negotiations – as I'm understanding it – was on the LUEC amount?

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

MS. O'BRIEN: Okay.

So I understand you saying that at least Emera wanted to get it down to 125 or below that.

MR. E. MARTIN: It didn't – he didn't say that, no. He was –

MS. O'BRIEN: Okay, so what did I understand – the 125, what was that number?

MR. E. MARTIN: I think he referred to it as a notional number. I think, you know, whatever that means, I think he was just laying out a thought as to a range he wanted to – he thought he could sell to the UARB.

MS. O'BRIEN: Okay, so that's where he wanted to get at the beginning of the negotiation. Am I understanding that correctly?

MR. E. MARTIN: I think that's why he used the term notional. I don't think he wanted to get there, I think he, you know, he was saying let's talk, let's explore it further. Once he understood the capital requirement, I think he just wanted to get the discussion going and he was – it was clear to me that he was flexible, let's work through it.

MS. O'BRIEN: Okay. So, ultimately, wherever you started with the idea of maybe getting it to 125, am I understanding you ended the negotiation at the 137?

MR. E. MARTIN: At the term sheet, at the non-binding term sheet, that's what the number showed, yeah.

MS. O'BRIEN: Okay, so that's where you kind of – when you talked earlier when you gave your direct evidence –

MR. E. MARTIN: That's correct, yeah.

MS. O'BRIEN: – to me, when you ended that negotiation, is that where you – is that where the – where that negotiation concluded at the 137?

MR. E. MARTIN: Yeah, that's the number that we thought, okay – or he thought that he could – he'd work with that.

MS. O'BRIEN: Okay.

And then, ultimately, when you say it went to the UARB at 160, what's the difference between the 137 and the 160?

MR. E. MARTIN: I think the majority of it would be the fact that costs had increased from

DG2 to DG3, but I couldn't give you all the elements.

MS. O'BRIEN: Okay.

So that wasn't a renegotiation between you and Mr. Huskilson. It was just the matter of the fact, when you finally got to the DG3 numbers, what it worked out to be, the agreed upon DG3 numbers.

MR. E. MARTIN: That's right, 'cause we locked –

MS. O'BRIEN: Okay.

MR. E. MARTIN: We had locked the capital in to whatever our capital was, was the principal.

MS. O'BRIEN: Okay.

So what I'm understanding you saying that making up the LUEC was the capex, which you didn't change on in the course of the negotiation, that held. Financing, and I assume financing would sort of be a fixed cost, you and he wouldn't be negotiating over the interest rates and stuff.

MR. E. MARTIN: No, I think that would be in his purview –

MS. O'BRIEN: Okay.

MR. E. MARTIN: – whatever they could arrange.

MS. O'BRIEN: So the areas where you could have had some back and forth, I take it, would have been on the operating expenses?

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

MS. O'BRIEN: And what – line losses?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Now, wouldn't line losses just be a matter of engineering. Like, isn't that something that can be measured and known?

MR. E. MARTIN: Yes, and back to the operating cost, too, a lot of this started to become in – you know, in Emera's, you know, viewpoint, I think, because once we started down the path of them building it, they would be operating it. So we would have operating costs and such that we would have. They would be looking at that to say what they believed. So negotiation may be a strong term on that. It would likely, probably be technical people talking through things to see, you know, could they presumably see that that was technically, you know, a better number or not.

MS. O'BRIEN: Okay. But is it fair to say the line losses would be something that is known – it either is or it isn't; you just have to get your engineering people to look at what are the line losses?

MR. E. MARTIN: Yeah, I believe that. There's different opinion, you know, different engineers would have different opinions within a range. So they would get people together to say, okay, what do we think here. I mean, let's get our heads together on that.

MS. O'BRIEN: Okay, so –

MR. E. MARTIN: It's more a technical discussion than anything. So it wasn't – what I'm trying to say, that was more a technical dialogue than it was a tit-for-tat on a negotiation.

MS. O'BRIEN: So what numbers were it that you and Mr. Huskilson were negotiating over?

MR. E. MARTIN: Nothing, really, other then letting the technical people sort that stuff out.

MS. O'BRIEN: But when you said to me in your direct evidence that you went in with padding in your numbers – I believe that those were your words –

MR. E. MARTIN: That's correct, yeah.

MS. O'BRIEN: Okay. What numbers were you going in with the padding on?

MR. E. MARTIN: Well, I didn't need the – we went in, and, you know, I wasn't sure what was going to happen, initially, and within, you know, extremely short period of time dialoguing with Mr. Huskilson, I could see he was interested in, mostly interested in the Maritime Link, you know, costing, and, you know, I took a call then to say, well, you know, we have costs on that, you're aware of that. And he said, what do you got? And I said, well, if we get there, I said, that's 'cause – going to be. And he said, yeah, we'll work with it. I said, well, I got the meat of the 6.2, and he said, well, let's work with it, and that was end of that.

MS. O'BRIEN: So you didn't go in with padding?

MR. E. MARTIN: Pardon me?

MS. O'BRIEN: You didn't go into the negotiation with padding?

MR. E. MARTIN: Well, just take timing – yeah, I walked in to – I wasn't sure where it was going. So it happened extremely quickly that I could see exactly where his mindset was – you get the feel – and we did 6.2, and he was – you know, he said I got that, we'll work it. And he said – basically his approach at that point was that, well, if you need 6.2, we'll get you there, and if we don't get you there, we're not going to do it.

So I was very happy with that at that point. I didn't know it at the time where we were going to start. So I went in with some – in my mind – a buffer, padding, if it happened, but it didn't happen. And we started to move down that path very quickly.

MS. O'BRIEN: So was there any negotiation that went on between you and Mr. Huskilson?

MR. E. MARTIN: With respect to – I guess between us, it would be the teams on the other side of the equation in terms of coming up with those other pieces, trying to run numbers back and forth to see what suited him. But then we would be more talking about, you know, the 80-20, how the – you know, how the – who would control the Maritime Link.

MS. O'BRIEN: But in terms of dollar amounts, was there any negotiations between you and Mr. Huskilson with respect to dollar amounts?

MR. E. MARTIN: No, not – from my perspective, no. After we landed on the 6.2, I was good.

MS. O'BRIEN: And 6.2 was where you started with him?

MR. E. MARTIN: That's correct.

MS. O'BRIEN: Okay, thank you. Those are all my questions.

THE COMMISSIONER: All right. Thank you, Mr. Martin.

So that's – we're finished for the day. And I assume we're gonna finish for the week, because I guess our next witnesses are Monday?

MS. O'BRIEN: That's correct. We have Mr. Alteen for a short period of time on Monday. He's from Newfoundland Power. He won't be a long time. And then it'll be former premier Kathy Dunderdale.

THE COMMISSIONER: All right.

So we're adjourned 'til Monday morning at 10 o'clock. Everyone have a nice weekend.

UNIDENTIFIED MALE SPEAKER: Commissioner – 9:30.

THE COMMISSIONER: Or 9:30, rather, on Monday morning. Sorry. Thank you.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.