



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 1

Volume 60

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*Commissioner: Honourable Justice Richard LeBlanc*

Tuesday

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**CLERK (Mulrooney):** All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc  
presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** All right.

Good morning.

**MS. DUNDERDALE:** Good morning.

**THE COMMISSIONER:** Mr. Learmonth,  
when you're ready.

And you remain under oath at this time, Ms.  
Dunderdale.

**MS. DUNDERDALE:** Thank you,  
Commissioner.

**MR. LEARMONTH:** Thank you.

There are two new exhibits I'd like to have  
entered. They are P-01673 and P-01674.

**THE COMMISSIONER:** Okay, just give me  
one second there. 01673 and 01674?

**MR. LEARMONTH:** Correct.

**THE COMMISSIONER:** Okay.

Those are entered as marked.

**UNIDENTIFIED SPEAKER:** All right, thank  
you.

**THE COMMISSIONER:** And when you're  
ready.

**MR. LEARMONTH:** Thank you.

Ms. Dunderdale, the – we talked yesterday about  
the removal of the risk analysis from the scope  
of work of MHI.

You recall that?

**MS. DUNDERDALE:** Yes, I do.

**MR. LEARMONTH:** And I asked Charles  
Bown when he testified like: Why not instead of  
moving the scope out, adjust the time so that the  
scope would permit the risk analysis to be done?

Do you see what I mean?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And the question I put to  
him was on – when he was testifying on  
December 5 – the question: “But why not move  
the time date? Instead of moving the scope, why  
not say: Well look, this is just not feasible; we  
have to get this work done, the risk analysis  
done, so forget about the June date.

“Was there any consideration given to that?”

And his answer was: “I don't recall. And that  
would be a political decision of when things  
were going to take place in the House of  
Assembly.” – That – “That's – that would be  
decided by the premier and her staff.”

Is that correct?

**MS. DUNDERDALE:** That is correct, yes.

**MR. LEARMONTH:** So you made that  
decision yourself, did you?

**MS. DUNDERDALE:** Of when we were going  
to go to the House – of when we expected to go  
to the House?

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** In June, so –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – you would've set that  
as a deadline at that point anyway, would you  
have?

**MS. DUNDERDALE:** Mr. Bown is completely  
right. When we go in or out of the House, it's a  
political decision.

**MR. LEARMONTH:** Okay.

And having agreed to Nalcor doing this preliminary work on the site –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – why would it be, nevertheless, important to have this debated in the House in June

**MS. DUNDERDALE:** I can't recall the sequencing. Everything that was going on at the time. I know that we were trying to sanction in July, August.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And as that got pushed further out, so did the debate in the –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – in the House of Assembly.

The critical piece for me – what I really would have been focused on is getting this into the House for some kind of a debate before we went to sanction.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And timing is critical in that piece – as to when we're going to be able to manage all of this.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** The loan guarantee was a work in progress. We were – my recall is that we were pretty much ready to go once the loan guarantee was secured, because I wasn't prepared to go to sanction without the loan guarantee. And that was getting pushed off by weeks on a regular basis.

So we had come from mid-summer sanction and having all of that in place by then to – now, we were getting pushed away to the fall.

And so I wanted to have the debate. If we could go with sanction in July or August, then I was prepared to do that.

And the minute we could get the project going, you know, once we could get – the earlier we could get to sanction regardless of any approval to spend extra money to mitigate risk, we would want to start the project.

So it was trying to keep the situation as fluid as we could so that the number of things that we had to do would get done in a timely way.

**MR. LEARMONTH:** Are you saying that you would have sanctioned the project even if there wasn't a federal loan guarantee?

**MS. DUNDERDALE:** No, that's – the delay was being caused in, to a large part, because we weren't able to sign off on the loan guarantee. And I wasn't prepared to go to sanction without a loan guarantee in place – an MOU in place with the prime minister.

**MR. LEARMONTH:** Yes.

But, Ms. Dunderdale, Emera didn't file its application with the UARB until January 2013.

So at the time – if you're talking about House of Assembly debate and sanction in June – if you were waiting – if you needed to get the federal loan guarantee in place, and you knew that Nova Scotia had to be part of the package in order to get the federal loan guarantee – I don't understand what the rush was.

Because until Nova Scotia – the UARB and Nova Scotia – approved the project, the Maritime Link, there could be no federal loan guarantee.

**MS. DUNDERDALE:** Well, we understood, at the time of sanction, that the arrangements that Emera had made with the Government of Nova Scotia were satisfactory to the point that we could go ahead –

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

**MS. DUNDERDALE:** – and sanction with assurance on our part that the loan guarantee was in place, that Nova Scotia had satisfied the federal government. It was only after the fact – after sanction – that it was brought to my attention that the arrangements that had been put in place by Nova Scotia were not acceptable.

The conditions precedent weren't considered to have been met.

**MR. LEARMONTH:** Are you saying that you didn't think that Emera had to go to the UARB and get the UARB's permission?

**MS. DUNDERDALE:** Yes, I knew that –

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** – the arrangements –

**MR. LEARMONTH:** (Inaudible.)

**MS. DUNDERDALE:** – the discussions that had taken place between our government, Nalcor, Nova Scotia and Emera with the federal government –

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

**MS. DUNDERDALE:** – and the arrangements that they had put in place –

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

**MS. DUNDERDALE:** – we were – we understood that they were satisfactory to meet the conditions to allow the loan guarantee to proceed.

**MR. LEARMONTH:** Mm.

**MS. DUNDERDALE:** It was only after sanction that I was made aware and we were made aware, as a government, that the government of – the federal government said: No, conditions precedent weren't met and another piece of work had to be done.

And I recall it very specifically, because it was a moment of such high tension –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – in government and high tension between the government and Nalcor.

**MR. LEARMONTH:** Are you saying then that you didn't understand at this time in, say, June 2012 – or we'll say at the time of sanction – you didn't understand that in order for the federal

loan guarantee to be put in place that the Nova Scotia UARB had to endorse and accept the application filed by Emera?

**MS. DUNDERDALE:** I understood what was required from the Government of Nova Scotia but there were negotiations and discussions going on between the two governments with the federal government as well as Emera and Nalcor –

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

**MS. DUNDERDALE:** – and my understanding was, while that piece of work hadn't been completed, the commitments and arrangements and so on that had been made by Nova Scotia to the federal government were acceptable to the federal government to the degree that they were prepared to proceed with sanction.

**MR. LEARMONTH:** Yeah, but not to give the federal loan guarantee, because I suggest to you that it was always clear that, unless the UARB approved the Maritime Link, that there would – there could be no federal loan guarantee because the federal loan guarantee was dependent on Nova Scotia being involved by constructing the Maritime Link.

So I don't understand your point here.

**MS. DUNDERDALE:** Mr. Learmonth, the prime minister of Canada came to Labrador –

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

**MS. DUNDERDALE:** – at the end of November, and

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

**MS. DUNDERDALE:** – we signed the loan guarantee with the MOU. We signed –

**MR. LEARMONTH:** In November '13.

**MS. DUNDERDALE:** November (inaudible).

**MR. LEARMONTH:** 2013.

**MS. DUNDERDALE:** November –

**MR. LEARMONTH:** But that wasn't the final loan guarantee.

It was still subject to the Nova Scotia participation, and in order to get the Nova Scotia participation, or Emera participation, it had to be approved by the Nova Scotia UARB. That was a condition precedent.

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And it was – the arrangements that had been put in place around the condition precedent to allow us to go to sanction were determined after the fact not to be acceptable to the federal government.

**MR. LEARMONTH:** Okay.

Well, did you understand that, in order to get the federal loan guarantee – that the Nova Scotia UARB had to approve the project?

**MS. DUNDERDALE:** I did, Mr. Learmonth. And I also understood from all the parties that conditions had been met in such a way, it was understood, that we could move ahead, that conditions precedent, or the arrangements around conditions precedent, were satisfactory –

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

**MS. DUNDERDALE:** – so that we could move to sanction – that everything was signed off.

It was only after the fact that we were told that conditions precedent hadn't been met by Nova Scotia, and I can tell you that was a shocking revelation, and it was a time of very high tension between Nalcor, specifically, and the government – many, many meetings, long negotiations, feelings running very high with regard – how we got to this place, how this happened.

**MR. LEARMONTH:** So when did you or your government find out that, in order to get the federal loan guarantee, the Maritime Link had to be approved by the Nova Scotia UARB? At what date did you find that out?

**MS. DUNDERDALE:** I can't tell you that, Mr. Learmonth. You know, that's six years ago, seven years ago in a – with a lot going on.

You know, we were aware that the agreement with Nova Scotia had to be satisfactory. It had to be a regional project to – for us to benefit from a loan guarantee – to be given a loan guarantee. So we understood that the whole way through.

**MR. LEARMONTH:** You understood that?

**MS. DUNDERDALE:** Absolutely.

And had many, many discussions with the prime minister, with Minister Flaherty, with Minister Fast, with Minister Oliver. There are any number of ministers who came – even in different portfolios on different issues that got tied back to the loan guarantee and where we were in the loan guarantee, how it was progressing, what were the challenges to the loan guarantee and so on.

There was lots of high tension around the loan guarantee, and the two peaks that I remember are the day that Nova Scotia and Newfoundland and Labrador completed negotiations in Ottawa and it was all done. And I got the phone call, Commissioner, telling me the loan guarantee is secured.

**MR. LEARMONTH:** Was it –

**MS. DUNDERDALE:** That was near the end of November.

**MR. LEARMONTH:** Of what year?

**MS. DUNDERDALE:** 2012.

**MR. LEARMONTH:** Okay. But the approval of it was subject to the Nova Scotia UARB approving the Maritime Link.

**MS. DUNDERDALE:** And the conditions that –

**MR. LEARMONTH:** Is that correct?

**MS. DUNDERDALE:** Yes, but there were arrangements made, I understood, with the federal government that we could proceed with sanction.

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

**MS. DUNDERDALE:** And the – you know, they would continue to negotiate the loan guarantee up to financial close –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and so on.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But in terms of the loan guarantee being a surety, you know, given that all –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the other pieces of work were completed satisfactorily over the next year, that the loan guarantee was acceptable.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And both parties signed off in Ottawa.

**MR. LEARMONTH:** Yeah.

Subject to the approval of the UARB for the Maritime Link.

**MS. DUNDERDALE:** There was some kind – and I can't give you specifics on it – but there was some kind of caveat that was attached to that –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – that allowed us to go to sanction, that Nova Scotia and Emera had satisfied –

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

**MS. DUNDERDALE:** – the federal government around that piece so that we could move to sanction before the UARB had approved.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And –

**MR. LEARMONTH:** But without – sorry, go ahead.

**MS. DUNDERDALE:** And, you know, that is – that sticks out in – that it was all signed off, Nova Scotia was at the table –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – Newfoundland and Labrador were at the table, federal government was at the table. It was all signed off. Everybody was congratulating one another because we finally brought the loan guarantee home and within a half hour the loan guarantee was off the table and the project was done and shut down. That was in November.

So that was a high-tension moment, high-stress moment, Commissioner. And then people – the prime minister called; we started talking. We resolved the outstanding issue. Everything was back on again. He made arrangement to come in the next week or so to Happy Valley-Goose Bay to make the announcement, and that allowed us to move to sanction.

It was only in January that I became aware that conditions precedent had not been dealt with in such a way while waiting for the UARB approval – hadn't been dealt with in a way that satisfied the federal government and more work needed to be done.

Now, Mr. Learmonth, you can imagine, because I had just sanctioned the project and our government had –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – just sanctioned the project, this was a moment of high tension and high stress.

**MR. LEARMONTH:** Are you certain that wasn't March instead of January?

**MS. DUNDERDALE:** I know it was after sanction, and –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – I can't tell you exactly when it was. I can tell you the meeting. I can tell

you the feelings – huge level of stress on all sides.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** As –

**MR. LEARMONTH:** But I mean, you mentioned – sorry.

**MS. DUNDERDALE:** As Nalcor worked with Emera to resolve the issue or make sure that the conditions precedent were met –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – so that we could move forward.

**MR. LEARMONTH:** Yeah. But you didn't need anyone – your government didn't need anyone's permission – the federal government or anyone else – to sanction the project. You could do it any time, couldn't you?

**MS. DUNDERDALE:** I didn't want to sanction the project, Mr. Learmonth, until we had everything nailed down. The loan guarantee – you know, I've heard testimony from the board here to say that they would have sanctioned without the loan guarantee. Commissioner, that's not where my head was.

**MR. LEARMONTH:** Yeah. That's what I was gonna ask you. Are you saying that your head was such that you weren't gonna go ahead with the project unless you had the federal loan guarantee?

**MS. DUNDERDALE:** That was my train of thought –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the whole way through the process.

**MR. LEARMONTH:** Because we have heard other evidence that it was, you know, going to go ahead no matter, whether there was a guarantee or not. But that wasn't your understanding.

**MS. DUNDERDALE:** No, Sir.

**MR. LEARMONTH:** Yeah.

But – okay, well, I don't want to spend too much time on this but is it correct that in June of 2012 you knew that in order get the federal loan guarantee, the final, you know, the funding, that the Maritime Link had to be approved by the Nova Scotia UARB?

**MS. DUNDERDALE:** I knew that it had to be a regional project that they were going –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – to send their piece of it to their UARB and so on.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Yes, I was aware of all those things, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

So, that if there was – if the Nova Scotia UARB didn't approve the project, then that would have been the end of the Muskrat Falls Project?

**MS. DUNDERDALE:** That would have been the end of the loan guarantee.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And it could have been the end of my political career, depending on where the rest of my Cabinet and caucus were.

**MR. LEARMONTH:** Yes, because at that point you would have had to decide whether the Government of Newfoundland and Labrador would borrow through the ordinary commercial channels, as opposed to the federal loan guarantee.

**MS. DUNDERDALE:** And we knew we could do that, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But, you know, this is – I've said more than once there were – you know, Cabinet and caucus could have stopped –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – Muskrat Falls at any time when they felt that it wasn't in the best interests of the people of the province.

**MR. LEARMONTH:** Or, on the other hand, could have endorsed it, even without the federal loan guarantee?

**MS. DUNDERDALE:** They could have endorsed it without.

**MR. LEARMONTH:** But that wasn't your information?

**MS. DUNDERDALE:** And there may have been different thoughts but in – from, as one person's perspective. And I didn't have any more say, control around this issue, than anybody else at the Cabinet table.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** You know, this is done by consensus. You know, it may have been stopped without me being on board but, clearly, Muskrat Falls would not have gone ahead if I hadn't been on board.

**MR. LEARMONTH:** Yeah. And you weren't on board without the federal loan guarantee?

**MS. DUNDERDALE:** I wasn't on board without the loan guarantee.

**MR. LEARMONTH:** So if the Nova Scotia UARB had not approved the Maritime Link in November 2013, you wouldn't have proceeded with a – with Muskrat Falls even though it had been sanctioned?

**MS. DUNDERDALE:** I can tell you that that would have been very, very difficult for me. To have the people of the province exposed completely on that amount of debt would have been something that I had to think very long and hard. There would have had to be a lot of convincing arguments.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** You know, it's not only the fact that the loan was guaranteed by \$4.5 billion, but we've reduced rates – our interest rates by a billion dollars; \$1.1 billion went

directly back to ratepayers because we had the loan guarantee.

**MR. LEARMONTH:** Yeah.

But the Nova Scotia UARB did not approve the project until the Energy Access Agreement had been submitted and approved and that was in, I think, November 26, 2013. Correct?

**MS. DUNDERDALE:** I understood all of that after the fact.

**MR. LEARMONTH:** Yes. So that you're saying that if the Nova Scotia UARB had not approved the project, based on the Energy Access Agreement, that there would have had to been a discussion as to whether Muskrat Falls would go ahead, even though it had been sanctioned almost a year before?

**MS. DUNDERDALE:** Absolutely.

All of these – as I said to you, I was in a position in the fall of 2012 when we – you know, when I had given my approval to the degree that it was required, to spend hundreds of millions of dollars to do early works on the project in order not to have slippage in schedule, to have the project cost more, to have more debt for ratepayers to have to bear to pay off and so on.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** When, in November, the prime minister and I had hit a logjam over the loan guarantee we had spent an awful lot of money and the early works money had been spent with my approval.

**MR. LEARMONTH:** Yeah, started going back April 2012.

**MS. DUNDERDALE:** Well, now I'm in November –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – that I'm saying no, Prime Minister, you can keep your loan guarantee because we're not going to do that.

**MR. LEARMONTH:** Was that over the CETA issue?



**MS. DUNDERDALE:** Yes, it was.

**MR. LEARMONTH:** Yeah, now, Mr. Kennedy testified that he recalled one night after supper going to the Brother O'Hehir Arena to play hockey and he got a call – a phone call from you saying or suggesting the possibility that the federal loan guarantee was off. Was that about the CETA negotiation?

**MS. DUNDERDALE:** It was.

You know, we had made it quite clear from the earliest days of having a project or a potential project on the Churchill River around Muskrat Falls that we would like to have a loan guarantee. All of that started under Premier Williams. And the prime minister really hadn't made any kind of a commitment towards a loan guarantee. He said that he was prepared to talk about it and consider it and so on, but there were no commitments.

In the federal election, Commissioner, of 2011, the prime minister came to the province and he made an announcement that he was prepared to consider a loan guarantee for Muskrat Falls. And he spoke about that at the Delta where he made the announcement. And I went down to the Delta, and once he said that I stood on the stage with the prime minister. I didn't say anything but I stood with him. I was the only premier in the country to stand with the prime minister in that action. I didn't tell anybody to vote for him or whatever, but I was stood there.

And it was obvious from that moment on in the House of Assembly, in public debate, I got accused of being a supporter of the prime minister and that I had given something away under the table to the prime minister in order to get the loan guarantee. And that accusation was made more than once in the House of Assembly in Question Period. What had I given up? What had I traded off?

You know, the only thing I had in all of that was my own integrity because I hadn't traded anything off. I had stood on the stage with the prime minister to get a \$4.5 billion loan guarantee. I was able to put a billion dollars, basically, Commissioner, in the pockets of ratepayers in this province and I had conceded nothing, given nothing. And Newfoundlanders

and Labradorians in return gave the prime minister nothing. He didn't win a seat.

Now, I'm not a big fan of the prime minister but to his credit, Commissioner, he gave us the loan guarantee. He didn't renege on his promise and he could have. There was no consequence to him if he didn't. He wasn't going to lose any seats in this province. But he gave us the loan guarantee free and clear, depending on the conditions that were set out by the federal government to meet the standards one needs to meet.

So that was fine. And we went through the negotiations and they got tangly from time to time and there'd be push and shove and so on. So in November – an evening in November – it was in the late evening and I got a phone call from my chief of staff who said: It's done. We have the loan guarantee. Ontario – or Nova Scotia's here, the federal government's here, everybody's in the room, everybody is satisfied, everything is signed off on.

I said: Good. He said: But there's something else I need to talk to you about. And I said: What's that? He said: Well, at the end of negotiations, as I was about to leave the table, the chief negotiator handed across a letter to me, and said that they wanted a concession from me that – on CETA – that when we got to the CETA discussion, that I would not take a stand on a certain chapter.

And he said: So, I'm gonna leave that with you, Premier, for 20 minutes or so, to let you think about that and talk to whoever you need to talk about, and I will call you back. And I said to him: Don't do that, that's not necessary. I said: You go back and tell the team to stand down and get on the next plane home. And tell the representative, whoever it might be, thank you, but no thank you.

And I said: Is Ed Martin somewhere up there? And he said: Yes, he is. I said: Could you ask him to call me, please? Right away. And five minutes later Ed called and I said: I am sorry, but I can't do this. I can't do it. It's something I could easily give away, for CETA – wouldn't have been a big issue. Most people in the province probably wouldn't even know that it had been done.

But that's not the point; there are no quid pro quos. And I said: We're standing down. I know you've put your heart and soul into this project, but it's not gonna happen.

**MR. LEARMONTH:** And that's when you called Jerome Kennedy? Just to connect first with him?

**MS. DUNDERDALE:** And then I hung up the phone on him and I called Jerome and said it's done, and both Ed Martin and him – both responded to me almost exactly in the same way, and said we understand completely, you have our full support, and there was no more to it than that. And then I heard from the chief of staff again –

**MR. LEARMONTH:** Nigel Wright, was it?

**MS. DUNDERDALE:** Nigel Wright was –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – he – Nigel Wright was then asking to speak to me and could he have my number. And so I said to Brian, give him my number, and Nigel Wright called and we had a very, very tense – very tense and long conversation. And then after about 40 minutes – 45 minutes on the phone, he said you know, the prime minister wants to talk to you, and will you talk to him?

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

**MS. DUNDERDALE:** And I said yes. Well, you don't get anywhere by not talking. So the prime minister called, the request was withdrawn, and we moved forward.

**MR. LEARMONTH:** Okay.

All right. I'd like to –

**MS. DUNDERDALE:** But that was in November and we sanctioned in December. So my point is, Mr. Learmonth, is nobody was married to Muskrat Falls. It wasn't Muskrat Falls no matter what or no matter what circumstances. I mean, Commissioner, at that moment when I was saying no to the Prime Minister of Canada around the loan guarantee, my political career was done. I was gonna have

to answer to the people of the province about early work spending and all of those kinds of things.

But I'd much prefer to do that than to have to answer somewhere along the – or even carry within myself – that I had done something that wasn't straightforward, that was underhanded – regardless of what the benefits might be.

**MR. LEARMONTH:** Okay.

The – you said that you – it was your view, your personal view anyway, that we had to have the federal loan guarantee in order to proceed with the completion of the Muskrat Falls Project. Why did you feel that that was absolutely necessary?

**MS. DUNDERDALE:** I didn't want the Province to be – you know, we had – we – as I said yesterday, the mantle of the Upper Churchill rests with all of us to some degree and it's taken us a very long time, I think, to understand most of it, and to have an appreciation, Commissioner, for the pressure that people were under at the time and what it was they were trying to achieve, and the good intentions of most of the people who were engaged.

But there had to be lessons learned from it. And I didn't want to get into a position where, as a result of what we had done on the Churchill River, that we had burdened the people of the province with debt and they saw very little return. We have a history of that in the province. We're a commodities-based economy. There's highs and lows that go with that and so there's not been many easy dollars earned in this province, but we're rich with resources and we still are – it's tremendous, what we have available to us.

And it was incumbent on us as a government – as I believe it is on every government – to make sure that those resources are developed to the benefit of the people of the province in the very best way that they can be. And I can tell you that that was my reason for getting involved and running in 2003, and I think there was an alignment within the party in which I served, that that whole piece resonated with.

And so I wanted to make sure that I could reduce as much liability to the people of the province in every circumstance that we might find ourselves in, given the tricky world of commodities and our own history and the state of the world. So I couldn't control any of that, so I had to put as many insurance policies as I could that were available to me, to try and protect the people of the province, and make sure that they got the benefits that were there for them.

**MR. LEARMONTH:** All right. Is there anything more you want to say about that topic?

**MS. DUNDERDALE:** But the – it's all high risk – in politics it's all high risk, you know, and even though my best efforts – we had spent hundreds of millions of dollars, and if the loan guarantee was off and Muskrat wasn't going to go ahead that then I had to go before the people of the province and – I, as premier – and take responsibility for that. And that's the position I put myself into that November, 2012.

**MR. LEARMONTH:** Yeah. It was a point of principle, was it?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Okay. Right.

**MS. DUNDERDALE:** This thing has to work, and it has to work on its own merit, and it has to work for the people of the province, and we're going to share as much as we can about this – and it either works that way or it doesn't work. I'm not cutting a deal with anybody to get Muskrat Falls. Not gonna do it. That's not what the people of the province put me here to do.

**MR. LEARMONTH:** All right.

Next I'd like to turn to Exhibit P-01179. Ms. Dunderdale, that's in volume 2 of the – your binder 2 – tab 72.

You have that, Ms. Dunderdale?

**MS. DUNDERDALE:** Yes, I do.

**MR. LEARMONTH:** Okay. Well, this is an email "scope of work MHI review" – April 9, 2012 – from Brian Crawley to Gilbert Bennett

and Paul Harrington and Mr. Crawley says: "Gilbert ... Ed asked us to hold off on the MHI scope of work while he worked it with the Province. Have you heard anything ... since?" et cetera.

Now, do you – can you tell us whether you had any contact with Ed Martin, at this time, about the scope of work? It says that he was working it with the province without –

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** – identifying who that person or persons would be.

**MS. DUNDERDALE:** I suspect that –

**MR. LEARMONTH:** You haven't –

**MS. DUNDERDALE:** – it would have been the minister.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I wouldn't have been involved at this level.

**MR. LEARMONTH:** You wouldn't have?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** Yeah. You're certain of that?

**MS. DUNDERDALE:** I don't recall having any involvement in terms of the scope of work.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** You know, I had absolute confidence in Minister Kennedy and, you know, he was down in the department like a dog after a bone –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – you know, exploring every aspect of the Churchill development – Muskrat Falls development.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And so – and I knew he was thorough and he was – I can't say he was assertive – he was aggressive in terms of his examination. So I would've been very comfortable leaving that with him.

**MR. LEARMONTH:** Yeah.

But at the April 6, 2012, meeting that I referred to yesterday – attended by Ed, Brian, Robert, Glenda, Charles and Jerome Kennedy – there were two people from your office in attendance. And Charles Bown's evidence is that at that April 6 meeting the decision was made to remove the risk analysis from the scope of work.

So there's at least two people – there's two people from your office who would've been at that meeting when that decision was made.

**MS. DUNDERDALE:** From the evidence that certainly –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – seems so.

**MR. LEARMONTH:** And although Mr. Bown is not – cannot be definitive, I just want you to – want to read to you what he said. Because I asked him whether everyone at the meeting would've known that the risk analysis had been removed and that would include the representatives from your office.

And he said in his transcript at page 95 [sp 124] – so I said: "The removal of the risk requirement – risk analysis – from the scope of work – we know that you knew about it ... the April 6 meeting but did everyone ... to the best of your knowledge, was that known to everyone at that April 6 meeting?"

**"MR. BOWN:** It would be my understanding it was discussed at that meeting – everybody would have ...." And then inaudible.

Then – question: "So everyone who attended the meeting would have known that?"

**"MR. BOWN:** That would be my assumption. Yes."

And then I say: "Well, you were there."

And Mr. Bown: "I was there."

"And that's your –

**"MR. BOWN:** Yes.

"– belief."

And he says: "Yes."

And then I say: "Everyone would have known. So, this is not Charles Bown making this decision ... just with Mr. Kennedy. The knowledge of the removal of that clause ... Roman numeral XI – was known throughout government to your knowledge. Is that a fair comment?"

**"MR. BOWN:** I can't say it 100 per cent certain."

And then: "But at least the people –

"... At least the people ...

"– at the meeting knew about it.

**"MR. BOWN:** – would have known that risk could not be done."

And then I said: "And there was a representative of the premier's at that meeting. Is that correct?"

He said: "Yes."

Now, he doesn't come out and say he was at a meeting and it was discussed. So I guess what he's saying is he assumed that, you know, everyone else at the meeting would've had the same knowledge of what went on at the meeting as he did.

And my point is – I know your memory was not clear on whether you knew anything about the removal of the risk analysis, but your – two of your senior officers were – or representatives were at the meeting. And I suggest to you that it would be a reasonable expectation that at least one of them would've told you about that.

Can you search your memory and see whether you can confirm that?

**MS. DUNDERDALE:** I did yesterday, Mr. Learmonth, and I did again last night. As I told the Commissioner yesterday, I don't have that recall.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** I wish that I could say to you, definitively, one way or the other, because it's an important point as far as you're concerned – absolutely. I don't know what they were thinking. I don't know what – how high a value my staff members would've assigned to risk in the myriad of things that they would've been looking at –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – in the MHI scope.

You put an awful lot of emphasis on risk, and I might do that as we moved through the piece. I'm not sure that my communications director or my chief of staff might, you know, give it the same kind of value. And, you know, there's too many assumptions in it for me. You know, as I said to you yesterday, Commissioner, you know, I don't want to tell you definitively that I didn't know that, because they very well may have come and told me that. All I can tell you is I have no recall of that.

**MR. LEARMONTH:** But – I'm not going to stay on this topic much longer.

But if it was important to government – and we know it was very important to Mr. Kennedy – that there be a full review so that there could be a full examination of the cost estimate, then I don't understand how the risk analysis would not be considered to be a very important, integral part of that review.

Do you have any comment on that?

**MS. DUNDERDALE:** But I would've assumed the same thing. But I wouldn't necessarily have questioned the mandate that was given to MHI –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – for their DG3 review.

**MR. LEARMONTH:** (Inaudible.)

**MS. DUNDERDALE:** But I had – certainly had confidence in Minister Kennedy that, you know, that he was going to ensure that a thorough review was given to all aspects of the Muskrat Falls development. And I – but I wouldn't have been over his shoulder checking his work.

**MR. LEARMONTH:** All right.

Next, I'd like to look at Exhibit P-01246; that's volume 4, tab – well, it'd be 40 or 140 – probably 40 in yours.

**MS. DUNDERDALE:** “Government Delays Muskrat Falls Debate” –?

**MR. LEARMONTH:** Yes, that's right. Okay, you have that?

**MS. DUNDERDALE:** Yes, I do.

**MR. LEARMONTH:** Okay, this is an announcement – a report of an announcement that on April 26 you stated that the debate in the House of Assembly on the Muskrat Falls Project would likely happen some time this fall. That would be fall of 2002.

What caused you to change the time – the schedule for the time of the debate in the House of Assembly on the Muskrat Falls Project?

**MS. DUNDERDALE:** The only thing that I can think of now that would've caused that – the debate to be pushed forward would be the delay on the loan guarantee. There may have been other elements to it. I don't recall what they were. It was a very fluid time. There was a lot of things going on. A lot of pressure to try and get this work clued up and make a decision whether or not we were gonna go.

**MR. LEARMONTH:** So you don't really have an answer as to what the cause of it was?

**MS. DUNDERDALE:** No, the loan guarantee certainly would've been part of it – would've – excuse me – would've allowed us more time, and to get more answers and to – you know, because when you go to the House of Assembly you want to go with as much information as possible. You know, you know there's going to be rigorous questioning from Opposition parties

on the project. And so you want to be in a position to give as many answers as you can –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – because not only are you speaking to your colleagues on the other side of the aisle, but you know, this is the place, officially, where we communicate with the people of the province. So people were going to be listening so the more information you could have and the more things tied up and completed, the better.

So one – if you had an opportunity – if things weren't falling into place and we needed more time, then it was better to wait until we had that work done before we went to the House, so that we could give a full, fulsome explanation of what was going on.

**MR. LEARMONTH:** Would – is it also possible that a reason was that the – Nalcor needed additional time to get its DG3 documents assembled?

**MS. DUNDERDALE:** May have.

**MR. LEARMONTH:** You don't know for sure?

**MS. DUNDERDALE:** I don't have that level of recall of day-to-day, you know, progression –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – of the project.

**MR. LEARMONTH:** Okay.

Ms. Dunderdale, accepting that the strategic risk was removed from the scope of work because it would be impossible to do that type of work before the June date, then given that the date was pushed to the fall, was there any consideration given to saying, well, now we can get the risk analysis done because we have that additional time. Do you recall any discussion or consideration, whether any – there was any discussion or consideration on that point?

**MS. DUNDERDALE:** No, I don't recall, Mr. Learmonth.

**MR. LEARMONTH:** You understand what I'm –

**MS. DUNDERDALE:** I understand –

**MR. LEARMONTH:** – proposing?

**MS. DUNDERDALE:** – exactly what you're saying, and no –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – I don't recall.

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

The contract with Manitoba – contract was signed on June 5 – it's Exhibit 00770, but I'm not going to go into that.

But I would like you to look at another exhibit, it's a decision note the Department of Natural Resources, Exhibit 01522, and that's in volume 2, tab 89, Ms. Dunderdale.

**MS. DUNDERDALE:** I'm sorry, could I have the tab number again?

**THE COMMISSIONER:** Tab 89.

**MR. LEARMONTH:** This is a May 28, 2012, document prepared – signed by, actually, Jerome Kennedy. Prepared by Ashley McCarthy, approved by Paul Scott, and then those signatures are – or Jerome Kennedy's signature at least, is on page 4.

**MS. DUNDERDALE:** Mm-hmm.

**MR. LEARMONTH:** Are you familiar with this document?

**MS. DUNDERDALE:** I'm not – I would've – decision notes come up to the premier's office, and I would've gone through – I went through decision notes on a daily basis with the clerk, and so, you know, this one, I'm not – I'm sure I saw this and –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – I don't recognize the document per say, but without a doubt.

**MR. LEARMONTH:** But in the ordinary course, you would've reviewed it with the clerk –

**MS. DUNDERDALE:** The clerk.

**MR. LEARMONTH:** – Mr. Thompson?

**MS. DUNDERDALE:** The clerk and I met every morning and reviewed emails, decision notes, any number of documents that came up through Cabinet Secretariat to the premier's office.

**MR. LEARMONTH:** Yeah, so this would've gone to Cabinet Secretariat, and then you would've met with Mr. Thompson?

**MS. DUNDERDALE:** Then the clerk would've brought it to my attention.

**MR. LEARMONTH:** Yeah, and the result – on page 28, there was an order – a Minute of Council, 2012 – May 31, 2012 – we have information that that didn't go to Cabinet. That was issued under the premier's prerogative. Is that –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – consistent with your recollection?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

Now, I just wonder, if you reviewed this with the clerk, and the scope of work is included in the documents – I just question why you wouldn't have picked up on that if you didn't know already that it had been removed, or was there any discussion with that – on that?

**MS. DUNDERDALE:** Because the question, Mr. Learmonth, is really around how much importance we attach to risk –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – in the larger discussion of examining whether the numbers that had – all the numbers that had – all the inputs into Manitoba Hydro were correct. You

know, right from the beginning in terms of around the question on DG2, for example, is this the least-cost option? And do we need the power?

So the focus would have been on those two questions and not so much around risk.

In DG3, again, the major focus would be around if that's still holding true, the answers that –

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

**MS. DUNDERDALE:** – appeared out of the examination at DG2. As we get more advanced information, engineering and so on, is that still holding true –

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

**MS. DUNDERDALE:** – as we move up through Decision 3 – up to Decision 3 Gate.

And while risk would have been important, I don't know how much front-of-mind thinking there was going on in the examination of the project in terms of the risk analysis. And that's the only explanation that I can offer you – why it just wouldn't have been immediately obvious that strategic risk wasn't part of the mandate of the work, the scope of work, that had been put –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – to MHI. That is the only explanation that I can offer you because it obviously didn't jump out. As I said to you yesterday, there was nothing about risk and ascertaining what the risk was that would have put me off. In fact, just the opposite. You know, the – to the – Minister Kennedy and I were certainly of the same mind. What I wanted to know was what is the number – how much is it going to cost us to build Muskrat Falls? Tell me the number.

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

**MS. DUNDERDALE:** And then we're going to decide about the number after the fact. You know, we're going to decide whether or not this is a good thing for us to do or not a good thing for us to do.

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

**MS. DUNDERDALE:** And do we have to sweep everything off the table, all the options we've considered up to this point and go down a different road altogether? But tell us what the number is. And then we'll decide. So whether the number was 6.2 or 7 or 7.5 wasn't a big issue for me at all.

**MR. LEARMONTH:** It wasn't a big issue for you?

**MS. DUNDERDALE:** No. I wanted to know what the number was.

**MR. LEARMONTH:** Yeah. Well –

**MS. DUNDERDALE:** Don't go – I didn't want anybody playing around with the number because they thought I was looking for a number.

**MR. LEARMONTH:** But if the number had been 7.5, as opposed to 6.2, would that not have been an item of concern?

**MS. DUNDERDALE:** Well, then we'd have had the discussion, Mr. Learmonth. But don't come and tell me it's 6.2 if it's 7.5 is my point.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** You know. We're gonna start our conversation –

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

**MS. DUNDERDALE:** – about whether this is financially responsible once we get the number. And so extreme amount of pressure and effort was put in finding out what the number was. Get the number right. The more that we can hone this down –

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

**MS. DUNDERDALE:** – the more engineering we can do, the more – the better we understand this river, the more we know about every aspect of this project, then the more certain we can be about what the number is.

**MR. LEARMONTH:** Agreed.

**MS. DUNDERDALE:** And then we can look at the business case, and we can see whether this is a sensible decision or not.

**MR. LEARMONTH:** Mm-hmm. But –

**MS. DUNDERDALE:** And so, you know, nobody would eliminate – I – you know, elimination of a number to make the – there wasn't a number you could use to make the case for Muskrat Falls. The only number you could make to make the case for Muskrat Falls was give me the right number.

**MR. LEARMONTH:** Yeah. There's no dispute, I don't think, on that. But what I'm saying is that in order to find out what the right number, to verify the information given to you by Nalcor, the only way to do that is to have a risk analysis done of the capital cost estimates.

**MS. DUNDERDALE:** Well, a risk –

**MR. LEARMONTH:** That's the point.

**MS. DUNDERDALE:** But a risk analysis is only – that number is only part of the equation.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** It's not all of the equation.

**MR. LEARMONTH:** That's correct.

**MS. DUNDERDALE:** There are – you know, there are significant pieces of – and risk is included in it.

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** All I'm saying to you at this point I'm not sure that the amount of importance that you assigned risk is exactly the same level of importance that was being assigned in terms of having it tested –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – was being talked about within government.

**MR. LEARMONTH:** Yeah, but at the time weren't you aware that one of the main reasons



why megaprojects throughout the world come in well over budget – major cost overruns – is that there wasn't a proper risk analysis done?

**MS. DUNDERDALE:** Mr. Learmonth, if I sat here and told you that I did a study of megaprojects around the world before we started down the road of Lower Churchill development, it wouldn't be true.

**MR. LEARMONTH:** Yeah. So you didn't have any knowledge of what I just said.

**MS. DUNDERDALE:** I haven't – I had knowledge of spending billions of dollars on what that looked like and contracting and overruns –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and all of those kinds of things. As I said, I was part of a government that spent \$8 billion in –

**MR. LEARMONTH:** That's right.

**MS. DUNDERDALE:** – infrastructure in 10 years. So there was a lot going on in the province during the time that I was in government.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** You know, a lot of the things that I saw happen was the, you know, having a measure of control over what was happening, having insight into the process as it was developed, making sure that due diligence was done in terms of understanding –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the river, quotes, you know, having other sets of eyes being put on this project, every element of it from every which way, and I don't – I didn't care what they spoke to; if Navigant had something to say, if Wade Locke had something to say.

Even in terms of people in the public arena who had come into the debate about Muskrat Falls, you know, sometimes people say – you didn't appreciate or you didn't pay attention to the naysayers. Pay attention to the naysayers? We

spent hundreds of thousands of dollars getting reports on the points that they raised so that you could have an independent source of information to judge the information that was in full public discussion.

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

**MS. DUNDERDALE:** So that's what we were trying to do – to make sure that we have a measure of control here because Nalcor – so we've designed Nalcor to do this kind of work on behalf of the province because governments aren't very good at doing this. That we've learned. So we meet and so we hired Wood Mackenzie –

**MR. LEARMONTH:** Yeah, we're going to deal with that later.

**MS. DUNDERDALE:** Okay.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So then we have a company that's designed to do this work –

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

**MS. DUNDERDALE:** – for the people of the province, so we got a measure of control over that. And then so, you know, we need to be on top of this to make sure that the due diligence is done.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And any other sets of eyes that you could put on this to inform us on different aspects about it – are we on the right track – was how we approached the project.

And all of that gave me great comfort because this was a brand new process that had never been undertaken in this province in our history. The last two attempts to develop the Churchill River stopped when they were on their way to make the fait accompli announcement. This was the first time that government had any –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – had undertaken in any way to engage –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the people of the province –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – in what we were doing.

**MR. LEARMONTH:** Okay, but I'm going to put it to you that there's a difference between Mr. Kennedy's reaction when he was told that there was no risk analysis done compared to your analysis. Because Mr. Kennedy said – agreed with my suggestion that the fact that a risk analysis – no risk analysis was ever done of Nalcor's work was alarming, and he agreed with it. And I – he agreed it was alarming, that was the word. And I take it that you don't find that alarming. Is that correct?

**MS. DUNDERDALE:** With the greatest respect, Mr. Learmonth, it wouldn't be the first time that Mr. Kennedy and I had a different reaction to a set of circumstances. But all of that to one side, there were many, many, many sets of eyes on this, Commissioner: the federal government, MHI, Navigant, Wade Locke, I mean, the list goes on. And it's an awful lot –

**MR. LEARMONTH:** But they didn't do risk analysis.

**MS. DUNDERDALE:** But it's an awful lot of people who said yay to the project, that the project had the correct inputs, you know, the practices they use are industry standard and so on. And I don't recall anybody ever pointing out to me in the analysis that there was an omission, that something that –

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** – needed to be done hadn't been done. I don't remember anybody ever bringing –

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** – that to my attention. And if it's – and if they had –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – I certainly would have dealt with it in the same way that we dealt with every other criticism or observation that was brought to bear on the project: many, many, many sets of eyes, a lot of people in the tent at the end of the day when we said yes to Muskrat Falls.

**MR. LEARMONTH:** Okay.

So, anyway, you weren't alarmed by the omission that was –

**MS. DUNDERDALE:** I wish that the omission hadn't been there. I wish that MHI had done the risk analysis. Risk was something that I was concerned with. Absolutely – that's why I paid such attention to the loan guarantee.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** You know, that's why I talked to Mr. Martin, first of all, about doing the early work so that we wouldn't start a domino effect that could cause all kinds of circumstances that we wouldn't want to deal with in the project.

**MR. LEARMONTH:** All right, let's – no, go ahead.

**MS. DUNDERDALE:** But I didn't say to somebody: Has somebody put a special set of eyes on examination of risk? I didn't do that, Mr. Learmonth.

**MR. LEARMONTH:** No, I'm aware of that. And that's why I'm asking these questions. Yeah.

**MS. DUNDERDALE:** And I'm giving you the answers as best I can.

**MR. LEARMONTH:** Yes.

Next exhibit is 01417. That's in volume 4 of your documents, Ms. Dunderdale, tab 44 of volume 4.

I'll just identify. This is a draft letter that Charles Bown said he had prepared for your consideration. Do you – are you familiar with this draft?

**MS. DUNDERDALE:** I read it in the documents that were provided to me by the Inquiry.

**MR. LEARMONTH:** Does it bring back any memory?

**MS. DUNDERDALE:** This particular letter doesn't bring back any particular memory to me, but the issue certainly brings back particular memories to me.

**MR. LEARMONTH:** Okay, what was the issue then?

**MS. DUNDERDALE:** The issue – Premier Darrell Dexter made it a point when he became premier of Nova Scotia – to foster a close and healthy relationship between the Atlantic premiers who, at the time, were himself, myself, David Alward in New Brunswick and Robert Ghiz in PEI. So we had frequent discussions on issues that were pertinent to all four provinces and really in an atmosphere that was fostered by Darrell to work co-operatively together to the benefit – if one prospered, we all prosper – and to find ways to make that happen.

And Robert and – or Darrell and I had had many discussions and shared many of the same thoughts around the value of the Maritime Link and the ability to wield power from Newfoundland and Labrador to Nova Scotia and vice versa. And they – he expressed to me a number of times, Commissioner, how they felt that their negotiating position was often compromised because of their relative isolation, which was certainly better – they were in a better position than us, but a position that he wanted improved.

And, you know, it was in that spirit he came to the province and we had a meeting about Muskrat Falls development. And we had laid down a number of timelines, talked about timelines and when we thought we could get the loan guarantee, when we would go to sanction, how we needed to look after the schedule – particularly important for Newfoundland and Labrador, because you're only buying part of your power from us, you know. If we get big delays in schedule over here, then that's going to have a significant impact on ratepayers.

And so I need to be very careful around all of that and so – can we have a discussion about what we're going to do, lay down the timelines, how we're going to do it. And we agreed that this was how it was going to go and this is what they were going to do in Nova Scotia and this is what we've tried to do in the province.

And they promptly went back to Nova Scotia and within a short period of time started doing a number of other things that wasn't what they had committed to do when they were here and meeting with us.

**MR. LEARMONTH:** What were those things?

**MS. DUNDERDALE:** Oh, they had expanded their mandate, I think, to the NSUARB, they were having discussions about PPAs and so on with Quebec, and so on.

So there are a number of things going on that I felt contradicted or put at risk the arrangements and agreements we had made at our summer meeting, I think it was.

Anyway, we started to draft a letter – I don't know if the letter ever went. Darrell and I certainly would have had a conversation. I mean, this would not have gone undiscussed by he and I. We had a great relationship, we had a very good relationship. It was a frank relationship and we could be very frank with one another and I can guarantee you we were on this issue.

Once you make commitments – if you're gonna put schedule and everything at risk with what you're doing in Nova Scotia, then you have to tell us about that. And you have to come over and we got to have a discussion about how we're gonna deal with all of this. Because if you're just gonna come over here and tell us that you're gonna do a, b and c, and you go back and do e, f, g – the consequence – yeah, I get blindsided by that and the real effect of that is on the ratepayer, is on Newfoundlanders and Labradoreans. And we can't work together that way.

So that's what all Charles' draft here was trying to put together. And I don't know if I ever saw it. I don't know if a letter came out of it or if Darrell and I had a subsequent conversation.

But it would have been addressed in some way.

**MR. LEARMONTH:** Okay.

Well, Mr. Bown must have got instructions from you to prepare the draft. Would you –

**MS. DUNDERDALE:** Without a doubt.

**MR. LEARMONTH:** Yep.

But I just wondered – in paragraph 5, you say: “I’m lead to believe that the expanded scope for the UARB opens the door again to the import of power from Quebec. Not only is this unacceptable, the expanded process is inconsistent with the approach my government took in restricting the PUB regulatory review. This” – inconsistent – must be consistency, although it says consistently – “will create a big headache for my government.”

Can you expand on that thought?

**MS. DUNDERDALE:** Yes, because it refers back to the first part of my conversation.

One of the things that was very important to Nova Scotia – as it was to us – to have ability in our systems to make power purchase agreements from more than one agency or group or government or company or whatever. It was extremely important.

And – it was one of the reasons that Premier Dexter has laid out for becoming engaged and support of the work that Emera was doing with Nalcor in terms of the Maritime Link.

So if that is a stated *raison d’être* for you to be in a position that you don’t get held hostage by another province or another provider of power that you have the ability to leverage the best deal for your citizens. If you’ve changed you mind on that and the rationale that you’ve offered to me while you doing that, then you should tell me that before you open the door, you know, tell me if you’ve changed your mind. That – in a respectful relationship, you have the right to change your mind. But then in a respectful relationship you would share that with me, if you’ve given me another understanding.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And that’s what that was about.

**MR. LEARMONTH:** Okay.

So at the time that this letter was written to voice your displeasure over your position that Mr. Dexter had – was on verge of breeching the understanding that you had with him?

**MS. DUNDERDALE:** Well, he’s (inaudible), you know, he’s saying, you know: I don’t want to have a single option or a very limited option, and – what I can do, when I go to buy power. So I don’t want to have to – I don’t want to be in a position where I can only go to Quebec to get a PPA, or I’m limited in my approach. So I want – I’m still prepared to deal with Quebec but if I have another source, then I can negotiate and I can ensure that I’m going to get the best terms possible for my government, for my people.

And there was some discussion and I’m – I’m not quite sure how to deal with this, Mr. Commissioner, but I’m going to say it, because it’s around my memory: There had been some discussion about approaches to Nova Scotia from Quebec offering a very good PPA on power once they were aware that we were in negotiations around Muskrat Falls and the Maritime Link.

And I remember Premier Dexter talking to me about that and saying: I can’t touch it, because if I do, I’m going to get a really good deal now. And then the Maritime Link doesn’t happen and then when they – when the PPA is – the term is complete and I’ve got to go back to renegotiate again, I’m in – I’m in a vulnerable position again now, because now I don’t have any leverage. So I’m going to resist that and not do it.

So this was the flavour of discussions that were taking place between myself and Premier Dexter and so on. So if you’re telling me you’re not going to go there and we need to do this because in the long run this works for the people of the – I’m saying this works for the people of Newfoundland and Labrador and he’s saying, yes. And I might have to suffer a little short-term pain here; I might not be able to have the best deal that I can get right now, but in the long term, I will serve the people of Nova Scotia

better by doing this because now I've got leverage when I go to negotiate terms for a power purchase agreement because I have more than one supplier.

And, you know, so we had had lots of discussion around these issues and so on, and were settled in it, and then I get all this information that indicates to me that perhaps Premier Dexter is backing away from all of those positions. And if he is, he may be putting our ratepayers in a vulnerable position. Well, that's my concern. That's when I need to become engaged, and I did.

But whether a more refined letter – you know, I wouldn't have been as heavy handed as this letter is, that would have been refined much more than it is there – I can't tell you whether it was sent.

**MR. LEARMONTH:** Well, we have no record of it ever having been sent, so ...

**MS. DUNDERDALE:** It may not have been. And it might have been – in fact, Premier Dexter may have come back here for a visit with me, but I –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – can't say for sure.

**MR. LEARMONTH:** All right.

The – MHI prepared a number of draft reports that were submitted to Charles Bown and they went on to Nalcor for comments. Did you ever see any draft reports from MHI? Or were you aware that they were sending back and – sending draft reports back and forth?

**MS. DUNDERDALE:** No, Sir.

**MR. LEARMONTH:** No. You know nothing about that at all?

**MS. DUNDERDALE:** I had a minister – you know, I'm premier, I'm – this is –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – not my only file. I – and it is very busy. And there are other crises going on and –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – routine business and so on, so it's a busy place.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And I have a –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – very able Cabinet who have responsibility to run their departments –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and to keep me informed, obviously. But they would never keep me informed on day – I had a great deal of confidence –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – in Charles, worked with him from the time I went to the department –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – in 2006, and certainly had great confidence in Minister Kennedy and –

**MR. LEARMONTH:** Okay, so you never saw any draft reports of MHI –

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** – on their DG3 review or –?

**MS. DUNDERDALE:** Not that I can recall.

**MR. LEARMONTH:** And you can't recall any amendments or changes in those reports as things progressed.

**MS. DUNDERDALE:** No, I wouldn't have been involved at that level, Mr. Learmonth. I wouldn't have been –

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** – editing or ...

**MR. LEARMONTH:** Okay, that's fine.

I'd like you to next turn to Exhibit 01244. That's volume 2, tab 78, Ms. Dunderdale.

**MS. DUNDERDALE:** Tab 78.

**MR. LEARMONTH:** Yes. Please.

**MS. DUNDERDALE:** Okay.

**MR. LEARMONTH:** So it starts off at the bottom of page 1. It's an email from Robert Thompson to Brian Taylor and Glenda Power. They're at your office. Correct?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Muskrat – Important, April 12: Brian, Glenda, I “appreciate your feedback on the draft message below that has been prepared for the Premier (and Minister Kennedy). It summarizes the issues around the House of Assembly debate and Early Works. You will need to open” the attachment to see, et cetera. So this is a draft message that Mr. Thompson was apparently preparing for the consideration of the – you and Minister Kennedy.

And on page 2 there's a number of items listed, one of which is – it goes 1, 2 and then 1, 2, so the second 1: “that the project will proceed even if the Maritime **Link/Emera** deal does not ultimately materialize (this has been the government's position all along, but it is helpful to reconfirm our resolve at this point in time) ....”

Was that a correct statement of your feelings at the time? Now this is – we're talking about April 12, 2012. Because that – you know, you said something different earlier.

**MS. DUNDERDALE:** And that would be a different statement from my feeling, but at the same time, you know, we're still negotiating and so on, so I'm going to keep my powder dry until it is necessary for me to fully disclose where I

am. You know, if we're in a position where there's still negotiations going on –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – with Emera, for example. Emera knows that we do have the ability –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – to build Muskrat Falls without the loan guarantee and that the banks will have given good grading to the project and we could do it on our own without the Maritime Link, without Emera, without the loan guarantee. They know that we could do that. So, you know, I would just keep my powder dry –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – until the appropriate time.

**MR. LEARMONTH:** So that was a negotiating –

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** – position more or less?

**MS. DUNDERDALE:** You have to be mindful –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – when you're in a – you know, it's – you know, when I'm making public statements, I – you know, and that's the same is true when we're negotiating with the companies in the offshore and so on.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** You need to keep your powder dry.

**MR. LEARMONTH:** And the next paragraph – well, after the second 2: “An additional looming issue, over which we have no control, is the Ecojustice court case and the possibility of a ‘stop work’ legal action when the road work is started.” Can you expand on that or give me some –?

**MS. DUNDERDALE:** I can't. I don't recall, Mr. Learmonth.

**MR. LEARMONTH:** Okay.

And the next paragraph says: "If the government's resolve at the current time continues to be strong in the face of these issues, then the ground is set for proceeding with early works." – we discussed those yesterday, I think – "Nalcor advises that the first contract for road-clearing needs to be let on Monday, April 16 in order to maintain the May 1 schedule. Although there is no need to announce this contract, there is a possibility that word will spread after the contractor has been informed, so it may be advisable for Nalcor to do a 'routine business' press release, following which government and Nalcor can be responsive to any media inquiries."

Now, this – is this the early work decision that you referred to in your evidence yesterday?

**MS. DUNDERDALE:** I'm not sure if that's all of it. You know, I'm not sure how far that, you know, when the approvals kept going.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** It seems to be me we were approving more stuff through the summer and the fall because there was –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – a real issue around the slippage. And that's when we –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** That would have become a real issue as –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the summer progressed and we hadn't gone to sanction.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** This work getting done in – but we had hoped to go to sanction in July.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And so the need for early works would have become much more intense once we got – once we knew that wasn't going to happen in July –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – wasn't happening in August and September, and so now we're under threat of losing the full year. If we had sanctioned in July, as we hoped to do, we wouldn't have needed the early works that we talked about to prevent –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – a slippage in the schedule.

**MR. LEARMONTH:** By the way, I'm not suggesting that the early work identified in this email is the only early work that Nalcor was carrying out, there were other – there was a bulk excavation thing, and there –

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** – were some other –

**MS. DUNDERDALE:** My –

**MR. LEARMONTH:** – building the accommodations and so on, but this is –

**MS. DUNDERDALE:** My –

**MR. LEARMONTH:** – this is one of them.

**MS. DUNDERDALE:** My recollection, Commissioner, is that work was always progressing, testing was always happening in terms of transmission, in terms of the river itself, the engineering on the river, concerns that were being identified and mitigated, and, you know, I never had a sense that that process ever stopped regardless of where we were in the sanction decision.

**MR. LEARMONTH:** And this was to maintain schedule, correct?

**MS. DUNDERDALE:** Maintain schedule and to understand the river as much as we possibly could. The more we knew about the river, the more assurance we had or more comfort we had about our ability to do this work and to do it properly and bring the project in on time and on schedule.

**MR. LEARMONTH:** The next exhibit – it's not in your book, but I'll ask the – Madam Clerk to bring it up. It's Exhibit P-00659. And if you go to page 2 of Exhibit 00659, please.

Is that page 2? No – no, it's not there.

**CLERK:** (Inaudible.)

**MR. LEARMONTH:** No, 00659, it's just a three-page document.

Yeah, that's it, and then page 2, please. Just going down to the paragraph beginning "Mr. Martin advised" – there it is.

"Mr. Martin advised" – do you see – "that there is ongoing engineering work in the decision to proceed with the construction of the road in Labrador has a cost of approximately \$20 to \$25 million."

**THE COMMISSIONER:** (Inaudible.)

**MR. LEARMONTH:** "If the Project is not sanctioned, the road would need to be remediated or could be used as forestry purposes. Board members confirmed that they were in agreement with proceeding with the early works."

Now, this is a –

**MS. E. BEST:** I think –

**THE COMMISSIONER:** Let's just – because it wasn't on the screen – you were reading it and unfortunately it left the screen.

**MR. LEARMONTH:** It was on the screen. It's on the screen.

**THE COMMISSIONER:** No, but – it is now, but it – when you were reading it, it wasn't on the screen.

**MR. LEARMONTH:** Oh, okay.

**THE COMMISSIONER:** So in fairness to me and as well to the witness, I wonder if you could just let us just read that paragraph, first of all, that begins with "Mr. Martin."

**MR. LEARMONTH:** Okay. Well, first – okay, the document is a minutes of a meeting of the directors of Nalcor Energy held on April 18 at 8:30 a.m. So that would be just to – very much – very close to the time when this email that we just reviewed was dated. It was April 12.

So the paragraph I'm referring to is beginning with "Mr. Martin advised that there was ongoing engineering work in the decision to pursue the construction of the road in Labrador has a cost to approximately \$20 to \$25 million."

So do you agree that that looks like the early work that we're talking – you were about in the –?

**MS. DUNDERDALE:** That's some of it.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Without a doubt, that's some of it.

**MR. LEARMONTH:** Yes.

And then it – the next Exhibit is P-00660, and once again, it'll come up in on your screens. It's not in the documents. If we can go to page 3, paragraph – the number is 647. This is a minute of meeting of April 27, 2012, of the directors of Nalcor Energy. 647, yes.

"Mr. Martin reviewed the Lower Churchill Project Report that was included in the Board papers circulated prior to the meeting. He briefly reviewed the plan highlights and advised that some early works have commenced with regard to the construction of a road and further early works, including site clearing, will be commenced in the coming months."

So do you agree that that's consistent with this initiative to get early work done for the project, Ms. Dunderdale?



**MS. DUNDERDALE:** Yes, again, it's another piece of it.

**MR. LEARMONTH:** Yeah.

And the last board minute I want to refer to is Exhibit P-00662. And that's a meeting of the board of directors of Nalcor Energy, June 28, 2012.

If we go to page 4, paragraph 675. Yes, just –

**UNIDENTIFIED FEMALE SPEAKER:**  
(Inaudible.)

**MR. LEARMONTH:** Yeah.

The second paragraph, 675, "He advised that Emera ... is progressing in the Maritime Link EIS and are currently awaiting guidelines from Government and noted that early works has commenced on the Muskrat Falls access road."

So that's just a further email, it appears, dealing with the early works. Okay.

Now, I mentioned yesterday that – and I referred you to the strategic risk document that had been prepared by Westney, and it was sent on – to Jason Kean on September 19, 2012. Do you recall that document?

**MS. DUNDERDALE:** Yes, I remember our discussion yesterday.

**MR. LEARMONTH:** Yeah.

Now, I'd like you to turn to Exhibit P-00130.

**THE COMMISSIONER:** You don't have that in your books, so you'll have –

**MR. LEARMONTH:** No, it isn't.

**THE COMMISSIONER:** – to look at it on the screen.

**MR. LEARMONTH:** Page 327.

**CLERK:** (Inaudible.)

Oh, sorry.

**MR. LEARMONTH:** 327.

**THE COMMISSIONER:** She's got 227.

**MR. LEARMONTH:** 327.

**CLERK:** Oh, sorry.

**MR. LEARMONTH:** All right.

So if we go down the – this is in – well, it starts off – it's an email from Jason Kean to Newfoundland and Labrador Hydro, Tony Scott, 09/04/12. And as you can see, if we scroll down through it, Mr. Kean is sending the text of a proposed email to Jack, who is Jack Evans at Westney.

And there's – they're dealing with – I think you confirm on page 327, and then it continues on to page 328 and 329. They're, you know, making proposals to send to Westney. Do you agree with that? On the project schedule.

**MS. DUNDERDALE:** That's the document before me, yes.

**MR. LEARMONTH:** Yeah. That's the – okay.

So these are proposals that are being sent.

The next document is page 326.

**THE COMMISSIONER:** Can I just go back just for a second on this one here? So, just so I can understand, what you're saying here is that –

**MR. LEARMONTH:** What I'm saying –

**THE COMMISSIONER:** Okay, go ahead. Sorry.

**MR. LEARMONTH:** Well, what I'm saying is that there's discussions underway about the schedule – the project schedule and the risk assessment for the project's schedule and Nalcor is preparing additional documentation to send to Westney for its review.

**THE COMMISSIONER:** Right, so here the question is they're proposing some sort of a rerun of the time model, the schedule I assume that means.

**MR. LEARMONTH:** Yes.

**THE COMMISSIONER:** And then – and they’re giving this additional information to Nalcor? Is that what you’re telling me?

**MR. LEARMONTH:** No, to Westney.

**THE COMMISSIONER:** To Westney, rather. Yeah.

**MR. LEARMONTH:** To Westney, yeah.

**THE COMMISSIONER:** Okay. All right, can we just scroll down a bit so I can just see what else is there?

Keep going, keep scrolling, please.

**MR. LEARMONTH:** All right. Is that – can I proceed?

**THE COMMISSIONER:** I just wanted just to go through them there.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** Okay.

All right.

Okay.

All right, thank you.

**MR. LEARMONTH:** And then if we go to page 326 of that exhibit.

This is an email from Jason Kean to Jack Evans at Westney.

It says: “Jack,

“To help with our discussions this PM, I am attaching an email train from Tony and myself.

“My fundamental question is: ‘Does our current knowledge of the project, increase the PXX of our planning schedule?’ I believe the answer is yes, however are we now at P20 or P30?

“I will call you at 4:30.”

So they’re, you know, having received information that it’s a P1 they’re submitting further information and, you know, attempting

to get the probability factor jacked up. So Mr. Kean is suggesting: Does this increase it to a P20 or a P30, is what it says.

And then the next – the last document is – well, it starts at page 321 of the same exhibit.

And if we go down to the bottom, this is an email – a reply from Jack Evans of Westney to Jason Kean, September 6, 2012. And this is the response to the request for an adjustment of the time-risk model.

And it goes down: “Attached is the latest Time-Risk model and ranging sheet.

“The deterministic duration for Task 28 was adjusted from 20 to 23 days to make the project end date equal December 12, 2017 (the ranging for Task 28 was not changed).

“Here are the preliminary results for Full Power:” – P25, July 18 – July 15, 2018; P50, January 2, 2019; P75, June 28, 2019.

And then if we turn up to page 322: December 12, 2017, P3.

You remember I mentioned to you yesterday the P3 adjustment? Well, here’s where it is – and so the December 12, 2017 date for full power, not first power, is a P3.

Now, Ms. Dunderdale, we have no – the information that we have available to us is that all the mitigation procedures that Nalcor had developed up to that time were submitted to Westney. And, further, we’re not aware of any evidence that there were additional mitigation measures taken by Nalcor by either – that Westney wouldn’t be aware of after September 6, 2012.

Now, based on that evidence, do you not believe that this information should have been provided to you by Nalcor?

**MS. DUNDERDALE:** I would certainly have appreciated an explanation, all of this – I mean, like, I’m looking at this information now –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and I certainly would need some guidance to take me through it, Commissioner, because this is not my background or my language (inaudible), because even in this – I’m puzzled – because on a P25, the completion schedule is July 2018.

**MR. LEARMONTH:** 2018.

**MS. DUNDERDALE:** 2018.

**MR. LEARMONTH:** Not ’17.

**MS. DUNDERDALE:** Yes, for the P50 –

**MR. LEARMONTH:** The information your government –

**MS. DUNDERDALE:** A P50, in the next line, has it a year later, 2019.

**MR. LEARMONTH:** Well, two years after January – you were given the date of the 17th – of 2017.

**MS. DUNDERDALE:** Yeah, that’s – what I’m saying in interpreting these figures – unless I’m reading this wrong, Commissioner – it says on a P25 schedule, the project will be complete on July 2018. On a P50 schedule –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – it’s going to be complete on January 2019.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And P75, June – why is it taking so much longer on a P75 schedule?

**UNIDENTIFIED FEMALE SPEAKER:** Six months.

**MR. LEARMONTH:** Well, it’s six months.

**THE COMMISSIONER:** Okay.

Maybe we should just explain.

My understanding – and I don’t have any more knowledge than you do, except for what I’m learning here. My understanding is, is that the

higher the P-factor, the more – it gives you more –

**MR. LEARMONTH:** Confidence.

**THE COMMISSIONER:** – reliability or confidence in the number.

So if you went with a P25 number – and somebody can correct me if I’m wrong here because, again, I’m not an engineer and I haven’t done a megaproject, although I feel like I’ve done one. In the circumstances here, a P25 means there’s a 25 per cent chance that you would conclude on the 15th of July 2018. There’s a 50 per cent chance – if you went to P50, there’s a 50 per cent chance you’d get to July – January 2, 2019.

**MS. DUNDERDALE:** Gotcha.

**THE COMMISSIONER:** If you use P75, then there’s a 75 per cent chance that you’re going to get to – that it will happen on the day – the date June 28, 2019.

**MS. DUNDERDALE:** Thank you.

**THE COMMISSIONER:** Okay? That’s my understanding of how this works.

**MS. DUNDERDALE:** Thank you. That makes sense.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But I wasn’t aware of this information. And I would’ve been very concerned if the completion date was later than – 2017.

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

**MS. DUNDERDALE:** Now, you know, I wouldn’t have been surprised if it wasn’t completed in July, but certainly within the time frame or very close to the time frame of 2017.

And so I certainly wasn’t aware of that. When we went to sanction, my – and my understanding up until the time I left government a year later was that we were on a 2017 schedule –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – and that we had a strong probability of bringing the project in on cost. There was a chance we could bring it in less than cost.

But if something happened, and we did go beyond the 6.2, that the number was a reasonable one. I certainly felt it was a reasonable one on the outside and could be well managed within the business case for Muskrat Falls.

That was my understanding at sanction, and that was my understanding right up until the day I left office –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – a year later.

**MR. LEARMONTH:** But this information was in the possession of Nalcor.

**MS. DUNDERDALE:** I would have wanted to know information that was any different from what I was told.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** You know, as I have said – and others who worked with me during that period of time – that my mantra, every day, was: Give me the real number. I want to know what it is; what we're looking at here. Then we're going to figure out if we can do this or not.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Whether or not we're going to sanction this project.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But if somebody told me that we had a P1 schedule –

**MR. LEARMONTH:** Or a P3, say?

**MS. DUNDERDALE:** Or a P3 schedule or a P10 schedule – that we didn't have whatever the industry standard was, you know, I don't – as you can tell, Commissioner, I mean, I don't have experience around –

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** – these things. But if somebody comes and tells me in terms of the puts and the takes in putting together this plan and this project are all industry standard – I mean, they're generally used across the board, that these are best practices in doing this kind of work – and if we meet that standard – this – that's what I wanted to know. That's where we are.

But if somebody is going to come in and say: We have no idea if this is going to come in at 6.2 or 10.5 or, you know, we might not get this until 2020 – wouldn't have happened. My Cabinet would not have approved it. The caucus would not have consented.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** This was a – you know – we talk about oversight a lot in the last day, Mr. Learmonth. I mean, it just wasn't me, I'm the person at the helm, and I'm engaged into it to – very, very deeply. And I've been with this for eight years now, from the first time we talked about the possibility of going it alone on Muskrat Falls, with the support of Emera, to a year after sanction.

That, in terms of politicians, I am the one person who was with it from that day to the day that I left government, and that's a period of about eight years. But at the same time – so I'm very engaged, but at the same time I'm trying to maintain some kind of a distance because not only in this file, but in every file that you have in government. My ministers would tell you that I would say to them all the time – it's a NAFTA analogy for here, Commissioner – that as ministers I wanted judges, not advocates.

I wanted them – when their deputy ministers, and their departments came forward with proposals and so on – I wanted their approach to be one of a judge, and to say whether this worked, whether it was sensible to do, whether we'd do this work on behalf of the people of the province. Don't come in advocating for what your deputy minister has told you that he thinks you need.

So I had very much – I felt that responsibility very much in terms of everything I did, but particularly around Muskrat Falls.

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

**MS. DUNDERDALE:** That I couldn't be married to this project – I had to have the ability to walk away from this project at any time, if it didn't work for the people of the province. But my Cabinet felt that –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – very keenly, and they weren't as engaged in the project. They had huge portfolios, Commissioner, that they were responsible – the health portfolio, education, transportation and works, and so on. Huge responsibilities, billions of dollars flowing through their hands that they were answerable for, programs that they had to see were (inaudible) properly and so on.

And so when they came to Cabinet or briefings on Muskrat Falls, they came with a much more jaded view: a much more skeptical eye, a more objective approach to it.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And so, you know, Nalcor would have been – and the minister, because the minister normally is the one who does the explanations and so on.

When we talk about oversight again, Commissioner, I mean, the fact that you're brought into Cabinet on a regular basis, doesn't mean that you got –

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** – a great relationship –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – in government. It means – you better be on your toes, because you're having to answer directly, you know, there's no –

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** – the minister is not here as your buffer or your spokesperson.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** You gonna come in here – and in the Cabinet room, I can tell you, Mr. Commissioner, there's no quarter asked if there's no quarter given –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – either. As Mr. Kennedy said: It's not a place for the faint of heart.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** So Nalcor would have been under direct questioning and the skepticism, because the whole idea is being tested on a regular basis and they don't have the day-to-day interaction and so on.

So you – they're being held accountable, asking questions and so on.

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** And if we – if they had ever had an idea that anybody was gonna go – that this project, when we were examining the sanction paper, Cabinet paper, with that P1 level – so we really didn't know how much it was gonna cost or how long it was gonna take – I can guarantee you – it would not have happened.

**MR. LEARMONTH:** Yeah. And –

**THE COMMISSIONER:** Can we take our –

**MR. LEARMONTH:** And for that – can I just –?

**THE COMMISSIONER:** Is this a good spot or did you want to finish up, because I would like to take our break? I just noticed it's quarter after 11.

**MR. LEARMONTH:** And for that reason – I've showed you this email that I – you know – for this reason – do you agree that Nalcor should have shown you these documents and if they had an explanation why they weren't reliable, they

could discuss it with you so you could be fully informed as to what was going on and assess their decision?

**MS. DUNDERDALE:** If Nalcor felt that there was – any element of that email was correct or identified that that risk existed, it absolutely should've been brought to our attention.

**MR. LEARMONTH:** Yeah.

And any explanation that Nalcor had could have been assessed by you and our members of Cabinet. In other words, if Nalcor had said: We have this – the report that I referred to yesterday – and we have these documents. Now, in our opinion, these are – we want you to show them to – but we have an explanation why we bring this risk down to zero and here's the explanation.

I'm suggesting that that would've been the proper approach, if they had a defence – so that you would be informed as to what was going on, so that when you went to the people of the province, you would have confidence that you had a complete disclosure from Nalcor of these items.

Do you agree with that?

**MS. DUNDERDALE:** Mr. Learmonth, it would – there'd be nothing better for me today than to be able to sit here and say: I saw these documents. This was the explanation that was provided –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – and this is why we decided to move forward.

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

We can take a break now if it's appropriate.

**THE COMMISSIONER:** All right.

We're a little longer this morning. I didn't realize it was so late. So we'll take our 10 minutes now.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Thank you.

Ms. Dunderdale, I just wanted to return to this problem that developed over the federal loan guarantee in, I think, January or – I think it was March actually. You said January. We have other evidence it was March.

**MS. DUNDERDALE:** It was in the new year.

**MR. LEARMONTH:** I'd just like you to explain your understanding of the misunderstanding – if that's a permissible term. I mean there was a misunderstanding between you and Nova Scotia and Canada – or your government and Emera, was there not?

**MS. DUNDERDALE:** That's not what I understood the issue to be.

**MR. LEARMONTH:** Okay.

Can you define it as best you can for us?

**MS. DUNDERDALE:** The best recall I have, Mr. Learmonth, of the issue is a misunderstanding between Nalcor and Emera together –

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

**MS. DUNDERDALE:** – with the federal government in terms of conditions precedent and what had been agreed to, what had been – concluded by all three parties that allowed to meet – to meet the requirements that we needed to go to sanction – that the loan guarantee was secured.

And so – everybody was of that understanding up to and including sanction. And after the fact, in the new year, it was brought to our attention that Nova Scotia hadn't satisfied the conditions precedent and it wasn't acceptable to the federal

government. And the concern was whether or not if the loan guarantee was at risk.

And it was a double problem for me because it was a political problem for me as well because, in good faith, I had gone to the people of the province and said: This is the circumstance, you know, we –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – we have the loan guarantee.

**MR. LEARMONTH:** And you signed the sanction agreement.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yep.

**MS. DUNDERDALE:** And the Cabinet papers had been done, everything had been done. So this was a huge issue for me and for Cabinet. It was huge.

And I can remember that Mr. Martin was in Nova Scotia working with Emera and the federal government to deal with the issue and he flew back to the province to meet with me and the minister and a number of officials. And I remember clearly, 'cause the premier's office was under renovation and we'd moved down to the fourth floor and there was a huge boardroom with a big, long board table with many, many chairs and they were full.

And Mr. Martin had been working for something like 36 hours and was showing every bit of it and the stress. And I was extremely tense and the whole discussion was tense – and trying to keep it professional and not let tempers flare and so on and work our way through it, piece by piece.

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

Because you would have wanted to know how did this happen?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** How did we get here?

And, you know, explanations give (inaudible) and I can't remember all the toing and froing and so on. I remember coming from the meeting and still very, very concerned and Mr. Martin back on the plane to Nova Scotia and so on.

And the whole matter did get resolved successfully. And we were all happy with it at the end of the day. But it was a couple of days of a lot of tension and a lot of stress.

**MR. LEARMONTH:** What –

**MS. DUNDERDALE:** The biggest piece of the stress for me – not that the loan guarantee was gonna fall apart, but I didn't want to be in a position where anyone could say that I had misled the people of the province. That I had provided misinformation or something like that. And that I'd be in a spot that I'd have to go back and undermine confidence in people – in their government. I – you know, that was a big issue for me.

So we got to get this fixed, and they assure me that this can be fixed and this is going to get done, and that's gonna get done and so on, and everything is going to be fine and we're not going to lose the loan guarantee.

But I certainly didn't want to be put in a position where I had said something to the people of the province that would turn out at the end of it all not to be correct. That was not going to be a good thing for any of us.

**MR. LEARMONTH:** So in the final analysis, if the Nova Scotia UARB had turned down the application of Emera, are you saying that the federal loan guarantee would still have been available?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** But the – remedy for the issue that had been identified was available to Nova Scotia, and they were just working through the detail. And then they did remedy it and work through it, and was all secured and fine.

**MR. LEARMONTH:** So there was a remedy in the event that the Nova Scotia UARB did not approve the project?

**MS. DUNDERDALE:** No, there was a remedy around whatever the agreement was between the federal government and Nova Scotia around the loan guarantee.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** That we weren't at risk of losing the – even though the condition precedent hadn't been met, that there was enough understanding that it could have been met, whatever – it didn't take very long to resolve the issue –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – but it was a tense, you know, couple of days, you know, to be – there was nothing to prepare me for that piece of information. And then when I received it and thought that – well, you know, I had to get straight in my head whether or not we had secured the loan guarantee, now that we're at this place and had I – you know, had I given the people of the province misinformation – was the other piece that I needed to do – to get straight in my head.

And then we had to see where we were, you know, if we had to cancel the project, or rethink it all, or explain to the people of the province – you'd never want to be put in that position.

**MR. LEARMONTH:** No, and after you'd spent a lot of money on it also.

**MS. DUNDERDALE:** And – and you know, I'd already made my stand. That – you know, when you stand up to the prime minister, and you put your stake in the ground and say: And this is where I am, and so on, that takes a fair bit of nerve, but that's my job. That's what I have to do – I didn't expect to have to be back there again, you know, two or three months from that and do the same thing all over again on another issue. And then have a much more tangled explanation to the people of the province of how we might have ended up in this place.

But it wasn't as difficult an issue as I – I think I was more concerned about the fact that I had gone to sanction without everything being nailed down. And I understood when people told me that they understood that it was nailed down, and it was only after the fact that they were made aware of this and there was a remedy and a resolution.

But when all of that gets laid on your plate, at the one time, it's very stressful.

**MR. LEARMONTH:** Yes, I imagine.

Thank you.

Now, I want to ask you a few questions –

**THE COMMISSIONER:** Just before we leave that, I need to go back and talk about what was the remedy? Because my understanding, from everything that I've heard so far and from what I've read so far, is that even in March, there was – there was no federal loan guarantee, unless all of the conditions precedent were met and that included approved by the UARB in Nova Scotia for the project.

So, how could it be that you were satisfied – and I'm not asking this question in a nasty way or anything, I just – for information, how could it be that you were – you and your government were satisfied that it had been worked out?

What was the remedy? How was it that it was worked out?

**MS. DUNDERDALE:** In – there were – until we got to financial close, Commissioner, you're absolutely right, that was the final go for the project. So even though we had the MOU in principle, there was still a negotiation conditions prescient and so on that had to met before we got the financial close – and this would go a year later.

But in terms – the issue was around the MOU – that there were certain, as I recall it, there were commitments and aspects of agreements that had to be made and information presented and commitments made around the MOU itself before the prime minister would sign it. And those commitments needed to come from us and that information needed to come from us and



come from Emera. And my understanding of – and I don't recall all the details of it, but whatever was required for that MOU signing and us to go ahead with sanction – those conditions hadn't been met.

We knew that we still had a year of negotiations ahead of us, up to financial close, but wherever the issue was, Commissioner, it was around the signing of the MOU.

**THE COMMISSIONER:** Right, but that still – we've had evidence from – that indicated that there was a penalty clause. There was reference to a penalty in the event that the conditions weren't met. And there was a way out. So whether it was, you know – and it was in the millions of dollars.

So was that the remedy?

**MS. DUNDERDALE:** No, Commissioner, that wasn't the remedy.

It was a commitment, as I understand it and as I recall now. Because I haven't turned my mind to this in five years, Commissioner, not for five minutes.

**THE COMMISSIONER:** So just to the best of your recollection.

**MS. DUNDERDALE:** (Inaudible.)

**THE COMMISSIONER:** I understand.

**MS. DUNDERDALE:** To the best of my recollection, it was a commitment that had been made by Emera around how it was going to meet its condition precedent or – there was some piece of work around that – how it was going to address the work that lay in front of it. And how it was – whatever the remedy was or whatever the piece was that they needed to get done – as we did the work coming up until financial close.

And I don't know whether it was some kind of a guarantee or it was information that was provided or information that should have been provided that was now going to be provided. It was around something like that.

And what came back to us was – while everyone initially understood that whatever Emera had

proposed or the Nova Scotia government had proposed was acceptable as they moved forward in their negotiations to come to financial close – that after the fact, it was reviewed and found that it wasn't acceptable.

So we're very early. We're nowhere near financial close or –

**THE COMMISSIONER:** No, but you were beyond sanction then.

**MS. DUNDERDALE:** Yes, but that was the issue, Commissioner. Because we had just done sanction. And here we are – and this issue is not resolved.

I mean, we may have come to a roadblock six months into the negotiation before financial close and we could have walked away from it. But whatever this issue was was specifically around sanction, not financial close.

But I can't recall anything more specific than that – the high tension, you know, having to go back to people of the province. Because if the negotiation failed – well, you have an explanation to bring back to the people of the province as to why this wasn't going to work.

But this to me was something that – an alternative to whatever requirement was laid out, was proposed and accepted and we went to sanction. And then after the fact, somebody had a look at the alternative and said: No, that's not acceptable. So, now we're in a – now we're in dilemma.

And that's the best explanation I can give you, Sir.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** Fine. Thank you.

**MR. LEARMONTH:** I'm going to ask you some questions on the natural gas reviews that government undertook.

We know that after – well, in the report from Ziff did, October 30, 2012, which – and the work for that was commenced in February 2011.

Ziff was retained then by the Department of Natural Resources.

Were you involved in the decision to retain Ziff in order to obtain a report on natural gas options?

**MS. DUNDERDALE:** The minister came back to me on two fronts, you know.

First, I think he – he was reporting that the, you know, he had a degree of comfort in terms of the work that he had done to satisfy himself that the project was a good one. As he testified here, he was very concerned – as all of us were – about the ratepayer and the impact that the project would have on rates.

He was also concerned about – I mean, there was a vigorous public debate occurring about the pros and cons of Muskrat Falls. And he felt that there was a great deal of misinformation and that there was a sentiment being put about that you couldn't rely on anything that government said or that Nalcor said. That there was an inherent bias in any information that we had provided.

And so, he wanted to do a series of independent reviews of a number of options that were being discussed in the public arena so that people would have this objective information and they could bring that with them to whatever debate they were engaged in.

And so he said: Can I get a series of reports done? Do I have the funding to do that? Will you approve that? And I didn't have any problem with that whatsoever.

So, that's how those reports came about.

**MR. LEARMONTH:** All right, but were you involved? I know Mr. – Minister Kennedy wanted to get these reports done, but were you involved in the handling of the reports –

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** – or the assignment?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** Nothing at all?

**MS. DUNDERDALE:** Nothing at all to do with any.

**MR. LEARMONTH:** Okay.

Are you aware now that there was – Wood Mackenzie was retained to review the Ziff work and Wood Mackenzie presented a report, which deal with both the, you know, the pipeline for the natural gas from the offshore, and the LNG – liquefied natural gas – and that ultimately, the work that Wood Mackenzie did on liquefied natural gas was removed from their final report and was never presented to the public?

Do you have any information on that?

**MS. DUNDERDALE:** No, I don't. I could speculate one it, but I don't have any particular information on that.

**MR. LEARMONTH:** You don't have any information?

**MS. DUNDERDALE:** No, we didn't discuss it, we didn't –

**MR. LEARMONTH:** Are you aware of what I'm talking about?

**MS. DUNDERDALE:** Yes, I am.

**MR. LEARMONTH:** Did you hear this from the –?

**MS. DUNDERDALE:** And most of it I heard here.

**MR. LEARMONTH:** Yes,

**MS. DUNDERDALE:** You know, I there was a vigorous debate going on with regard to natural gas and our natural gas, and what was possible and what was not possible, and I was interested in the debate that took place – the discussion that took place –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – here, Commissioner, in terms of your own puzzlement as to why we couldn't, you know, that we had – Premier Williams had taken a stand in the offshore before for certain conditions that he wanted met.

But there was a fundamental difference between what Premier Williams did at the time. At the time we had Hebron and the companies were coming to negotiate the benefits under Hebron. And what Premier Williams did was draw a line in the sand and say: We have three projects out there now, and the benefits to the companies have been absolutely tremendous. And I'm not sure that the people of the province have had all the benefit they could have, but we want to make sure on a go-forward basis, that they do have all the benefits.

So in this set of negotiations, I'm serving notice that I'm gonna ask for equity, 10 per cent equity, and it's in the Energy Plan. I'm gonna offer – I'm gonna ask for equity in the offshore projects. And the lead at the time, was ExxonMobil, who came to have a meeting with the premier with regard to that, and make an argument that they really hadn't done all that well in the offshore, that things were not as they appeared.

And Premier Williams properly told them that he just hadn't fallen off the turnip truck, and to leave the office and everything went nine ways for Sunday. Eventually they came back to the table and we sat down to negotiate –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – and we arrived at 4.9 per cent and so on. But that was a negotiation of a contract and terms and so on.

In terms of natural gas, the – we have, I think, is maybe 11 trillion cubic feet of gas offshore discovered; 60 trillion cubic feet of gas, we believe, is offshore. And we had worked hard as a government, from the time we came in, in 2003, to encourage companies to do something with that gas that they weren't using to produce oil, to monetize that gas and bring it ashore or do whatever with it, so that we could realize some benefit from the gas, rather than having it just sit offshore.

And we put a sample royalty regime in because – that offered special considerations in our Energy Plan to see that – if we could encourage further consideration. Premier Williams and I met with Dr. Lau of Husky on a number of occasions, every time encouraging him to do something with natural gas. I met with Mr.

Ghosh, who followed Dr. Lau as the head of Husky, and made the same request in my several meetings with him.

So it wasn't up to – in order to dictate to the companies that they had to bring natural gas ashore for use in LNG or use in electrical generation or so on, would've required us to break the contract with them, Commissioner. This was signed, sealed, delivered, done – their gas to do what they wanted with when they wanted to do it.

And, you know, that's – to break a contract with any company that's come and negotiated in good faith in this province would be a very serious matter. If somebody came and proposed that to me, I would say: No, you don't. Thirty per cent of our revenue comes from the offshore.

We need – the companies ask us – their one requirement from us all the time is clarity. Tell us what the rules are. Tell us what we need to do, tell us what you expect of us. Tell us what we need to provide in return. Let's be absolutely clear and we can work with you when that's the case. But if we were to go breaking open contract, we could sour that whole investment or – environment.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And that would be catastrophic for this province –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – when we rely so heavily on that revenue.

**MR. LEARMONTH:** Okay.

But I don't think anyone's suggesting that you –

**MS. DUNDERDALE:** So – but the big –

**MR. LEARMONTH:** – break the contract.

**MS. DUNDERDALE:** – debate was around natural gas and what could we do with it.

And so – and people were absolutely insisting that we had access to it, absolutely insisting that we could bring it ashore when that wasn't the

case. And so – you know, again, let's get an independent expert who understands this stuff to make a review of the issue and make it public to the people of the province.

So there's no bias in it from the government; there's no bias in it from Nalcor, not that there would've been, in any case, in my view. But, you know, you can rely on this, 'cause this come from a third party –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – who has an expertise in this area.

So this – these were the – and LNG wasn't – at that time, wasn't a big issue in the public debate.

So I don't know if that factored into the removal of LNG from that part of the report. I'd only be speculating.

**MR. LEARMONTH:** Okay. So there's no need to speculate.

**MS. DUNDERDALE:** But I don't know.

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

**MS. DUNDERDALE:** I don't know.

**MR. LEARMONTH:** Did you know that it had been removed when you were premier?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** No? You just found it out at the – through the work of the Inquiry or the –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – evidence presented –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – at the Inquiry?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** Yeah. All right.

Now, I think, just to be clear, Dr. Bruneau gave a presentation on natural gas and at no time did he suggest that the government should break a contract.

What he suggested is that the government should have put together a proposal whereby the cost of the pipeline would be covered by the province and go to the oil companies and see whether something could be negotiated, whether there could be an agreement reached with – on the matter, not break a contract.

**MS. DUNDERDALE:** Well, I can tell you that, you know, Premier Williams and I had several discussions with Husky under any circumstance in which they would bring natural gas ashore and never got a bite.

**MR. LEARMONTH:** Okay. When were these discussions?

**MS. DUNDERDALE:** They – in 2006 was the first one that I attended. And, you know, as I said, when Premier Williams pushed back on the oil companies, and then there was a great deal of concern being felt by industries – the industry association here in the province and so on. And there – you know, there was quite a lot of consternation, and there were harsh words being exchanged.

Dr. Li at Husky came to see us in the midst of all of that and spoke out publicly in support of Newfoundland and Labrador and the government in trying to ensure that the people of the province got more benefits from their resources.

So there was a great relationship fostered there. I met with him again, at least once or twice, with Premier Williams.

**MR. LEARMONTH:** When would that have been?

**MS. DUNDERDALE:** I can't tell you. We would have to go back to my calendar to find that.

And I met with him myself when I was premier. In fact, when he was retiring, one of his last visits was here, and I met with him and his wife, maybe – I can sometimes judge, Mr. Learmonth,

more where I was, 'cause I was still on the – in the formal premier's office the last time I met with him. And he came to take his leave of us.

And I met with Mr. Asim Ghosh when I was in Houston. I met with him twice, and both those –

**MR. LEARMONTH:** Do you know –

**MS. DUNDERDALE:** – visits –

**MR. LEARMONTH:** – when?

**MS. DUNDERDALE:** It was during OTC – the oil conference –

**MR. LEARMONTH:** But what year?

**MS. DUNDERDALE:** – in – well, I was premier, so I would have met with – that would have been 2011, 2012.

**MR. LEARMONTH:** Okay –

**MS. DUNDERDALE:** And every time, that's what we were talking about. You know, is there a way that we can monetize the gas; is there something we can do with the gas; are you interested in developing the gas?

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** Is there any proposal?

**MR. LEARMONTH:** – was there any proposal that was put forward, or was it just a preliminary –

**MS. DUNDERDALE:** No –

**MR. LEARMONTH:** – discussion?

**MS. DUNDERDALE:** – it was a discussion, under what circumstances –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – and they were using the gas to help get the oil out of the ground and were storing it until conditions were right for the company to do something more with it.

**MR. LEARMONTH:** Okay, and that's your – that was the extent of your involvement in the natural-gas-potential issue?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

I'd like you to turn to Exhibit P-00807, which is volume 1, tab 26.

It's volume 1, tab 26, Exhibit 00807. This is a May 11, 2011, Decision/Direction Note from the Department of Finance and Natural Resources. On page 4, it's signed by Shawn Skinner and Tom Marshall. It's prepared by Paul Reardon, Department of Finance, and approved by Terry Paddon and Charles Bown, the – from Department of Finance and Mr. Bown from Department of Natural Resources. Are you familiar with this document?

**MS. DUNDERDALE:** Yes, I am.

**MR. LEARMONTH:** Okay.

Is it – did you become familiar with it because of your participation in the Inquiry, or do you have a recollection of it independent of that?

**MS. DUNDERDALE:** I don't – I know that this decision note would have been reviewed with me because that was the process, and – but I don't remember the specific day we reviewed it or talked about it or so on.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** But I can tell you that having an independent review of the numbers was something that was on my mind, and I don't know if it was because of it or a part of it. I can't speak to that level of detail. But this certainly would have figured in.

**MR. LEARMONTH:** But this apparently went up to your office and then nothing happened to it after that, is that your recollection?

**MS. DUNDERDALE:** Well, nothing – just informs the premier with regard to a discussion and the view of the minister or ministers who have, you know –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – have prepared the decision note and sent it up.

**MR. LEARMONTH:** Yeah.

But it's the – on page 2 it says: "**Decision / Direction Required:**

"Whether to approve the selection and retention of a qualified consultant to provide an independent review" et cetera. So this was a recommendation, was it not?

**MS. DUNDERDALE:** Absolutely, from two ministers, no –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – question about it.

**MR. LEARMONTH:** Yeah.

So –

**MS. DUNDERDALE:** And –

**MR. LEARMONTH:** And no independent review was conducted as –

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – a result of this, is that correct?

**MS. DUNDERDALE:** Well, that would have gone then – the view of two ministers – would have gone into the mix of discussion about what we would do in terms of an independent analysis or having an independent outside body speak to the decision and where we were in terms of Muskrat Falls.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So other ministers would have become engaged in that; there would have been a discussion around this. And at the – the decision that was taken was to send it to the PUB for a limited review.

**MR. LEARMONTH:** Okay.

But do you remember the discussion about this? Or are you just saying it would have happened?

**MS. DUNDERDALE:** I remember the discussions about where we were – what we were going to do, what decision should we take, should we send it to the PUB, not send it to the PUB, get somebody else, you know, what should the question be, all of those kinds of things. I remember those discussions.

But I have a recommendation from two ministers, which I give full weight. But there's 16 ministers gonna make a decision on what we're gonna do.

**MR. LEARMONTH:** So anyway –

**MS. DUNDERDALE:** So that discussion would have – you know, it's not the premier sat up in his or her office saying yay or nay to this, to that, to this, to that. This is an opinion that's been put forward in a very formal way –

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

**MS. DUNDERDALE:** – by two ministers. So that – even that speaks to the strength of their feeling around this issue.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** So that's taken into consideration. So now what kind of a review are we gonna – are we gonna do this kind of a review? Or is something else possible? And that discussion would have taken place with me and with my Cabinet.

**MR. LEARMONTH:** Are you saying this went to Cabinet?

**MS. DUNDERDALE:** We certainly would – every Thursday, we had Cabinet. And before we would start the business of the day, we would take a piece of time to discuss relevant issues or issues that were at the top of mind or extremely important and so on.

So almost every Thursday there would be some discussion of Muskrat Falls. On occasions, there would be formal presentations and so on.

And so we would have this kind of a discussion. It very well might have been an informal discussion. But you didn't take these kind – certainly something like having an independent review, you wouldn't – I wouldn't take that decision on my own.

**MR. LEARMONTH:** No, but –

**MS. DUNDERDALE:** Even on the recommendation of two ministers.

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** That would go back and be fully discussed at the Cabinet level.

**MR. LEARMONTH:** Okay. So you're certain that this went – was discussed at a Cabinet meeting?

**MS. DUNDERDALE:** In terms of a review, absolutely. And the two ministers would have been at the table and would have absolutely shared their view on what they felt should happen.

**MR. LEARMONTH:** Now, you say would have. Do you recall that that happened? Or are you just going by your –

**MS. DUNDERDALE:** It's –

**MR. LEARMONTH:** – basing what you're saying on your recollection about what happened in the ordinary course?

**MS. DUNDERDALE:** It would have happened in the ordinary – even getting to a place of deciding whether or not we would send it to the PUB for a limited review –

**MR. LEARMONTH:** Yeah. But –

**MS. DUNDERDALE:** – would have entailed consideration of all of this.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** And those two ministers would have expressed their view on whether they thought –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – the PUB was the appropriate place to go for a review –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – or we needed to do something different than that. It would have been a fulsome discussion, Mr. Learmonth.

**MR. LEARMONTH:** Yeah, but I wanna know that – there's a difference, you're saying it would have been. Do you actually recall – by your own memory, not by the normal process, by your own memory – discussing this at a Cabinet meeting?

**MS. DUNDERDALE:** It would have been pro forma. I don't remember all the discussions we had around –

**MR. LEARMONTH:** Would you remember discussing this?

**MS. DUNDERDALE:** I can't say that I specifically remember this particular discussion.

**MR. LEARMONTH:** Okay. So what – am I correct that what you're saying is that with a document like this, in the ordinary course, it would have gone to Cabinet and be discussed at a Cabinet meeting, but you don't actually recall that happening?

**MS. DUNDERDALE:** That's not what I said, Mr. Learmonth.

**MR. LEARMONTH:** Okay, well, I'd like you –

**MS. DUNDERDALE:** What I said, Mr. Learmonth, is that the Decision Note comes up to inform –

**MR. LEARMONTH:** Yup.

**MS. DUNDERDALE:** – the premier, at the premier's office.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** About a particular issue and a minister's – what information a minister's gathered and so on and posing a question, is: What are we gonna to do about this?

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So in terms of a – and I may or may not do anything with it, or I might put it over to another department, or give instruction to the clerk to do something with it. Any number of actions could be –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – taken with regard to a Decision Note.

**MR. LEARMONTH:** But what happened to this Decision Note?

**MS. DUNDERDALE:** I can tell you that in our Cabinet discussions, very likely in our caucus discussions as well, we would've had a discussion about what we were gonna do in terms of a review –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – of the Muskrat Falls Project or the –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the least-cost option, which is –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – what it was at the time.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Those two ministers would have been part of that discussion.

**MR. LEARMONTH:** Yeah. But I'm not – Ms. Dunderdale –

**MS. DUNDERDALE:** I can't recall the –

**MR. LEARMONTH:** Okay, it's a question of – like, I understand, you've said that a number of times: would have. But I'm asking you what I think is a very simple question. Do you have a recollection in your mind of this being discussed at a Cabinet meeting or referred to a committee or whatever? Do you have a recollection?

I understand what the normal process would be, but I'm asking you whether you have a personal recollection of what happened to this document.

**MS. DUNDERDALE:** I can tell you that there was a discussion at Cabinet –

**MR. LEARMONTH:** About this?

**MS. DUNDERDALE:** – about what kind of a review was going to be done with regard to the least-cost option.

**MR. LEARMONTH:** Yeah. That's not my question.

**MS. DUNDERDALE:** That's all I can tell you.

**MR. LEARMONTH:** Okay. So you don't – you can't tell me whether this document ever made it to the Cabinet table?

**MS. DUNDERDALE:** It may not have made it to the Cabinet table.

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

**MS. DUNDERDALE:** It may – no, I don't know.

**MR. LEARMONTH:** All right, that's fine.

**MS. DUNDERDALE:** And that wouldn't be significant one way or the other, Mr. Learmonth.

**MR. LEARMONTH:** Okay. Well, anyway, if you don't remember that's fine. You've said that.

I just note on page 2 at the bottom, it says, "In addition to the above, Nalcor is also planning to undertake additional due diligence as follows: Completion of a project cost analysis by Independent Project Analysis ... an international organization that specializes in the review of large scale projects."

Were you aware that that review was never undertaken?

**MS. DUNDERDALE:** No, I'm aware from the Inquiry.



**MR. LEARMONTH:** Yeah. Does that give you any concern?

**MS. DUNDERDALE:** In terms of the number of eyes that went on this project, it really doesn't cause me a great deal of concern.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** Do I wish they had done it? Yes, I wish they had done it. In hindsight, it's a great thing.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And if you're ever to be involved in anything like it again you would make sure that all of those – just goes in the lessons learned piece, when you say you're gonna do something, you really ought to do it.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** But in terms of the sets of eyes that were on this project through the course of this planning, you know, I don't get terribly upset over the fact that it wasn't done.

**MR. LEARMONTH:** All right.

Next Exhibit 01168, it's volume 1, tab 20. Do you have that document?

**MS. DUNDERDALE:** Yes, I do.

**MR. LEARMONTH:** This was prepared by Charles Bown – or sent from Charles Bown to Richard Wardle on February 3, 2011. So you can see on page – pages 2 to 6, it's a shareholder's letter of expectation.

Are you familiar with this draft document?

**MS. DUNDERDALE:** Just from the Inquiry, Mr. Learmonth.

**MR. LEARMONTH:** Okay. You have no knowledge of it at – other than –

**MS. DUNDERDALE:** I have no recall of it.

**MR. LEARMONTH:** No recall of it.

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** No. And I just point out that, at the end of his evidence, Mr. Bown was asked by the Commissioner whether he has any regrets about, you know, his participation in the Muskrat Falls Project, and he listed this as a regret, that he didn't pursue it. Did you hear him say that?

**MS. DUNDERDALE:** I can't recall, Mr. Learmonth.

**MR. LEARMONTH:** Okay. But, anyway, you have no knowledge of this document whatsoever.

**MS. DUNDERDALE:** I don't have any recall –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – of this document.

Commissioner, when we were – when I came to Natural Resources in 2006, Mr. Martin had been hired president and CEO of Newfoundland and Labrador Hydro and we were – the department was well advanced in the establishment of the new energy company. But I was able to become a – to be involved in a significant part of the discussion around the formation of this company and what it would look like and where the accountability was.

And I remember that particularly because we spent some time talking about, for example, how the Auditor General will be involved with Nalcor and have access to Nalcor, the – and in view that the company would hold a significant amount of commercially sensitive information, especially now that we're going to be taking stake in the offshore and how we resolve those pieces without limiting, at all, the Attorney General's right to go in there at anytime – Auditor General rather – the Auditor General's right to go in and audit Nalcor at anytime and how the Auditor General would report any incidents that they found in the course of their work.

And the course of action for the Auditor General to follow was, if he found exceptions in any of the work and auditing of Nalcor, that he would report those exceptions to Cabinet. And then he would – and he would give the nature of the exception and all of the information to Cabinet,

but then he would proceed to the House of Assembly and inform the House, through either the Speaker or the Clerk, that an exception had been made to Nalcor. So Members of the Opposition would be well aware that some kind of a reporting of an incident, that something that didn't sit well with the Auditor General had been made to Cabinet. And that's – then we would deal with it in the course of the House and the questioning and all of those kinds of things.

The second piece was that Nalcor, because it belonged to the people of the province – it was an entity that was wholly owned by the people of the province – that it would have public AGMs and that it will provide all its audited reports and financials and everything to the people of the province. And that they would have an open board meeting, and anybody who had any interest in Nalcor or the workings of Nalcor or the business of Nalcor would have an opportunity to attend this board meeting and question the principles of the company directly and seek out whatever information that they were looking for, or explanations that they were ...

So there was a lot of effort put in to transparency and accountability with regard to Nalcor. And that's not to say that more couldn't have been or shouldn't have been done, but it was an extremely important piece of the work that we did in building the new energy company.

**MR. LEARMONTH:** Yes, but I'm talking about governance now. You recognize that government has an obligation to provide some oversight and governance over Crown corporations?

**MS. DUNDERDALE:** Over all Crown corporations.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And I can say, in terms of this company, it had its board of directors to –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** And remember, boards – the board of Hydro, for example, had played significant roles in terms of holding the

company to account. And I refer back to the development, or the attempted development of the Churchill in 2000.

So they had their own board of directors, they had the Auditor General, they had Cabinet, they had the clerk, I mean, there were as many eyes – and they had a very public AGM and pathway for the people of the province to examine what Nalcor was doing as opposed to, example, Newfoundland and Labrador Housing.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So there was a high degree of accountability built in, and oversight built in, for Nalcor.

**MR. LEARMONTH:** Yeah, but why not have Nalcor sign a document like this in the accompanying handbook, which I'll bring up. It's not in your book but it's 01531 – Exhibit 01531. Maybe you can bring that up?

**MS. DUNDERDALE:** I don't have an issue with it, Mr. Learmonth. I don't know why it didn't come to my attention and then why – I can't tell you that. I don't recall this document or reviewing the document, or seeing the document.

**MR. LEARMONTH:** So you have no idea of what (inaudible).

**MS. DUNDERDALE:** So I don't have any idea, but I don't have any – you know, I was held to account every day as premier –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – of the province, as I should be.

**MR. LEARMONTH:** Yeah, have you reviewed this draft Department of Natural Resources governance and accountability?

**MS. DUNDERDALE:** If it's in my documents –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – then I would've had a look at it before I came here.

**MR. LEARMONTH:** Okay.

But, obviously, a lot of work went into it. But, anyway, if you have no knowledge whatsoever of it, then there's no point in me ...

**MS. DUNDERDALE:** That's right.

**MR. LEARMONTH:** And you –

**MS. DUNDERDALE:** But I don't have any problem with people being accountable.

**MR. LEARMONTH:** And you have no – in principle then, you would agree that a document like this would be appropriate for Nalcor?

**MS. DUNDERDALE:** Absolutely, I don't have – there is no – when you're in charge of somebody else's resources, then, you know, you need to be held accountable. There should be a high standard around that. I don't have any issue with it whatsoever.

**MR. LEARMONTH:** So having seen this document, do you agree that it would be reasonable to have Nalcor enter into such an agreement with –

**MS. DUNDERDALE:** I have no difficulty with it whatsoever, Sir.

**MR. LEARMONTH:** No difficulty with it?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** Next document is 01128, which is volume 3, tab 23 in your book, Ms. Dunderdale.

Excuse me.

**MS. DUNDERDALE:** Tab 23?

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

This is a Direction Note, Department of Natural Resources, which was prepared November 27, 2012. On page 4 it says prepared by NR and Justice, approved by no one; ministerial approval, no one; just dated November 27, 2012.

Now do – in carrying out this work, Bob Noseworthy, the former chair of the PUB and an

independent consultant, was engaged by NR. And it just deals with accountability oversight for the Muskrat Falls Project, more so after sanction than before sanction. Are you familiar with this document?

**MS. DUNDERDALE:** Yes, I've seen this document, Mr. Learmonth.

**MR. LEARMONTH:** When did you first see it?

**MS. DUNDERDALE:** I don't know. I – my first recall of seeing it is preparing for the Commission.

**MR. LEARMONTH:** All right. Okay, so you don't recall getting it when you were in government.

**MS. DUNDERDALE:** I don't know that I saw it before that. I may have but –

**MR. LEARMONTH:** So you have no recollection of it?

**MS. DUNDERDALE:** I remember discussions around oversight of the project and so on, but I can't remember pieces of paper from that long ago. I –

**MR. LEARMONTH:** So you don't have any recollection?

**MS. DUNDERDALE:** No, not of specific pieces of paper, I don't – or notes.

**MR. LEARMONTH:** Okay.

Do you know – can you recall what happened to this Direction Note? I mean, what consideration was given to it? Where did it end up?

**MS. DUNDERDALE:** I don't recall –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – Mr. Learmonth.

**MR. LEARMONTH:** And you would have been premier at that time, correct?

**MS. DUNDERDALE:** I would have been premier at that time with a lot of things going on.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And other people assigned responsibility for these issues and –

**MR. LEARMONTH:** All right. You have no recollection of it. That's your answer. That's fine.

In terms of the board of governors, the appointments, can you tell me what the appointment process was for board of directors for Nalcor, both when you were in the Department of Natural Resources as minister and when you were premier?

**MS. DUNDERDALE:** All appointments across government – there's a survey of Government Members to ask to put forward names and résumés of people who they think could serve on government boards and so on. And that all comes up to the premier's office and there's a committee there that screens those résumés and so on. Because what an MHA would do, for example, is, in doing their screening of people who might be suitable for boards and commissions and agencies and so on, would speak to those people if they thought they were suitable and get a résumé and so on.

That process in itself is a bit touchy, you know, because if you're asking – you're going to call somebody and ask them would they be prepared to serve in some kind of capacity and then you don't call them back with the position, sometimes the process itself can be fraught with a little difficulty. But we would – we would ask for recommendations from the caucus and certainly in terms of public service, especially at a deputy minister's level and so on if they – they wouldn't be shy about putting someone's – recommending somebody if they thought it was appropriate and then that would go to a committee, generally, and appointments would be made, sometimes the premier would be involved, sometimes not. Chief of staff might be involved, but certainly in terms of Nalcor the premier would have been involved, no question.

**MR. LEARMONTH:** Right.

Now – so you made the appointments when you were premier, did you?

**MS. DUNDERDALE:** Yes, I did.

**MR. LEARMONTH:** Yes.

And – I want you to turn to Exhibit 00395, that's volume 2, tab 51.

You can see in the bottom part there's an email, January 26, 2011 [sp 2012] from Thomas Clift – he was on the board of directors – to Robert Thompson. Are you familiar with this email?

**MS. DUNDERDALE:** Yes, I am.

**MR. LEARMONTH:** Okay.

Now – among other things, Mr. Clift calls out for, you know, the appointment of people to the board who have experience in megaprojects and so on. And he says under number one: "Our Board would benefit greatly from the addition of individuals with large-scale engineering project experience, international project experience, labour relations experience and additional finance or accounting experience. In addition ..." and so on.

So, you know, I guess the position is that the board of directors is overseeing a very large megaproject, very important for the province, yet they have no one – although they're all capable individuals in their own line of work, they have no one with international project experience and so on and their asking for someone to – consideration be given to hiring someone to help them with that. And do you acknowledge that that's a reasonable position for them to take?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah.

Now, you were the premier when this email was prepared. Did you see it?

**MS. DUNDERDALE:** I don't know that I saw the email because I didn't get email directly. Somebody in my office would have collected the email, probably my chief of staff or a clerk, or

my – yeah, I can't – Robert would often go over my email with me.

But I was certainly aware of the board's position with regard to wanting more volunteers or more board members – wanting more board members with distinct experience around hydro development and the issue of compensation.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** I was very well aware of all of those issues.

**MR. LEARMONTH:** Because they weren't getting paid anything.

**MS. DUNDERDALE:** Nobody in the province gets paid anything, Mr. Learmonth; it's an unfortunate fact but it is what it is.

**MR. LEARMONTH:** Yeah.

But if you became aware of this call from – or this position of Mr. Clift, can you tell me what, if anything, you did about it?

**MS. DUNDERDALE:** Well, a couple of things in terms of – I felt there needed to be – certainly needed to be more shoulders available for the work that was being undertaken by the board.

And I certainly – and I saw gaps beyond those identified by Mr. Clift and company. There was nobody on the board from Labrador –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – I mean, which was a big omission, as far as I was concerned. So, I wanted that addressed.

I wanted people outside of St. John's who lived in community and had regular interaction with people as they went about their everyday life in rural parts of the province. I wanted them represented on the board.

I, you know, spoke to the clerk and to the chief of staff about canvassing to see who or what might be available to us in terms of experience. I talked to Mr. Martin about – given the fact that we didn't have a great deal of expertise on some of the pertinent issues to the board – that when

you're hiring expertise – like, if you have Navigant there, or you have Westney there, or whoever, whatever expertise you have that are assisting you with the business of Nalcor – that you make those experts available to your board of directors –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – so at least they have an avenue –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – that they can get some information from –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – from somebody other than somebody who works at Nalcor.

**MR. LEARMONTH:** Yeah, but that doesn't respond to Mr. –

**MS. DUNDERDALE:** I –

**MR. LEARMONTH:** – Clift.

**MS. DUNDERDALE:** – I recognize that.

The issue of compensation was one that I had to take into account. First of all, the amounts of money that we were talking about, which were significant – and not just for any expertise that we might bring to the board – that everybody expected to be compensated in a similar way. And there are, you know, six subsidiaries – or six corporations over there – six subsidiaries in Nalcor all having boards – a significant number of people.

So, if we're talking compensation of \$80,000 a year, \$90,000 a year, you know, the price tag gets very high. But then, I'm – you know, I also have to look at the health boards, the education boards, all who have large boards of directors, who have great responsibilities, who put in significant time and effort in what they do on behalf of the province. And if I'm going to compensate one board, I really have an obligation to consider compensation for the vast majority of the boards.

And then that became a significant amount of money. And we never ever saw ourselves in a position that you could do that. And it's not been done to this day.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** The situation hasn't changed five years later since I left.

And that's unfortunate because we've got very, very, very good people and I expect a lot of people in this room have done the same things themselves in community, that have made themselves and their talents and knowledge, and skills and everything available to an organization. In this case – to the people of the province to do a specific piece of work. And the work is onerous. The reward is almost in your own personal satisfaction with what you're contributing to the province. But other than that – and that's unfortunate. And it doesn't speak well to the great contribution that we all get from people who choose to do this for us on their behalf.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But the circumstance was, you know, in terms of saying to the clerk, like: You need to organize something so that we can see if we can identify somebody who could fill some of the expertise gaps on the board that the board is talking about. And then let's try to put a dollar figure on how many millions of hours are we talking about here now if we go compensating boards right across the province. Because I never ever felt that I was in a position that I could compensate one and not compensate the others. And if somebody is making a decision on somebody's life and health or circumstances and the – that's equally as important as ...

**MR. LEARMONTH:** So you didn't think it was feasible or practical to –

**MS. DUNDERDALE:** I just didn't – I just couldn't see where we – I – the biggest challenge was identifying a significant pot of money to pay boards right across the province. The challenge of finding the expertise, Commissioner, probably would become less

onerous if you had something to offer somebody to come.

**MR. LEARMONTH:** Yeah. All right.

And then just for completion of this subject – on P-01623 – this is your – the Honorable Jerome Kennedy is announcing the appointment of directors Allan Hawkins, Leo Abbass and Erin Breen, so that's someone from Labrador.

So if you're choosing the appointees, why is the minister announcing the appointment of them?

**MS. DUNDERDALE:** Because the board falls under the jurisdiction of the –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – Department of Natural Resources.

**MR. LEARMONTH:** But you – you make the appointment?

**MS. DUNDERDALE:** Yes, I do.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And it may – and it goes to routine Cabinet. There's a Cabinet approval process associated with it. So there is a determination by Cabinet that these appointments are acceptable.

**MR. LEARMONTH:** But you make the recommendation to Cabinet?

**MS. DUNDERDALE:** I make the recommendation – it gets recommended up to me and then I can make the recommendation. Then it goes down to routine Cabinet usually –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and the decision is made there.

**MR. LEARMONTH:** All right.

**THE COMMISSIONER:** It's –

**MR. LEARMONTH:** Now we were –

**THE COMMISSIONER:** It's 12:30, is this a good spot to –

**MR. LEARMONTH:** Just one more question –

**THE COMMISSIONER:** Oh sure, go ahead.

**MR. LEARMONTH:** Minister Tom Marshall, when he was in the Department of Natural Resources says that – said that he actually approached you with this same position that we have to get some people with different qualifications for the Nalcor board and, I think, he said it didn't really go anywhere.

Did you – do you recall that?

**MS. DUNDERDALE:** We had these kinds of discussions all the time. We were asking a lot of board members on government boards, commissions and agencies to do a lot of work on our behalf without any – any real compensation for their effort and, you know, we wished to do otherwise. It's how we create the opportunity to make that happen was the challenge.

**MR. LEARMONTH:** So the pitch by Mr. Marshall ended up with – receiving the same treatment as that of Mr. Thompson when he brought to you the request from Mr. Clift?

**MS. DUNDERDALE:** We would have had the discussion.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** You know, we worked by consensus –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – Mr. Learmonth, there's no one at the top of the pyramid per se in decision-making except in rare circumstances.

**MR. LEARMONTH:** All right.

Okay. If it's a good time we'll continue –

**THE COMMISSIONER:** It's 12:30 so we'll come back at 2 o'clock then, this afternoon.

**CLERK:** All rise.

### Recess

**CLERK:** All rise

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** Thank you.

All right, Mr. Learmonth when you're ready.

**MR. LEARMONTH:** Thank you.

Ms. Dunderdale, could you turn to volume – I think it's one –

**THE COMMISSIONER:** Excuse me just for a second, Mr. Learmonth – I apologize, but I brought the wrong book with me for some reason. I don't know how I did that, but I'll – it's right on my desk.

Sorry.

**MS. DUNDERDALE:** That's okay.

**THE COMMISSIONER:** Mr. Learmonth.

**MR. LEARMONTH:** Thank you.

Ms. Dunderdale, if you turn to volume 1, tab 10 (inaudible). Volume 1, tab 10, Exhibit 01369 please.

Do you have that, Ms. Dunderdale?

**MS. DUNDERDALE:** 01369?

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay. Are you familiar with this document? It's – it was prepared by the Department of Finance – Department of Natural Resources on or about May 3, 2010 and it's – on page 2 – April 30, 2010. It's entitled *Nalcor Energy: The Shareholder's Perspective*.

Have you seen that document before?

**MS. DUNDERDALE:** I would have seen that document because I was still minister in the department at the time.

**MR. LEARMONTH:** Okay. Do you recall it?

**MS. DUNDERDALE:** No, I'm not – maybe, but I don't have a clear recall, Mr. Learmonth.

**MR. LEARMONTH:** Yeah, so you would've been the – in the department – the minister at the time but – so you don't – you're aware of it because you got it as a document in the Inquiry, but do you have an independent recollection of it?

**MS. DUNDERDALE:** Um –

**MR. LEARMONTH:** In other words, when you saw it – when you got it from the Commission, did you say oh, I know all about that, I remember it. Or was it just otherwise?

**MS. DUNDERDALE:** I don't remember it per se, but I know that if it was produced in the department for distribution then I would have seen this document.

**MR. LEARMONTH:** And would you have approved it?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay, do you know why it was prepared? Why this document was prepared, what initiated it?

**MS. DUNDERDALE:** It may have been around the establishment of the energy company. You know, because we had moved from, obviously, we're along in the process because we've moved on from Newfoundland and Labrador Hydro. We've moved on from the energy company, because now the energy company has a name.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And that branding exercise took some time, so it could very well be the fact that we now have an energy company called Nalcor, and to provide some more information around that.

**MR. LEARMONTH:** Yes. And if you turn to page 7 please, Ms. Dunderdale? There's a statement at the top, "The ultimate shareholders of Nalcor are the taxpayers of the Province." Do you agree with that statement?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah, and that's why as a Crown corporation, there has to be vigilance in protecting the resources of the taxpayers?

**MS. DUNDERDALE:** That's correct.

**MR. LEARMONTH:** Yeah. And if we go to page 12, the first item is: "The Shareholder is ultimately accountable for the actions of Nalcor." Do you agree with that?

**MS. DUNDERDALE:** I do.

**MR. LEARMONTH:** The next point, "The Shareholder must ensure that the taxpayers money is not being wasted and is being spent to benefit the taxpayers." Do you agree with that?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** And Nalcor – the third point, "Nalcor's decision to fund particular projects therefore must be consistent with the Shareholder's strategic plan."

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Do you agree with all those statements?

**MS. DUNDERDALE:** Yes, I do.

**MR. LEARMONTH:** Without qualification?

**MS. DUNDERDALE:** Yes, I do.

**MR. LEARMONTH:** Okay, thank you.

Next, I want to turn to – at – there are a number of exhibits. I'm not going to go through them all, but there are a number of exhibits for – and I'll pick one out for example, Exhibit P-01284, which is volume 4, tab 41, if you could look at that?

**MS. DUNDERDALE:** The tab number, please?



**MR. LEARMONTH:** Tab number 41.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** This was a document, October 30, 2012: "MHI Analysis and DG Cost Estimates Support Development of Muskrat Falls."

On page 2 there's a – second paragraph, where Mr. Kennedy is quoted: "'The costs of both the Muskrat Falls and Holyrood options have increased proportionately as a result of cost escalation and improved scope definition,' said Minister Kennedy. 'Through extensive planning, detailed design and engineering, we have now more clearly defined the scope of the Muskrat Falls project and established an informed, high-quality cost estimate. As we move towards the debate in the House of Assembly and a" discussion on the "project sanction, it is crucial to have the best information available to inform Newfoundlanders and Labradorians about the project and in the coming days will be releasing more information to better inform the public.'"

Can you confirm that when – at the time this statement was made you believed it to be true and accurate in all respects.

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yes.

And there are other documents; I'm just going to list them. I'm not going to go through every one, but some other counsel may want to. There's Exhibit P – you don't have to turn these up unless you want to comment on – P-00066, volume 4, tab 32; there's P-00425, volume 3, tab 16; Exhibit P-01630, volume 3, tab 6.

**MS. E. BEST:** Commissioner, perhaps if Mr. Learmonth could tell us what the documents are, that'd be helpful.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** As you go through them.

**MR. LEARMONTH:** Yeah. I can go through them if you'd prefer, if – I can – okay, I'll name them. Exhibit P-00066, December 17, 2012,

"Government of Newfoundland and Labrador Announces Sanction of the Muskrat Falls Project." That's volume 4, tab 32, Exhibit P-00066.

The next document is Speaking Notes, Premier Kathy Dunderdale, Decision Gate 3/MHI Report, Sheraton Hotel, St. John's, Newfoundland, October 30, 2012. That's 00425.

Next volume 3 – or binder 3, tab 6, Exhibit P-01630, that's just a – Speaking Notes, Premier Kathy Dunderdale, St. John's Board of Trade, October 3, 2012.

And that's it for the documents. Yeah. Okay, so other counsel may want to question it, but I'll just leave it at your statement that you just made.

Now, Ms. Dunderdale, I now want to turn –

**MS. E. BEST:** Commissioner, I'm unclear as to what we just did. So the documents were entered. And was Ms. Dunderdale's statement to be that she agreed with them even though we didn't –

**MR. LEARMONTH:** No –

**MS. E. BEST:** – look at them? Is that what ...?

**MR. LEARMONTH:** I asked – I think asked Ms. Dunderdale whether she can confirm that all the statements she made to the public about the Muskrat Falls Project, the cost estimates, were true and correct to the best of her knowledge, information and belief.

**MS. E. BEST:** Okay and I guess she agreed to that.

**MR. LEARMONTH:** Yeah.

**MS. E. BEST:** But at the same time we don't know that these documents necessarily reflect her – the statements.

**MR. LEARMONTH:** Okay, well, I'll tell you what, if – in terms of fairness, I don't mind taking her through all those documents. Okay?

**MS. E. BEST:** Well, if you're going to plan to hold her to – that her testimony –

**MR. LEARMONTH:** Okay.

**MS. E. BEST:** – is that they’re accurate.

**MR. LEARMONTH:** Okay. I’ll certainly do that.

**THE COMMISSIONER:** So the first one is P-00066, book 4, tab –

**MR. LEARMONTH:** But – okay, I’ve already referred to P-01284.

**THE COMMISSIONER:** Mm-hmm.

**MR. LEARMONTH:** Okay, so I don’t have to deal with that one again.

Exhibit P-00066, volume 4, tab 32 in your binder, Ms. Dunderdale.

**MS. DUNDERDALE:** Tab 72?

**THE COMMISSIONER:** Thirty-two.

**MR. LEARMONTH:** Thirty-two.

**MS. DUNDERDALE:** Sorry.

I have.

**MR. LEARMONTH:** All right.

Okay, at the third to last paragraph at the bottom, the two last sentences: “The report confirmed the engineering, costs, and project planning completed by Nalcor and affirmed Muskrat Falls as the least-cost option for electricity generation in the province. The report included the most up-to-date information on load forecasts and cost estimates including capital costs, operating costs, financing costs, fuel and interest.”

Do you confirm that that was a true and correct statement to the best of your knowledge –

**MS. DUNDERDALE:** Yes, absolutely.

**MR. LEARMONTH:** – at the time you made it?

**MS. DUNDERDALE:** I would not have made it otherwise.

**MR. LEARMONTH:** Yeah. Okay.

The next document, P-00425, that’s volume 3, tab 16. The – do you have that document –

**MS. DUNDERDALE:** Yes –

**MR. LEARMONTH:** – Ms. Dunderdale?

**MS. DUNDERDALE:** – I do, Mr. Learmonth.

**MR. LEARMONTH:** Okay, page 2, please.

The last paragraph on page 2: “Over the past 18 months between DG2 and 3, Nalcor has been working on refining the design and engineering of the project to ensure a high degree of cost certainty. The capital costs identified in the MHI report are based on the completed work of approximately 50 per cent of the engineering and detailed design work for the project, the results of early site work being completed near Muskrat Falls, and actual bid values for major components, such as turbines, generator sets” – and then we’re on to page 3 – “and the Strait of Bell Isle Cable. Having all of this information ensures an extremely reliable and sound cost estimate.”

Once again, the same question: Did you believe that to be true and correct to the –

**MS. DUNDERDALE:** I did.

**MR. LEARMONTH:** – best of your knowledge and information when you made it?

**MS. DUNDERDALE:** I did.

**MR. LEARMONTH:** Okay. And the next document is Exhibit P-01630. That’s volume 3, tab 6 in your – well, I refer to a volume, it should be a binder, binder 3, tab 6.

And that’ll be page 5, Ms. Dunderdale and at the bottom paragraph. Do you have that, Ms. Dunderdale?

**MS. DUNDERDALE:** Yes, I do, Mr. Learmonth.

**MR. LEARMONTH:** Okay.

“The House of Assembly will debate this project under the same rules as the Voisey’s Bay project was debated a decade ago. The significant difference is that, in this case, we have hired international experts to ask the critical questions of our own well-accomplished professionals at Nalcor. All the questions which need answering will be addressed through the work of independent and world-renowned experts, such as those at Manitoba Hydro International. Another difference from a decade ago with the Voisey’s Bay project is that we will be providing the analysis of those experts well in advance of the debate.”

Same question as before: Do you confirm it’s true and correct to the –

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** – best of your knowledge, information and belief at the time it was made?

**MS. DUNDERDALE:** Yes, I do, Mr. Learmonth.

**MR. LEARMONTH:** Yes.

And the last document in this series of questions, which will be the sanction decision on the Muskrat Falls Project, Exhibit P-00067, which is volume – binder 3, tab 29. This is the – you didn’t make – Mr. Kennedy prepared this –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – memorandum. But I want you to go to page 10 of this document.

Under the heading, Financial Considerations, the second paragraph: “DG3 estimates the total capital cost of the project at \$6.2 billion. This estimate includes MF costs of \$2.9B; LTA costs of \$0.7B and the LIL at \$2.68. The \$6.2B represents the total cost to the Province and Nalcor and excludes interest during construction and financing costs.”

Same question as before: Do you confirm this statement –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – is true to the best of your knowledge, information and belief at the time you made it?

Okay. Thank you.

I next want to turn to the consideration of the Public Utilities Board, which I’ll refer to as the PUB.

Ms. Dunderdale, was the decision to refer the reference, or send the reference, to the PUB in June of 2011 a decision that you made as premier, or was it a Cabinet decision? Who was involved in arriving at this decision? Because I think, earlier, the position was it wasn’t going to go to the PUB? Is that correct?

**MS. DUNDERDALE:** That’s correct.

**MR. LEARMONTH:** Can you give me a little bit of background on that, please?

**MS. DUNDERDALE:** Well, projects of this – hydroelectric projects had been exempted from review by the PUB in legislation that was put in place back in the ’90s. And the rationale was, as I understood it, due to the fact that such reviews could cause significant delay and money and, as a result of that, cause significant challenges for business planning around this kind of work. And, as a result, these types of projects were exempted.

And there was no discussion, really, of changing that legislation or diverting away from that path that had been set out at that time in terms of hydroelectric development.

As minister and – it was an issue that was raised a number of times, discussed a number of times and no modification made to the decision not to refer. After I became premier, I took it under consideration in a different light because now I wasn’t a minister; now I was a premier.

And the big debate at this point in time in the development was whether or not which of the two projects – we were still going through CPW, and the big question was what was the – which project was least cost? That was one

consideration, and the second big consideration was did we need the power.

And that debate was happening vigorously in the public arena through open-line shows and so on and in questions being put forward in the House of Assembly and so on. And to – there was so much conflicting information around those two questions, and for me and for the Cabinet, they were the two critical questions: do we need the power, and what is the least-cost option?

And in my own thinking, having that put to somebody independent of government wasn't a bad thing. So I made the recommendation to Cabinet that we have a limited referral to the PUB to answer those two questions based on the information we had to date.

So we had a full picture up to DG2, and I know that the mandate letter doesn't speak – or the mandate document doesn't speak to DG2, but it was clearly understood that this was gonna be DG2 information. And we would hear back from the PUB on those two essential questions, which were going to determine everything else: Do we need the power, and which of these two is the least-cost option?

**MR. LEARMONTH:** But you say it was clear that you were dealing with DG2 numbers. While it may have been clear to government, I – you know, I submit that it wasn't clear to the PUB until after they received the reference. In other words, it wasn't referred to in the terms of reference or any of the correspondence between government and the PUB before the PUB received the reference. Is that true?

**MS. DUNDERDALE:** It may not have been in writing, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But it was certainly in the public arena around discussion and discussion in the House of Assembly and so on.

**MR. LEARMONTH:** Well, I don't – I stand to be corrected, of course, but I don't recall seeing any documentation to support that. I know, after the decision was filed, there was a lot of discussion in the House of Assembly, but do you

– are you aware of any statements in the House of Assembly where –?

**MS. DUNDERDALE:** I can't offer you an exhibit.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** But I do recall the discussion, because there was consternation at the table, Commissioner, when, you know, Nalcor, for example, learned that I was considering recommending to Cabinet that we put it to the PUB for a limited review.

**MR. LEARMONTH:** But – oh, sorry.

**MS. DUNDERDALE:** And they weren't very happy about it.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** And so I had to consider what information we were going to put before the PUB.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And if we were going to put all of the information before the PUB, then we would have had to delay 'til we got right up against the Decision Gate. But we had just – we had gone through DG2; that tranche had worked. One and two – Gates 1 and 2 were completed. It was comprehensive information to make those decisions.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** That was the information that I was recommending that would go before PUB, and I didn't learn, until we came to the Inquiry and the documentation that you provided, getting ready for my interview, and in my interview, that the documents didn't speak specifically to Decision Gate 2 information and numbers.

**MR. LEARMONTH:** Yes.

And I'm – I agree that – with what you're saying. I'm not challenging what your saying that this was what was – this is the information within government and –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – perhaps with Nalcor –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – that it was just going to be DG2, but I’m saying that that information was not known to the PUB at the time they received the reference, it was something that was discovered later on in the process. Do you have any information –

**MS. DUNDERDALE:** No –

**MR. LEARMONTH:** – that would contradict –

**MS. DUNDERDALE:** – I don’t. I can’t –

**MR. LEARMONTH:** – that?

**MS. DUNDERDALE:** I can’t speak to that, Mr. Learmonth.

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

Now, can you explain for the Commissioner why the scope of the reference to the PUB was narrow? In other words, it was a binary thing, yes or no or what – this choice or another choice, as opposed to the full review that was given to the Nova Scotia UARB, where they – where the UARB generally had the right to examine any and all options that they thought was reasonable. Whereas our reference – there was a question; there was just two options given so that, for example, our PUB couldn’t examine the feasibility of natural gas or any other alternatives.

Why was the reference question limited in that way?

**MS. DUNDERDALE:** Two different animals, Mr. Learmonth, is the easiest answer I can give you.

In Nova Scotia, they were talking, essentially, about a power purchase agreement from Nalcor to supply part of their power needs in Nova Scotia.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** What was happening in Newfoundland and Labrador was a public policy piece that we had gone to – was part of our platform in 2003, was part of our platform again in 2007 – that we were gonna develop the Lower Churchill.

The critical question that we had to answer in terms of providing energy – electricity to our own rate base was: Is it the least cost and can we promise security of supply? And they were the two critical questions. And so, you know, do we need the power? You know, is the forecasting based on good principles and good information and following industry practice? And of the options – there’s a number been eliminated and some information was provided on all of that to the PUB, in terms of what had been considered and put to one side. And we had gotten it down to two options.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So which of these – are we on the right path here in terms of the work that we’re doing and the analysis we’re doing? Are we on the right path in terms of trying to determine which is the least-cost option?

**MR. LEARMONTH:** Hmm. But it was still open to government – I hear what you’re saying. But it was still open to government – if it had chosen to do so – to make it a much broader reference, such was done in Nova Scotia.

Is that not correct?

**MS. DUNDERDALE:** Absolutely. We could’ve changed the legislation and gone to a full review, Mr. Learmonth. There was nothing stopping us from doing it. But this was a public policy decision of something we were going to do. It wasn’t an expectation of something we would do when we – even by the time I came to the Department of Natural Resources in 2006, that we – that there was a critical path forward for us to develop power for the Island. When I came in 2006 we were still thinking about export more than anything else if the opportunity would present itself.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But, you know, in terms of a limited question around least cost – which was extremely important and we’re mandated for least cost as long as we pair it with security, that we’ve got a sustainable supply of electricity – security of supply. They were the two critical questions.

And so they were the questions I thought would be appropriate and agreed with by Cabinet to put to the PUB. We didn’t have to put anything to the PUB.

**MR. LEARMONTH:** I understand that.

But I’m asking you why the decision was made to limit the scope to the two questions, rather than do what was ultimately done in Nova Scotia; that is, allow the UARB to consider any and all options.

**MS. DUNDERDALE:** Two different animals, again, Mr. Learmonth, is all I can say.

When you’re – you know, when you’re having a discussion about a PPA, the \$1.2 billion and a discussion about a \$6.2 billion project that is gonna be the critical supplier of energy to your province as a whole, one requires much more time, much more expertise, much more information – is gonna cost a whole lot more money.

And part of setting up the energy company in the first place was to ensure that the expertise was there to find a path forward on all our energy developments in the province – whether that be hydro or oil or whatever the circumstance was – and to make sure that there was comprehensive planning around that as we move forward.

There was never an intention to bring in a second party or a third party to redo that piece of work.

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

**MS. DUNDERDALE:** But because of the discussion around whether or not we needed the power or whether this was – either one of these was the least-cost option – which was the least-cost option of the two – I felt very comfortable putting it to the PUB.

**MR. LEARMONTH:** With the narrow question?

**MS. DUNDERDALE:** With the narrow question.

**MR. LEARMONTH:** Okay. Well, that’s your answer. That’s fine.

Now, we know that Nalcor was consulted by government in developing the wording of the terms of reference. Is that correct?

**MS. DUNDERDALE:** I don’t know, Mr. Learmonth.

**MR. LEARMONTH:** Okay. Well, just turn to Exhibit P-01095; that’s volume 1, tab 30, please.

Yeah. Do you see that?

This is an email from – excuse me – this is an email from Charles Bown, Department of Natural Resources, to a number of people including at least one – or no – at least seven people at Nalcor.

So do you acknowledge that by this email government was seeking input from Nalcor as to the wording of the terms of reference?

**MS. DUNDERDALE:** I wouldn’t have been familiar with this. I acknowledge the document that I see before me.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But in terms of a – in terms of myself and Cabinet, we were quite clear on what the question was –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – to be put to Nalcor.

**MR. LEARMONTH:** But do you know why Nalcor was consulted on it?

**MS. DUNDERDALE:** I have no idea.

**MR. LEARMONTH:** No idea.

Would that have been acceptable to you referring –?

**MS. DUNDERDALE:** I wouldn't have mind Charles asking – you know, sharing information with them about where we were going. This was gonna be a big task for Nalcor. I knew they didn't want a review, but the minute that Cabinet decided there was gonna be a review, there was no push back. There was no push back whatsoever – it's all right, let's get on with it. And that's what we proceeded to do.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** But, you know, sharing with them the scope of what we were gonna do or how we're gonna do it – I mean, these were the people that were gonna have to provide the information. So, you know, giving them a heads-up on that or this is what's gonna be included. Or, you know, what do you think needs to go in here for comprehensive review? I wouldn't have any particular issue with any of that.

**MR. LEARMONTH:** All right.

Then we see the next Exhibit is P-01096, volume 1, tab 31. That's from Robert Thompson, who was then clerk, correct?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** To Brian Taylor and you – draft question.

So was Mr. Thompson charged with the responsibility of preparing the reference question?

**MS. DUNDERDALE:** He would've certainly oversaw the process.

**MR. LEARMONTH:** All right.

The next document is 00846, it's volume 1, tab 34. "Direction/Decision Note, Department of Natural Resources."

It was – on page 3 you can see it's dated May 26 and was prepared by Paul Scott, Charles Bown; reviewed by B. Delaney of Cabinet Secretariat; and, approved by Minister Skinner.

So this is the final recommendation which went to Cabinet and there's a few orders-in-council beginning on page 11 of that Exhibit and ending

on page 14. Do you see those? That was the formal approval by Cabinet of the reference question, is that correct?

**MS. DUNDERDALE:** Yes, it is.

**MR. LEARMONTH:** Required an order-in-council.

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Yeah.

Now we know that – there was – the time limit for the PUB to complete its review was initially the end of December 2012. And the evidence we have is that there was a substantial delay on the part of Nalcor in providing documentation to the Public Utilities Board.

Is that your understanding?

**MS. DUNDERDALE:** It – it was brought to my attention.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I became aware.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And I heard Mr. Kennedy's response to it here in the Inquiry, but I specifically spoke to Mr. Martin. I called him.

**MR. LEARMONTH:** When was this, Ms. Dunderdale?

**MS. DUNDERDALE:** When the PUB made us aware that they weren't getting the information in a timely way.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And so I called Mr. Martin and said: This is the complaint that we have received. And his explanation, which was perfectly legitimate is that: We're extremely busy over here.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** We have that many balls in the air that we're really, really over-extended

in terms of all the things we're trying to do and so it's been difficult.

And my response to that was that I wasn't particularly interested in the reasons why, but it had to stop immediately. And to do whatever you need to do to make sure that the PUB gets all of the information that it requires in a timely fashion. I don't care what it takes, who you have to hire, what you have to do. You know, we've put this question to them, we've asked them to do a piece of work on our behalf. Now, make sure that they can do it.

**MR. LEARMONTH:** Now, Nalcor was not in favour of the reference in the first place.

Did you get any sense that they were – Nalcor was dragging its feet a little bit?

**MS. DUNDERDALE:** Not a bit.

**MR. LEARMONTH:** No. What explanation –

**MS. DUNDERDALE:** Not a bit.

**MR. LEARMONTH:** – was put forward to you for the reason for the delay?

**MS. DUNDERDALE:** Just as I explained – a lot going on, feeling very stretched within their own organization. The volume of information that was being sought by the PUB was kind of overwhelming for them and they were having difficulty responding.

My response to that was: I'm not interested in what the issues are – resolve them ASAP and get the information. And then on top of that, we extended the PUB by a three months – their hearing time by three months – to make up for the time lost by the slow receipt of information.

**MR. LEARMONTH:** Yes.

Now the PUB ultimately requested an extension 'til the end of June 2012 and that was declined.

**MS. DUNDERDALE:** Yes, it was.

**MR. LEARMONTH:** Do you know the reason why it was declined?

**MS. DUNDERDALE:** Well, they – MHI had reached its conclusion, their expert had reached its conclusion. And the other piece of it was that the process, which I had believed to be quasi-judicial, was now highly politicized. And I found that very difficult.

When political comment is at play, when political discussion is being engaged in in the public arena by persons who you feel ought to be impartial and studying this with an independent eye, then I lost faith in the process, to be quite frank with you. And I wasn't interested in extending beyond the nine months. We'd take the work that was completed to that point, which was MHI's report, and we'd move on.

**MR. LEARMONTH:** And that was your decision was it?

**MS. DUNDERDALE:** Well, I certainly would have discussed it with Cabinet. There is not a pyramid in government, you know. There is a (inaudible) is a more appropriate way of discussing decision-making and it's done by consensus and Cabinet. They are – Cabinet themselves are the decision-makers.

So you know, we discussed not to move any further, Commissioner, with the PUB process at that point. We just didn't see it as being productive.

**MR. LEARMONTH:** And I take it you're referring to the comments in the media by Chairman Wells –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – who's had words to the effect that it was a torturous process to get documents of Nalcor.

Is that what you're referring to?

**MS. DUNDERDALE:** There were a number of things. And you would see even in his own interview –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – and that discussion best continued since there were conversations



happening all over the city with different people who didn't have anything to do with the process in a very prejudicial way –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – about the information that was being examined at the PUB.

**MR. LEARMONTH:** Yes. And Mr. Wells gave evidence on those discussions while he testified.

Did you see his evidence?

**MS. DUNDERDALE:** No, I didn't.

**MR. LEARMONTH:** All right, but – so the fact that Mr. Wells was speaking, where you believed he shouldn't be speaking, was the reason that you declined to give an extension to June 30, 2012?

**MS. DUNDERDALE:** I – Mr. Commissioner, I had lost confidence in the process. I put it to the PUB expecting everyone there to act in a professional way – that's all I could ask. Because once I put it into the hands of the PUB, I had no control over the outcome.

And I had enough confidence in the PUB to do that. And what I was looking for didn't happen – it became a highly politicized exercise.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And so in terms of, you know, here's the mandate you were given, here's the timeline, you know. If you didn't feel that you could do the work you should –, you could very well have said no to me right from the get-go – that you weren't going to accept it under those circumstances.

You know, I tried to respond to you, you know, as soon as I heard that you were having difficulty getting information, I moved immediately to correct it. I gave an extension to compensate. And now we have moved from an independent analysis that I'm gonna get a report at the end of the day, and we're all gonna find out in this province at the same time what the PUB thinks of this project. There's something else altogether going on here. And it undermined confidence; it undermined my confidence.

And so, that's why I said: Thank you, we'll take the work; we appreciate it and I'm sorry that you couldn't do more. And we're gonna move on.

**MR. LEARMONTH:** Yeah.

So, that – if – in other words, if Mr. Wells had not made these comments, it's – can I infer from what you're saying that you would have given an extension?

**MS. DUNDERDALE:** I'm not gonna deal in hypotheticals, Mr. Learmonth; I can only tell you what happened.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** And that's what happened.

**MR. LEARMONTH:** All right.

Now, Mr. Kennedy – when he testified, expressed some regret that a further extension to June 30 was not given.

Did you hear him say that – when he looked back on it?

**MS. DUNDERDALE:** I can't recall that specific –

**MR. LEARMONTH:** Well, he did say that –

**MS. DUNDERDALE:** – I'm not sure if I was watching that part.

**MR. LEARMONTH:** Well, did he say that –

**MS. DUNDERDALE:** I –

**MR. LEARMONTH:** – not –

**MS. DUNDERDALE:** – that's fine –

**MR. LEARMONTH:** – in those exact words, but he said looking back, he regrets, or if he had his time back, something like that, he would have –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – given the PUB further time.

Do you have a similar expression of regret in retrospect?

**MS. DUNDERDALE:** No, I don't, Mr. Learmonth.

**MR. LEARMONTH:** You don't. All right.

But when you – you know, the evidence we had from the members of the PUB – of the – there was two who testified, Mr. Wells and Darlene Whalen, and also legal counsel Maureen Greene and Fred Martin. I don't believe I've left anyone else out. They had planned to do a process called a technical conference in January. And they were going to have some hearings and so on. But all that had to be put aside because of the – because they didn't get the extension they needed.

Did that concern you as a – being a compromise on the integrity of the process of the PUB?

**MS. DUNDERDALE:** I can only tell – I can only repeat what I said to you earlier. To me, the whole process had been compromised by the conduct of the chair, that continued and continues to this day in terms of how he felt about Muskrat Falls. And what, you know, whatever his personal feelings were –

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

**MS. DUNDERDALE:** – you know, he was chair of the PUB. And I believe I had a right – as did the people of Newfoundland and Labrador – to expect him to set his personal views to one side and do a complete objective examination of the issue at hand and make a report to government.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And then he could move on and do whatever. Or come to us and lay out a case that another piece of work needed to be done to make this a better informative document for government.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** He skewed that process to such a degree that I couldn't have any confidence – he failed in the first mandate, in

my view, in terms of an objective look. Because in the process, he almost became a lobbyist against Muskrat Falls while you're reviewing the project. So I wasn't really interested in moving on with Mr. Wells.

And I don't have anything to say, Commissioner, about the other people at the PUB who were involved in this process. I've – I only met one of them many, many, many, many years ago. And I don't think I've ever spoken to any of the other people there; know very little about them.

**MR. LEARMONTH:** Okay, thank you.

Now, we had evidence from Mr. Peter Alteen of Newfoundland Power yesterday. I don't know whether you saw his evidence.

**MS. DUNDERDALE:** No, Mr. Learmonth.

**MR. LEARMONTH:** Or saw him give his evidence.

**MS. DUNDERDALE:** I was preparing to come in, so I was –

**MR. LEARMONTH:** Otherwise occupied?

**MS. DUNDERDALE:** – having a quiet time.

**MR. LEARMONTH:** Yes.

Well, Mr. Alteen, who is the president and CEO of Newfoundland Power made some statements about, you know, his perception or Newfoundland Power's perception of this process and he said pretty well word for word that the politics of the process shut Newfoundland Power out of the process. That it was a political matter rather than a utility matter. That's generally what he said.

Do you have any comment on that?

**MS. DUNDERDALE:** That surprises me, Mr. Learmonth, is what I'm going to say to this.

At the time all of this was happening, Earl Ludlow was – I'm not sure what his title is – president, CEO – anyway he was head of Newfoundland Power and I had occasioned many times to be in the company of Mr.

Ludlow, for whom I have enormous respect. Mr. Ludlow would have been welcome to my office, to Cabinet, to government, generally, anytime to make the concerns that he may have had, as head of Newfoundland Power, known to us.

I also know that he was held in high regard by the people at Nalcor and had a collegial relationship with them and could have done that as well, and we had general discussions about the development. At no time did Mr. Ludlow ever express to me any concern about any part of the process in the Muskrat Falls development.

**MR. LEARMONTH:** Yeah.

And were your discussions – the discussions you’re referring to with Mr. Ludlow, what time frame did those discussions that you’re referring to take place?

**MS. DUNDERDALE:** From the time that he took – he came back and became president of Newfoundland Power and CEO, up until the time I left.

**MR. LEARMONTH:** Yeah. So would that have been within the period, say, June 1, 2011 to March 30 –

**MS. DUNDERDALE:** Yes, the –

**MR. LEARMONTH:** – 2012?

**MS. DUNDERDALE:** – whole expanse of it –

**MR. LEARMONTH:** Excuse me, yes –

**MS. DUNDERDALE:** – of time that we were doing Muskrat Falls.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** I had many encounters (inaudible).

**MR. LEARMONTH:** With him during that period that the –

**MS. DUNDERDALE:** Yes, with –

**MR. LEARMONTH:** – matter was before –

**MS. DUNDERDALE:** – Mr. Ludlow –

**MR. LEARMONTH:** – the PUB?

**MS. DUNDERDALE:** Absolutely. Absolutely.

**MR. LEARMONTH:** Yeah. And was there any discussion at all about it?

**MS. DUNDERDALE:** None, he never raised a concern. And Mr. Ludlow was well aware that I had a lot of time for him and for his company and that anytime he could have picked up the phone and called me and I would have welcomed the call.

**MR. LEARMONTH:** Yeah.

Well, during the time frame we just defined, are you saying that Mr. Ludlow and you in your discussions were silent on the question of the PUB reference, or that you discussed it but that he didn’t make any unfavourable comments?

**MS. DUNDERDALE:** I don’t remember him raising the issue of the PUB reference with us at all; anything about the PUB –

**MR. LEARMONTH:** And you didn’t raise it.

**MS. DUNDERDALE:** – with me, personally.

**MR. LEARMONTH:** So there was no discussion?

**MS. DUNDERDALE:** And if Mr. Ludlow had a concern and – you know, they only generate 7 per cent of their own power, they’re reliant on –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – Newfoundland and Labrador Hydro for their power supply for their customers, so my answer is to you around that question is if he had a genuine concern about what was happening in terms of the development of Muskrat Falls, my knowledge and understanding of Mr. Ludlow is that he would not have been shy about raising that with me or raising it with Nalcor, and I would’ve welcomed any comment that he had.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** As I said, I have enormous respect for Mr. Ludlow.

**MR. LEARMONTH:** Yes, and so for that reason you were surprised at Mr. Alteen's evidence yesterday?

**MS. DUNDERDALE:** Absolutely, it was the first I heard of it.

**MR. LEARMONTH:** It's the first you heard of it, all right.

Well, apart from the comments that Mr. Alteen made about the process being political and that the politics of it shut Newfoundland Power out of the process, just putting that aside, Mr. Alteen did say that the way that the reference was structured, that Newfoundland Power was precluded from participating as an intervenor, and that Newfoundland Power could've added a lot to the debate in terms of reliability and other matters, other utility matters.

So, we'll put – just putting aside the political comments –

**MS. DUNDERDALE:** Sure.

**MR. LEARMONTH:** – and just focusing on that part of it, which is that – I'll summarize it this way: That Newfoundland Power was in a position to bring something to the discussion and the debate, and the way that it was structured, whereby any questions that Newfoundland Power had would have to be fed through the Consumer Advocate, that that meant that the fulsome debate that could otherwise be available was shut down.

Do you have any comment on that position?

**MS. DUNDERDALE:** Well, Mr. Learmonth and Commissioner, the only thing that I can tell you is that anything that Newfoundland Power had to say with regard to Muskrat Falls would've found a receptive audience –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – in the government. And if a – another kind of process needed to be examined to see that they had a fulsome expression of whatever their concerns were, it certainly would have been considered.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** We would never ignore a company like Newfoundland Power or somebody like Mr. Ludlow, if he had something to say about this project.

**MR. LEARMONTH:** So I know we're talking, you know, very much in hindsight and hypothetically, but I will put this to you, if you feel comfortable, I'll ask it. Are you suggesting that if Mr. Ludlow had met with you and said: Look, we want to be involved in this, can you, you know, change things so that we can become involved, that you would have given that request consideration?

**MS. DUNDERDALE:** I can tell you –

**MR. LEARMONTH:** Consideration?

**MS. DUNDERDALE:** – that anything that Mr. Ludlow or Newfoundland Power had come to the government with, we would have been prepared to examine it. They are the other utility in the province.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** They're critical to the delivery of power to the residents of the province. They're a huge player. And – and that – and nowhere in the process – and I'm saying – because this is not just Newfoundland Power sitting over there and letting us get about with whatever we were doing and not having anything to say. There were many occasions when we were having interaction – about what was happening in the province, social interactions and so on, we were together. We got along very well together.

There was all kinds of opportunities to raise any issue you might have. Even being shut out of the PUB. I never heard it. Not once.

**MR. LEARMONTH:** Until yesterday?

**MS. DUNDERDALE:** 'Til Mr. Alteen appeared here yesterday – was the very first time I ever heard a sound from Newfoundland Power.

**MR. LEARMONTH:** So it came out of left field, we'll say. Is that –?

**MS. DUNDERDALE:** Yesterday, yeah. It absolutely did. I was very surprised.

**MR. LEARMONTH:** All right.

Now you – the report was given to government I think at 10 o'clock at night, March 30 or something like that and then you – you've already talked about the fact that you met on April 1 – it's a Sunday morning – to review it, then you engaged MHI. I'm certainly not going back into that.

But I'd like you turn to Exhibit P-00727, which is volume 2, tab 63 please.

Do you have that, Ms. Dunderdale?

**MS. DUNDERDALE:** Tab 63.

**MR. LEARMONTH:** Tab 63, volume 2.

**MS. DUNDERDALE:** Yes, I have it.

**MR. LEARMONTH:** Okay. It's a release from the Executive Council and Natural Resources dated April 2.

Okay, the first – the second paragraph attributes this quote to you, “Our government has been intent from the outset on ensuring the proposed development of Muskrat Falls is subject to scrutiny and analysis prior to any decision on sanction of the project. This is why we engaged the PUB in the first place,” said Premier Kathy Dunderdale.

“I am disappointed that after nine months, in excess of \$2 million spent, and the PUB having access to thousands and thousands of pages of documentation, that they have chosen not to fulfill their responsibility as it relates to the terms of reference for their review to determine whether Muskrat Falls is the least-cost option to respond to our future power needs. This is especially puzzling given that others have been able to use the same information available to the PUB to assess whether or not the development represents the least-cost option.”

Now was that – were those statements made whether – made by you as a further expression of your disdain for the actions of Andy Wells and what you said was politicizing this?

**MS. DUNDERDALE:** It wasn't my further disdain, it was how I felt about the whole exercise and my first public expression –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – of my disappointment in what had taken place. I didn't have to refer this question to the PUB.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And in hindsight, nobody could question or put an argument that I would have had any more criticism than I'd gotten for putting it to the PUB, than I would've if I hadn't put it to the PUB. But I sincerely put it to the PUB around the two critical questions, and once it went in their hands – it is for you now to examine and come back.

So if you come back and say no, I don't need the power, and this is why we don't need the power. And of these two options, this one, you know, is better than the other one or whatever – there are other things you can consider than – then that was better than what I got, because what I got was nothing, except the MHI report.

And as I said, we're \$2 million and 9 months down the road now, so you start to get a better understanding of why the legislation was put in place in the beginning –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – so that we could avoid these kinds of exercises.

**MR. LEARMONTH:** Yeah. But based on your earlier comments, is it fair to say that your attitude towards the PUB was coloured to a great degree by the comments that Andy Wells made in January, 2012?

**MS. DUNDERDALE:** They were – there were commentary going about this – there were hearsay reports all the time – never mind in terms of the comments that he made publicly. There were hearsay being reported back about political discussions that the chair was engaged in.

And, you know, I did take some of that into account because they were reliable sources and of course, Commissioner, as I said – Andy Wells confirmed it in the transcript of his interview with you, which I have had access to before coming here today.

**MR. LEARMONTH:** Yes. Well he – in addition, he’s testified at the Inquiry. Or are you talking about the transcript of –

**MS. DUNDERDALE:** I didn’t hear his –

**MR. LEARMONTH:** All right. Okay.

**MS. DUNDERDALE:** – his testimony here.

**MR. LEARMONTH:** Okay. But just so other counsel will be aware – there’s another Exhibit P-00601 – volume 2, tab 62 – which is a Hansard – House of Assembly Proceedings dated April 2, 2002 [sp 2012] and I’ll just turn to page 8 and 9 of that document, please?

**THE COMMISSIONER:** Tab – which one again?

**MR. LEARMONTH:** Tab 62 – volume 2. Eight and 9, please, Ms. Dunderdale.

**MS. DUNDERDALE:** Yeah. I’m here.

**MR. LEARMONTH:** I’ll just refer you – like the bottom of page 2 [sp page 8] – right towards the bottom: “Mr. Speaker, I did not get a report from …” – this is just a similar to the comments that you made earlier and on page 9 there’s further comments. I’m not going to go through them at all because they’re just – they’re consistent with the comments you made –

**MS. DUNDERDALE:** I wasn’t happy, Mr. Learmonth.

**MR. LEARMONTH:** You weren’t –

**MS. DUNDERDALE:** I wasn’t happy.

**MR. LEARMONTH:** No. No. I don’t think so. No.

And last there’s been – you’ve referred to Mr. Wells and – well, his interview transcripts, and he’s testified here and I know that you’ve

acknowledged that you made a phone call to Mr. Wells on or about April 5, 2012. Is that right?

**MS. DUNDERDALE:** I did so.

**MR. LEARMONTH:** Yeah. And there’s different accounts of the telephone conversation – there’s –

**MS. DUNDERDALE:** Well, there’s my account and Mr. Wells’.

**MR. LEARMONTH:** Yes. There’s conflicting accounts as to –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – what was said, and the tone and so on. So I want to give you an opportunity to respond to what Mr. Wells said and I first want to refer you to the record that Mr. Wells had of this telephone conversation – just to give a little history.

At the interview, Mr. Wells said that he had made a record and put it – a record of a telephone conversation that you had with him and he put it in – he filed it at the board and then we searched for it and it didn’t turn up anywhere. And then it turned up after he gave evidence here. Apparently, it was in some box in his office or – anyway, so that’s how this record turned up. We got this from the PUB.

Anyway, he says – it’s volume 2, tab 71 –

**THE COMMISSIONER:** Tab 71.

**MR. LEARMONTH:** – Exhibit 01619.

**THE COMMISSIONER:** Seventy-nine – 71, so tab 71 in your book.

**MR. LEARMONTH:** Yes. And the writing is fair.

Fourth line of the record says: “Dunderdale” something –

**UNIDENTIFIED FEMALE SPEAKER:** Warned.

**MS. O’BRIEN:** Warned me that.

**MR. LEARMONTH:** – “warned me that ... ‘I am fed up with the Board. I have had enough.’” That’s the first comment.

Did you say that in that telephone conversation?

**MS. DUNDERDALE:** No, I didn’t.

**MR. LEARMONTH:** Okay.

And then he goes on: “Fred Martin was trying to interfere with govt’s decision to hire MHI.”

You’re aware of that issue, are you, with government’s attempt to hire MHI, Ms. Dunderdale?

**MS. DUNDERDALE:** No, I’m not.

**MR. LEARMONTH:** Well, the issue –

**MS. DUNDERDALE:** I mean, I know we had a meeting the day before and we’d discussed hiring MHI, but the report was out then –

**MR. LEARMONTH:** Yeah. Well, anyway –

**MS. DUNDERDALE:** – and the work was done.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And so then a decision was made that day to pursue MHI –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – to do the DG3. That’s what I know.

**MR. LEARMONTH:** Yep.

**MS. DUNDERDALE:** I know in his interview that he accuses us –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – of interfering with MHI while they were still working for them and doing the work for them.

**MR. LEARMONTH:** Yep.

**MS. DUNDERDALE:** And that we were in a conflict interest, is one of the many accusations he makes –

**MR. LEARMONTH:** Yes. Well, I’m not –

**MS. DUNDERDALE:** – in his interview.

**MR. LEARMONTH:** – just to record what the issue is, according to my understanding, and I’m not expressing any view of course on the merits of it, whether it has merits or not, but, apparently, the people at the PUB, including Darlene Whelan who is an engineer, took exception to the fact that before MHI had been discharged from its engagement with the PUB that government had contacted MHI with a view to retaining them and there was some feeling at the PUB that this was not correct and so on. And that was – that’s generally what the issue is. There’s different points of view on it.

**MS. DUNDERDALE:** I can’t speak to it –

**MR. LEARMONTH:** Yep.

**MS. DUNDERDALE:** – Mr. Learmonth. I – you know, the discussion we had the day after the report was issued was the first discussion that I think that I can recall that we talked about hiring MHI to do Decision Gate 3.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And then I would’ve left that –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – process in the department; moved on, expected that they would –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – explore that.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** They only – you know, I hadn’t had a discussion with Andy Wells since my time in municipal government.

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** And referred it to the PUB where I knew he was, and hoped that I would get back an objective view. By the time that I received the report, I wasn't particularly surprised at the nature of it. But I wasn't angry with Andy Wells. I thought, given his position, one could expect better of him, and I didn't feel that he lived up to the position that he had taken on.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But I certainly wasn't going to get into a mud-slinging match –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – with Andy Wells. There's no reason for me to go there.

**MR. LEARMONTH:** Yeah. But, I guess, one question that emerges from this, like, why would the premier of Newfoundland and Labrador call the PUB, as opposed to having someone else in your department do it? Why –

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – would you personally call him?

**MS. DUNDERDALE:** The issue was pushed over to me. The question I asked was: Why do you want me to call Andy Wells? And what I was told was there had been a significant effort to get this letter – and you have a better idea of what the letter is. I couldn't recall it at the interview.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And I still don't know recall what the letter was.

**MR. LEARMONTH:** Just to interrupt you, if I might. The interview is in the – letter that, apparently, you're requesting is – has been entered as Exhibit 00602.

**MS. DUNDERDALE:** Yes, and you –

**MR. LEARMONTH:** Volume 2, tab 68. It's undated.

**MS. DUNDERDALE:** And you showed it to you me –

**MR. LEARMONTH:** Yes. This –

**MS. DUNDERDALE:** – at the interview.

**MR. LEARMONTH:** – was to release MHI from whatever.

**MS. DUNDERDALE:** Whatever it was.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** But the department said to me that it was –

**MR. LEARMONTH:** Oh, sorry, the letter I referred to is not the letter of release. That's elsewhere. This is the letter that Paul Wilson of MHI wrote to the board requesting a release, yeah.

**MS. DUNDERDALE:** Well, there's two points, Mr. Learmonth.

**MR. LEARMONTH:** Yep.

**MS. DUNDERDALE:** It's not normal for the premier to be making these kinds of requests. This kind of stuff doesn't get pushed up to the premier's office.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So the fact that it was, was unusual. I was told that there was a timing issue.

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

**MS. DUNDERDALE:** That we really needed to get this piece. And they – would I make the call?

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And I made the call.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And the call was short and sweet. You know, neither one of us pretended that we were friends. So I told him why I was calling and asked if I could have the



letter at the end of business that day. And he said: Yes, Premier; you can, Premier; certainly, Premier; we'll send it to you, Premier. And that was the end of the conversation.

But I will tell you, Commissioner, that I can have a little bit of fire about me from time to time and if I wanted to have words with Andy Wells, I wouldn't have needed an excuse to call him. Or I felt that that was important or something I should do, or I wanted to vent my spleen, I wouldn't need somebody to come over and hash up an excuse for me to call Andy Wells.

I'm not interested in getting into it with Andy Wells. Not now, not then, not ever. There's nothing to be achieved from that.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And I'm not engaging in that kind of behaviour. And, you know, I might not have been happy with him.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I might have been fed up with him. But I didn't interfere in anything he was doing.

**MR. LEARMONTH:** Yeah. Well –

**MS. DUNDERDALE:** And the report was in. So I could have been unhappy with the whole darn lot of them.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** There was no impact or consequence. But I'm not in the habit of expressing those kinds of views and starting a racket for no reason at all, for my own amusement, or chastising somebody. That's not what I want to do.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And I wasn't going to be part of that parade.

**MR. LEARMONTH:** Yeah.

Well, he – Mr. Wells said in his evidence, which he gave to the Commission October 25, 2018 on page 74, he said – I asked him ...

But in any event, he gave a pretty well verbatim account of that telephone conversation. How confident are you that your recollection is correct?

Mr. Wells: Oh, absolutely. And I said: Yeah. And he said: And the tone of Ms. Dunderdale was what? And Mr. Wells said: Menacing, threatening. This was an angry person. This was a bully.

That's what he said.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** What comment do you have to those?

**MS. DUNDERDALE:** I have no comment whatsoever, Mr. Learmonth. None at all.

**MR. LEARMONTH:** Is it true or not true?

**MS. DUNDERDALE:** Of course it's not true, Mr. Learmonth.

I am not gonna become part of Andy Wells's –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – parade. Not here –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – not now, not then.

**MR. LEARMONTH:** Yeah. Well, I'm just putting this to you –

**MS. DUNDERDALE:** I understand.

**MR. LEARMONTH:** – so that you have an opportunity –

**MS. DUNDERDALE:** I've read his –

**MR. LEARMONTH:** – respond.

**MS. DUNDERDALE:** – interview.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** I – you know, I didn’t put any questions to my counsel to put to Mr. Wells. That’s his view; he’s welcome to it. I’ve moved on, and that’s where I’m gonna keep on going in a positive direction.

**MR. LEARMONTH:** So you deny saying that – words such as I am fed up with the board, I’ve had enough, you deny that?

**MS. DUNDERDALE:** If that’s what I wanted to say, I would’ve said it; I didn’t say it.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** I don’t – I didn’t feel any need to engage with Mr. Wells on what had occurred. There was no point to it. It was – it would – it’s not how I operate. It’s just an argument and would be an argument for argument’s sake.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** It would be fuel to the fire of what I already had an issue with. Don’t stoop when there’s nothing to pick up. Move on.

**MR. LEARMONTH:** All right.

One point that I’d like to bring to your attention before we end this discussion on this point.

In your interview, you said that you’d been waiting for this letter for weeks?

**MS. DUNDERDALE:** Well, that’s what I – there was an urgency –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – to it. I didn’t know about the letter ’til that day, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I hadn’t been –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – waiting for it.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** But, you know –

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** – there was urgency attached to the letter, because I wouldn’t even know about the letter if the department hadn’t brought it over and brought it in to the Premier’s office to the chief of staff or the clerk, ’cause –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – I can’t even remember which one brought it to my attention –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – to say can you please call over there and get this letter, because we’re calling and calling and calling and we think people are playing games with us. It’s not getting produced. Perhaps if you ask for it, we can get the letter, and we can move on –

**MR. LEARMONTH:** Yeah, but –

**MS. DUNDERDALE:** – which is what I did.

**MR. LEARMONTH:** Yeah, but I just – in your transcript you said my understanding we’ve been asking for the letter for some time, weeks, and hadn’t been received, that’s on page 91.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** And on page 92, you say – my question was: But why wouldn’t you get someone else to call him?

That – someone else had been calling him. That was the whole thing. That’s why it got bumped up to my office. That despite significant attempts by every department. I can only – you know, it would’ve had to come from the Department of Natural Resources. I mean, even the fact that they referred it up to the office – up to the Premier’s office – would speak to – because I wouldn’t have been involved at that level.

The only comment I would make is that you didn’t get the report of the PUB until almost the

end of the day on March 30, so it couldn't have been weeks.

**MS. DUNDERDALE:** I don't know –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – how long it was.

**MR. LEARMONTH:** Okay, fair enough.

**MS. DUNDERDALE:** A request came in to –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – me that day, saying we've been trying and trying and trying to get this letter – perhaps they were trying all morning; I don't know. Or they could have been trying for day – I don't know.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** But could you please see if you can apply some pressure to get this letter?

**MR. LEARMONTH:** Yeah.

So the tone of the conversation was – how would you describe it?

**MS. DUNDERDALE:** Professional.

**MR. LEARMONTH:** Professional? Yes, okay.

**MS. DUNDERDALE:** And assertive.

**MR. LEARMONTH:** And assertive.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Did you hang up on him at the end of your –

**MS. DUNDERDALE:** No, I said –

**MR. LEARMONTH:** – discussion?

**MS. DUNDERDALE:** – well, I did, after I said thank you very much, I appreciate that.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** It wasn't warm and friendly, Mr. Learmonth.

**MR. LEARMONTH:** No, I understand. Yeah.

All right –

**THE COMMISSIONER:** Is this a good place to break now, Mr. Learmonth? We're at our midday – mid-afternoon.

**MR. LEARMONTH:** We could, but I – we could break now. I'm almost finished.

**THE COMMISSIONER:** Okay, so let's break then 'til – for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Mr. Learmonth.

**MR. LEARMONTH:** I wanted to ask you some questions about the Joint Review Panel.

**UNIDENTIFIED FEMALE SPEAKER:** Your microphone.

**MR. LEARMONTH:** I wanted to ask you some questions, Ms. Dunderdale, about the Joint Review Panel report. You're familiar with that, are you?

**MS. DUNDERDALE:** Yes, I am.

**MR. LEARMONTH:** Yeah.

Now, at the time, you were premier. Correct?

**MS. DUNDERDALE:** Yes, I was.

**MR. LEARMONTH:** It was released in August 2011.

**MS. DUNDERDALE:** That's right.

**MR. LEARMONTH:** Did you participate or were you involved in any way in the preparation

of the government's response to the recommendations of the Joint Review Panel?

**MS. DUNDERDALE:** I would've reviewed it after all of the responses were collected.

**MR. LEARMONTH:** So you would've had to sign off on it, is that correct, or ...?

**MS. DUNDERDALE:** Yes, in terms of it – once it had been out to all of the relevant provincial and federal departments and the responses put together to the different recommendations, then I would've reviewed it.

**MR. LEARMONTH:** All right.

Now, I'd like you to go to Exhibit P-01608, volume 1, tab 39. This is: "Muskrat doubts can be resolved," CBC, August 26. So this was just shortly after the report had been prepared.

But I just look at the first paragraph: "An independent review that found that the proponents of the Lower Churchill hydroelectric megaproject have not proved their case will not stop the plan, Premier Kathy Dunderdale says." Was that not a very early response to a report that was, I think, 200 pages long? I mean, weren't you very quick off the mark on making those comments?

**MS. DUNDERDALE:** All I can say is, Mr. Learmonth, I wouldn't have made the remarks if I weren't comfortable with them.

**MR. LEARMONTH:** All right, so you believe you would have read the report before you made those comments?

**MS. DUNDERDALE:** I would – normally the way – I wouldn't have gone line by line through the report.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** Others read the report.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And they would call and if there was an executive summary I would go through that. And then somebody would take me

through the highlights of the report and then take me through the different recommendations.

**MR. LEARMONTH:** All right.

Now, there's just a few recommendations. I'm going to – there are 83, I think, or thereabouts, but I just want to take you to some; other counsel may want to go into it in greater detail.

In Exhibit P-00051, which is volume 2, tab 57, now Recommendation 4.1 – that's No. 1, Recommendation 4.1: "The Panel recommends that, if the Project is approved, before making the sanction decision for each of Muskrat Falls ... the Government of Newfoundland and Labrador undertake a separate and formal review of the projected cash flow of the Project component being considered for sanctioning (either Muskrat Falls or Gull Island) to confirm whether that component would in fact provide significant long-term financial returns to Government for the benefit of the people of the Province."

The response: "The Government of Newfoundland and Labrador accepts the principle that a review of the Project's financial viability is required prior to sanction, but does not support the Panel's assumption that the information provided by the proponent was inadequate. Based on information that Nalcor has already provided, the Government is satisfied that the development of each component of the Project will result in significant financial benefits" et cetera.

So why wouldn't you follow that recommendation? I mean, this was a recommendation made by a panel that had done a lot of work and held hearings, very eminent people on the panel. Why would you reject that recommendation? Can you tell me?

**MS. DUNDERDALE:** For the very reasons that are stated in the response. You know, a thorough review had been done of the business case. It had a business case that had been developing over eight years. Many, many, many sets of eyes have been on this piece of work and we were satisfied, we didn't see value in repeating what had been done and had been reviewed a number of times.

**MR. LEARMONTH:** Okay, well, reviewed by who? By Nalcor we know, and perhaps by Navigant and by the PUB?

**MS. DUNDERDALE:** And by the federal government.

**MR. LEARMONTH:** Okay, those are those – and NRCan –

**MS. DUNDERDALE:** And they're significant reviews.

**MR. LEARMONTH:** All right.

So that was your reason, anyway, for turning down that – or declining to follow that recommendation.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** The second one, No. 2, Independent analysis of alternatives to meet domestic demand: "The Panel recommends that, before governments make their decision on the Project, the Government of Newfoundland and Labrador and Nalcor commission an independent analysis to address the question 'What would be the best way to meet domestic demand under the 'No Project' option, including the possibility of a Labrador-Island interconnection no later than 2041 to access Churchill Falls power at that time, or earlier, based on available recall?' The analysis should address the following considerations ...."

Now – and there's a number of points on page 2 which follow. And the response was: "The Government of Newfoundland and Labrador does not accept this recommendation. The information provided by Nalcor to the JRP on the need, purpose and rationale for the Project provides an adequate basis to conclude that the interconnected Island alternative is the long – term, least cost option ...."

Now, why would you not have followed this recommendation? That – the no project option, including the possibility of a Labrador-Island interconnection – in other words, building a transmission line from Churchill Falls to the Island, Soldiers Pond, using at a minimum the 270 or 300 megawatt less load losses and then bring that to Soldiers Pond and maybe try and

negotiate a power purchase agreement with Quebec. You know, other alternatives such as that.

Why was that rejected outright?

**MS. DUNDERDALE:** That had been rejected some time ago.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** We were moving through a process towards a decision on the least-cost project. And you have to move forward, you can't continue to examine options, examine options, examine options for – you'd be at it for 10 or 15 years. There come points in time that you have enough information to move on to the next piece and leave that behind you.

And in terms of Newfoundland and Labrador Hydro, significant pieces of work have been done on elimination of possible sources of generation as being least cost. That work continued in the energy company, Nalcor, and we were in a completely different place. So we believed that these options had been thoroughly examined, eliminated for good reasons and it was time to move on. And we did move on.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** We weren't gonna back up and start the planning process all over again – which essentially this is – put everything we had done to one side and start again.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** There are waypoints in – when you're doing any kind of a project that you have to make a decision and leave things behind and move on to the next piece. And that's whether you're building a hydro dam, you're building a school, you're building a hospital, whatever. You can't continue to turn around and start from the beginning again.

**MR. LEARMONTH:** Yeah.

Well, did your government or in the Williams government – do you have any recollection of ever approaching Hydro-Québec to see whether

a power purchase agreement could be a possibility?

**MS. DUNDERDALE:** I don't think there was ever a discussion around a power purchase agreement. But Premier Charest and I were good friends and we had lots of conversations, Commissioner, about power.

But I have to tell you that – and I'm speaking to you now as a political person – that I would have a great deal of difficulty, even if they had the power – which I was told that they didn't have the power and shown the documents to support that. And I also know that they had released their Plan Nord, which spoke to developing new generation in La Romaine. So they're talking about developing rivers in La Romaine at a much higher cost than Muskrat Falls; that they certainly had some kind of an issue around energy supply.

However, putting that to one side, I would have the greatest difficulty as a premier making the responsible – making the province reliant on Hydro-Québec for their power supply. And that's based on my experience in watching what happened with them in terms of New Brunswick. It was in all of our actions that we tried to find a transmission route through – for Gull and Muskrat through Quebec. And how they went and talked to Emera, I understood, to try and derail the Maritime Link. They tried to become involved in the environmental review – Joint Review process.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** They tried to interfere with the federal government on us getting a loan guarantee.

See, Mr. Learmonth, we didn't make a good deal on the Upper Churchill, and constantly every government since then has tried to find a legal means to challenge that contract.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And at the end of the day, Commissioner, we might just have to suck that up. You know, I'm sure if another government thinks they have a credible argument to make under the law to change the

terms of that contract to a more fair distribution of benefits, that they'll try it. But if they don't, we have to live with the Upper Churchill contract and we have to honour in every way the Upper Churchill contract. And they can think – good for us.

But why would you interfere with any other developments on the Churchill River? Why would you exercise a fair amount of effort and energy in trying to stop the development of Muskrat Falls?

And I can give lie to one of the arguments. While they're arguing to the federal government that we shouldn't be provided with the federal loan guarantee because energy falls within provincial jurisdiction and the federal government should not be intervening or participating. Just about the time that Hydro-Québec was making that argument, Commissioner, Premier Charest approached me – and I think it was at the premiers' meeting in Nova Scotia in 2011 – and said: Kathy, I want to make a proposal to you. I'm gonna talk to Dalton, and how about –

**MR. LEARMONTH:** That's Dalton McGuinty?

**MS. DUNDERDALE:** Dalton McGuinty.

**MR. LEARMONTH:** The premier of –

**MS. DUNDERDALE:** The premier –

**MR. LEARMONTH:** – Ontario.

**MS. DUNDERDALE:** – of Ontario.

What I want to propose is the three of us go make a pitch to Prime Minister Harper and ask him to consider a \$3 billion investment in infrastructure – in hydro infrastructure in Quebec. And if he is prepared to make that commitment, I will guarantee to you and Premier McGuinty that we will offer a transmission route from Churchill Falls into Ontario. And you can work out a PPA. You'll just pay the normal tariffs, rates, so on, and you can work out a PPA that works for Newfoundland and Labrador and works for Ontario. And we can move away from just

Muskrat. We can go back to the original proposal.

**MR. LEARMONTH:** Gull Island.

**MS. DUNDERDALE:** On Gull –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – and Muskrat.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And you asked me, at the very first time, had I talked to Ed Martin before I came to my – give my testimony and to give my interview, and that's what I was trying to ask him about: Where was the timeline? Where were we –

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

**MS. DUNDERDALE:** – when Charest made that proposal? And he and Premier McGuinty and I met and discussed it, and it was decided at that meeting that Charest would make the pitch to Prime Minister Harper. And Prime Minister Harper wasn't going to have anything to do with it whatsoever, and the thing fell apart. And I've thought about it often, because while Prime Minister Harper may not have considered it, I have a funny feeling that, perhaps, Prime Minister Trudeau might have. Anyway, it fell apart.

But back to the original part of my response, Commissioner, while Hydro-Québec is making the argument, publicly and to the federal government, that we have no business going looking for a loan guarantee, because electricity generation is in the purview of the provinces and the federal government shouldn't be involved, here's Premier Charest over knocking on his office door saying, wait, you know, if you give us \$3 billion investment in Quebec, this is what we can do.

So, you know, for me, there wasn't a great deal of trust.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And to – if somebody had come to me and asked me to set a situation

in place where the people of the province were totally reliant on Hydro-Québec for their power supply, I don't think I would've spent five minutes on the proposal –

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** – because you need trust to do those kinds of things, and we might've gotten a great PPA for 20 years, but I don't know what would've happened after the fact.

And so it's the whole piece of surety of supply and so on that I wouldn't have been interested in a PPA from Hydro-Québec – would not – and have no problem saying that publicly, wouldn't have had any problem going to an election with that as a tenet of something that I believed in, and the people would decide. So I don't know if there was ever a discussion.

The second piece of the answer to the whole question around Quebec is, after Premier Charest left, Premier Marois became president – premier of Quebec, and in the summer of 2012 or 2013 – I'm not sure, maybe 2013 – we had a meeting of eastern governors and – or New England governors and eastern premiers, and we attended these meetings regularly because New England was certainly a market destination for us for power.

In fact, Governor Peter Shumlin and Governor Lincoln Chafee came with me to Churchill Falls. They visited. Peter Shumlin's from Vermont, as I said; Governor Chafee was from Rhode Island. You can go to the Internet and get a copy of their remarks at the 2013 meeting.

They were very familiar with the situation between Newfoundland and Labrador and Quebec. They encouraged us to resolve our differences. They told us that they were interested in being power purchasers from both provinces. Governor Shumlin addressed the whole is hydro green – big hydro green and the legislation that he had introduced into Vermont to say that it was.

And that meeting was co-chaired by Deval Patrick and – Governor Patrick from Massachusetts, and he also spoke about being an interested purchaser from power from Eastern Canada and particularly in terms of what was

happening in Newfoundland and Labrador and in Quebec. And you can find those remarks, if you got patience, on the Internet. I just looked at them a couple of weeks ago.

So, you know, we were talking to all of these people, and it was a great conference, and Premier Marois approached me as the conference was drawing to a close, and it was in her district just outside Quebec City, and she said to me:

Premier Dunderdale, I'm wondering if you're interested in having breakfast with me on – in my residence in Quebec City on your way home? I'm troubled by the fact that we have such difficulty around discussions around power generation and trying to make deals, and I was making deals and having them fall apart, and I don't understand why. I don't have a clear picture. I talked to my officials, and they say that, from Quebec's perspective, that they think they put good deals on the table, and they're not sure why we'd walk away from them nor why we get so upset. So can you come have breakfast with me, and we'll have a discussion around that. And I did.

And we put a committee in place of public servants to start to get a process ready so that we could have that exchange of conversation and develop a better understanding. And there was some preliminary work done on that and events overtook me, and I was gone before I was able to see if it had – you know, if we could get it to bear any fruit.

So we – I was having conversations with Quebec all the time. And when I did resign, Premier Charest wrote me a lovely letter which somebody ATIPPed in the media and roundly mocked because he said in the letter that he wished that we had had more time together to work on the Churchill and we probably could have done something really good together.

So I never had any hesitation with working with Quebec. But I didn't have any hesitation whatsoever either in critiquing their approach.

**MR. LEARMONTH:** Okay. Is that –?

**MS. DUNDERDALE:** That's it.

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

**MS. DUNDERDALE:** Sorry, I went on too long.

**MR. LEARMONTH:** No. It's very helpful.

The next and last recommendation I want you to look at in Exhibit 00051 that you have before you is "*Recommendation 4.5 – Full clearing of the Muskrat Falls reservoir.*" The recommendation is "The Panel recommends that, if the Project is approved, Nalcor be required to apply its 'full clearing' reservoir preparation option to the Muskrat Falls reservoir."

And as you know, that issue is still out there and will have to be resolved I guess at some point.

The response of the government was, you know, limited. It didn't say we accept it. It was limited to "maximizing the utilization of forest resource."

Can you tell me why the government didn't accept this recommendation that there be full clearing in the Muskrat Falls reservoir?

**MS. DUNDERDALE:** Well, it was certainly something that I was interested in. Not so much around the methylmercury issue.

So for me it was almost like two issues. And the first issue was that we had this great resource there, and if there was any way that we could utilize that resource and get some benefit from that resource, then my wish was to do that, rather than just flood it.

And –

**MR. LEARMONTH:** The resource being the timber?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I – but I had had an experience the year before, because if you know the power supply situation on the coast, there's



really not many – there's no homes heated 24 hours a day in the isolated communities.

It's you know, once they – they're given a block of power that they buy from; if you get beyond that, it's exorbitantly expensive. And so most of the people on the coast will go to another source of heating. And if you've been up on the coast, you know there's not much of a wood supply.

The year before, it was discovered that there was a high incidence of TB in some of the communities on the Coast, Hopedale was one. And that was the winter of the bird flu as well. So I felt that some of the communities on the Coast were under a triple threat, and heating their homes was a critical issue.

Patty Pottle had brought this to my attention. And one night we were talking about it, was there anything we could do to deal with this. At the time, Commissioner, we were building a – the Trans-Labrador Highway and the contract gave all the wood that was harvested in preparing for the road to the contractor.

So Patty and I put a plan together. We went to the contractor and we bought the wood. And then I got the Department of Transportation to bring it down to the Churchill River, down to Lake Melville, and then we bought bins to put the wood in so we could transport it.

And we tried to get some of it up on our supply boats as they went up to supply the communities for the winter. And we talked with the Government of Nunatsiavut, who had two barges, to see if they could come and take the wood up and we'd just make it available in the community, Commissioner.

And confident that members of the community would take that wood and would saw it and would get it to elders and others who needed it in the community to try and ensure we were doing something and they were warm and it was something that was there. It was a low-hanging fruit that we were trying to get our hands on to make a difference in that community for the winter.

And we weren't very successful at it. Nunatsiavut had other responsibilities or other obligations that they had to fulfill with their

barges, so they – I don't know if they took any of the wood. And we got as much of it off as we could, but the bulk of the wood stayed on the banks. And I suppose rotting away there still.

So there's a huge wood supply in Labrador, but the forestry industry is just about dead there. And the final nail in that coffin was when Abitibi went down in Stephenville, because they provided pulp wood. And wood in Labrador has a bit of a twist. It's unusual wood. It's not easy to market. It was – we worked hard at supporting the saw milling industry up there and not very successfully.

So the question was: If we took all the wood, at tremendous cost – would've, you know, added significant cost, I was told, to the project to harvest all the wood, what were we gonna do with it?

The second piece was around the methylmercury, and the reservoir for the Upper Churchill is the size of PEI and the catchment area is the size of New Brunswick. And so the amount of methylmercury that had been coming down the Churchill River for a significant amount of time by then, was something that I had to consider. And what we were planning on the Muskrat was nothing as significant as that – we were going up the channel. It was never as – you know, it would've been dwarfed a hundred times by what happened on the Upper Churchill.

So, in terms of what I read and what I understood about methylmercury, there had been significant methylmercury in the water, and probably still was. And the only chance that we had to mitigate the formation of methylmercury – more methylmercury – would've been to lay the ground bare. That any organic matter under water would contribute to methylmercury. And there was just no way that we could do that. There was no way that you could get the trees, the soil – I mean, the cost would've been exorbitant and it was dangerous work as well to try and get all that organic matter out of the reservoir area.

So the recommendation was, at the end of the day, to leave it there to – monitoring had gone on because substantial amounts of methylmercury had been coming down that river for a long time. And from my research, my own

personal research, you know, stayed around in the water for 20, 30 years, maybe longer. And now we were certainly going to add to that, but the recommendation was to continue to monitor the methylmercury with the interested parties. And if there was a significant impact or an economic impact, that they worked together at Nalcor to resolve that issue to both their satisfaction.

So there just wasn't any kind of a point that was significant enough to warrant the danger and cost of cleaning out that channel.

**MR. LEARMONTH:** Okay. Was that based on your personal observations or science?

**MS. DUNDERDALE:** It was – well, the – some of the science I read and researched on the Internet, then I was informed by the Department of Environment, and I followed it through because even with the – you know, I'm not – I've kept an eye on it because I've been approached several times since I've left government on the methylmercury issue and I read some of – I know that there was a workshop held by the current government on methylmercury and they brought in their own scientists and others and so on and the information that was distributed there is not substantially different from anything that I knew.

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

Now, you made a statement this morning in your evidence that I think you asked Ed Martin to provide the board of directors with all reports; you referred to Navigant and so on. Did you not say something like that?

**MS. DUNDERDALE:** I asked him to offer his experts –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – to the board of directors.

**MR. LEARMONTH:** Did you follow up on that?

**MS. DUNDERDALE:** No, I didn't.

**MR. LEARMONTH:** Because the evidence we have is that the board of directors, before they approved to sanction this project, never received the strategic risk report that was received by Nalcor on September 19. They never received that. And they also – they never received the August 31, 2012 independent review report.

**MS. DUNDERDALE:** Mr. Learmonth, I met –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – with the board of directors of Nalcor once, and Robert Thompson has an email around that.

**MR. LEARMONTH:** That was when – the email that we discussed this morning?

**MS. DUNDERDALE:** That was the email that you discussed with Robert Thompson when he talked about narrow views and so on. But I met once –

**MR. LEARMONTH:** Oh, the one about people with narrow –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay. I didn't mention that to you because Robert Thomson had already –

**MS. DUNDERDALE:** And I just feel very badly because that's not the way that Robert expresses himself.

**MR. LEARMONTH:** Do you want to comment on that?

**MS. DUNDERDALE:** I do because –

**MR. LEARMONTH:** Okay, please do. That's the one where – I can find it –

**MS. DUNDERDALE:** – I'm really –

**MR. LEARMONTH:** – but it's something that's –

**MS. DUNDERDALE:** Yes, the –

**MR. LEARMONTH:** – small-minded people or something like that.

**MS. DUNDERDALE:** – and Robert said to you it was the tone of the time.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** The tone of the time was very bad. It was – particularly directed at me – it was loud, noisy, nasty, vindictive, personal, and I don't think anybody who was paying attention, anybody in this province, could have missed it. At times it was scary.

And it was new days for all of us in terms of social media. We're all so familiar with our BlackBerries and everything now, Mr. Commissioner. I can remember in 2004 being in the House of Assembly during Question Period and Gerry Reid, I think – maybe it was later in 2000s – Gerry Reid I know, was asking the question and he talked to Premier Williams about Facebook. And I remember Premier Williams turning to me and saying do you know anything about this Facebook? Do – are you familiar with this at all? That's what the world was like in 2004 and 2005.

And by the time all of this was happening everybody had Facebook, they had Twitter, you know, there was – and blogs, there was everything going on. And anybody who was paying any attention into this – into anything that was going on in government had to be aware of the tattering that I was getting at every avenue, and it was merciless. And had very little to do – you can have a discussion of an issue with anybody and I'm always happy to do it. This wasn't discussion of the issues; these were personal attacks that were vindictive.

And I think a good few people felt sorry for me, and Robert and I, who had a great relationship and thoroughly respected one another – Robert was privy to a lot of these things that were really nasty, and I think he was trying to reassure me, you know, go to your meeting and don't be worried about these narrow and nasty comments and reports.

And I felt badly when I came up here in the Commission, 'cause I can tell you, Robert didn't speak about people like that. He's an extremely respectful person and, you know, in some way certain – critical look was cast his way because of his trying to comfort me or defend me. And I

just feel I wanted to speak to that and I thank you for letting me do that; because that was out of character for Robert. And Robert did it because he was afraid, I think, that my feelings were getting hurt or that I was vulnerable around this stuff because the onslaught was so severe.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But however, I did have one meeting with the board of Nalcor, and it was a dinner meeting; Kathy Bennett was chair. Kathy was retiring from the chair of Nalcor to go on a promotional tour for Muskrat Falls across the province.

We had a discussion – we certainly had a discussion about the board needing more support. But in terms of where they were with regard to the project, here's the chair leaving so she can have independence to go across the province to promote the Muskrat Falls Project. So there was nothing being expressed to me by the board, in that circumstance or any other, to say that they weren't satisfied with the information or the quality of –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the information that they had. And I would've taken it very seriously –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – if they had. And remember the project of 2000 – Grimes' project failed because the chair of the board and one other member resigned –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – over it. So, the board has tremendous influence in – and impact, and I was going to listen to anything they had to say.

**MR. LEARMONTH:** Yeah. But –

**MS. DUNDERDALE:** But that was my only –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – engagement with the board.

**MR. LEARMONTH:** But the point I think I'm trying to make is that the board didn't receive these reports. It wouldn't have known about the existence of these reports before they voted to sanction. So, you know, that's different from saying that they were satisfied with the board. You can't express your satisfaction or dissatisfaction with something that you don't receive because you don't know it exists.

**MS. DUNDERDALE:** I can only tell you what my experience was, Mr. Learmonth, and that –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – was my interaction with the board.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And in terms of the challenges of making sure that we had people on the board who could handle the work, and the challenges we had getting the kind of expertise that they were asking for – you know, I do remember, you know, asking Mr. Martin to make sure that any expertise that he had commissioned into project planning, and so on, that they –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – would be available to the board members if they had questions, and so on.

**MR. LEARMONTH:** Yeah. But what I'm saying is that the board members say that they never received a copy of the strategic risk management reserve report that was received by Nalcor on the 19th, and they never received a copy of the Independent Project Review or – dated August 31. Were you aware of that?

**MS. DUNDERDALE:** No, I wasn't –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – Mr. Learmonth.

**MR. LEARMONTH:** Does that concern you?

**MS. DUNDERDALE:** Not in terms of the business of the board. They were independent –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – of us and they had their own oversight of what was happening at Nalcor. You know, if you're asking me if I'm concerned that all the information is – that could be provided is not being provided, yes –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – that does concern me. Yes, provide everything that you – information doesn't hurt people. The more information you provide the people, I think, the better off everyone is.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** So I don't have an issue with providing information.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Unless there's a critical reason not to do so.

**MR. LEARMONTH:** All right.

Those are my questions. Thank you very much, Ms. Dunderdale.

**MS. DUNDERDALE:** Thank you, Mr. Learmonth.

**MR. LEARMONTH:** All right.

**THE COMMISSIONER:** All right, take cross-examination.

The Province of Newfoundland and Labrador.

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

Thank you.

**THE COMMISSIONER:** Nalcor Energy.

**MR. SIMMONS:** Good afternoon, Ms. Dunderdale.

Dan Simmons for Nalcor Energy.

**MS. DUNDERDALE:** Good afternoon, Dan.

**MR. SIMMONS:** I'll just take a moment to get set up here.

I actually want to pick up, not exactly where Mr. Learmonth left off, but with a – kind of on the same topic, and that's the role and relationship of the board of Nalcor Energy and the province.

We've heard the relationship between Nalcor – the working relationship between Nalcor and, in particular, the Department of Natural Resources – described by Mr. Thompson as being almost an integrated team, as it being very functional and – such that Nalcor is not a department of government; it's at some degree of arm's length from government in that it's a separate corporation with a separate mandate. But it is not as separate as if it was a private corporation that didn't have this relationship with government.

So I'm interested in your comments, if you could provide us with them, on where you saw the authority of the board versus government, the minister and the premier, in relation to making decisions for Nalcor. Was there a line, a division somewhere, so that we'd know which decisions fell in the camp of the board and which fell in the camp of the government? When you were minister, and later premier, how did you see that relationship working?

**MS. DUNDERDALE:** The decision-making, as it fell to Nalcor, would have to be made with the board.

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

**MS. DUNDERDALE:** So they would have regular board meetings and relevant decisions would be brought before the board and they would make their decision. A lot of our discussion was around informing work that was going on, for example, in – if we were negotiating Hebron, for example, of being kept absolutely up to date, being informed what the platform was and policy issues were around resource development in the province and so on, and to make sure that they were included in the negotiations, and so on and reports on the negotiations and so on. But decisions we – you know – so there'd be fair alignment before it went to the Nalcor board, but the Nalcor board would make the decision.

**MR. SIMMONS:** Okay.

So, we know that – we've seen from some of the evidence that Mr. Learmonth has brought you to that at one point there was a mandate letter or a letter of expectations of some sort drafted which didn't seem to go anywhere, didn't seem to be implemented.

A manual – at one point drafted – didn't seem to go anywhere. So there doesn't seem to be any written guidance anywhere about how this relationship worked, when people would know that they had to be aligned with government and when they'd know that it was a decision that the board could make, instead of it being something that had to go to government.

Now when you were minister – how did that work when you were minister?

**MS. DUNDERDALE:** Well, when I was minister, most of my interaction would be in terms of briefings.

**MR. SIMMONS:** Yes.

**MS. DUNDERDALE:** So I would meet with oil companies on my own, for example, and we would have general discussions and so on. And my point of interaction would always be for the – the lead would always be Mr. Martin.

And – so, at that level, it would be generally reporting – this is where we are, this is what we're gonna do, this is reasonable, this is where we are, this is where we need to get to, and these are the rubs. For example, I talked yesterday about the gender and diversity piece, for example.

That's a good example of interaction with Mr. Martin, because that was something that was very important to me because women had been virtually shut out of the Hibernia project. Less than 4 per cent of the employment went to women and less than 1 per cent – couldn't even measure it – for trades and technology, and it was the engine that drove the province for a significant piece of time.

So if we were gonna do another project, then, from my background and my experience – and now I'm minister, so I'm bringing this with my

experience to the table – I want us to have a gender and diversity clause. And everybody's pushing back because this is the first time this has ever happened. It's – we have no evidence of it ever happening in the country or in the world, so we're gonna talk about it.

So, Mr. Martin is negotiating with the Hebron negotiators, and they come to a road block – there's a rub. They're not understanding, they don't know how they can make this work, negotiations aren't going well around it.

Well, then Mr. Martin came to my office. And we sat. And we talked for about two hours about what this was, what it looked like, what the objectives were, and how do you not gerrymander a project all together because you can't meet certain requirements or expectations, but you have to make reasonable efforts.

And when he had a comfort level that he understood that and felt better to go back and do the negotiation, then I'd back away. Then he comes back at the end of the day with whatever benefits have been negotiated and so on, that's acceptable to the province and then ratified, I assume, by the board.

**MR. SIMMONS:** Okay. So Nalcor has had a number of important provincial projects on its plate, aside from the Lower Churchill Project.

**MS. DUNDERDALE:** It has.

**MR. SIMMONS:** There's the oil industry projects that you've spoken of. And from what you've said, maybe we can take two things out of it.

Is it fair to take out of that that when government, through the minister or even the premier, has objectives that they want achieved for the projects Nalcor is involved in, that those objectives would be communicated to Nalcor and Nalcor would be expected to work to try to achieve them?

**MS. DUNDERDALE:** Yes.

**MR. SIMMONS:** And also, would be expected by the minister and by the premier that on important projects like the Lower Churchill Project and the oil projects, that important decisions wouldn't be made within Nalcor

without first ensuring that government was aligned –

**MS. DUNDERDALE:** They would look for alignment.

**MR. SIMMONS:** – with those decisions that they would –?

**MS. DUNDERDALE:** Yes.

**MR. SIMMONS:** And although there is no written guidance we can look to to see when someone knows or is supposed to know that they have to get to that alignment, that seems to have been reasonably well understood at the level at which you functioned.

**MS. DUNDERDALE:** And well negotiated, but that's not to say there weren't rubs.

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

**MS. DUNDERDALE:** And there were from time to time –

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

**MS. DUNDERDALE:** – because again, as I said this morning, Mr. Simmons, when you're charged with governance –

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

**MS. DUNDERDALE:** – you have to stand back to some degree for all of this. You can't be all in in terms of commitment to projects or relationships or so on. You have to retain enough distance –

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

**MS. DUNDERDALE:** – that you can make a judgment. And there are processes in place and they're there for good reason.

And for example, that would be one of the rubs we would have with Nalcor on a pretty regular basis, to say: We're sending this down, this is something we need to enable a piece of work that we're working on together. But we need this from the legislature next week. And the answer would be: That's not how it works.

**MR. SIMMONS:** Mmm.

**MS. DUNDERDALE:** There are processes here that have to be followed, but, you know, we need it and this is gonna happen and the sky is gonna fall if we don't have it – too bad. This is the process; this is how it works.

**MR. SIMMONS:** So, when Mr. Thompson described it as, I think, as an integrated team with contacts at various levels, I think, I understand his evidence about that. At the level with – at which you operated – first, as minister and then, as premier – I gather that your relationship with the CEO of Nalcor and throughout your tenure, it was Mr. Martin – that that would have been a very important relationship for the proper functioning of the government-Nalcor relationship and for getting the business of Nalcor done.

**MS. DUNDERDALE:** Nalcor, as far as our government –

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

**MS. DUNDERDALE:** – were – was concerned, was a critically – enabler –

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

**MS. DUNDERDALE:** – of moving from a high – economic highs and lows of a – economic future that wasn't predictable – to a place where we had certainty that we understood what we had before us to craft a future for ourselves and the people of the province. And they were gonna be major players in that development.

When – I can tell you that when we began our first budget, the – people sometimes forget that first term. We were elected in October 2003, Commissioner, and I think the first two terms we had to have police escort into the House of Assembly. The first thing we had was a strike, and the next piece we went into was raw-material sharing – and none of it well-received. And people reacted strongly.

So, I can remember coming down into the House with police escort, and my poor mother being called all kinds of names from the gallery – as we tried to do our jobs in the House of Assembly.

And that first budget just about did me in. And Premier Williams, when he was here, spoke about, you know, trying to decide whether or not people could have teeth –

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

**MS. DUNDERDALE:** – and we were virtually bankrupt. You know, there were critical questions.

I remember at one point, we had \$6 million that we could use for some kind of economic development, and High Liner was pulling out of Arnold's Cove, and the great debate as to whether or not we purchased the quota that they had to sell for \$3 million or we build a school.

**MR. SIMMONS:** Can I bring us back to the relationship with the CEO of Nalcor maybe?

**MS. DUNDERDALE:** Yes.

**MR. SIMMONS:** Unless that's where you were going.

**MS. DUNDERDALE:** Well, that's where I'm going.

**MR. SIMMONS:** Yeah.

**MS. DUNDERDALE:** Because we did a SWOT analysis, we had to find a way to get ourselves out of this morass of debt and lack of opportunity. And it was – you wouldn't want to be in government. I remember Premier Wells – Premier Williams saying to me: This is not what you put your hand up for. It was dismal.

So we did a SWOT analysis to say where are the opportunities, where are the challenges, where are our strengths in this province that we can take and use and craft a future for our people with. And where we found that was in natural resources.

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

**MS. DUNDERDALE:** We found it in oil. We found it in gas. We found it in hydro. We found it in wind. You know, we found it in minerals.

And so when we developed the energy company, they were going to be the tool that we

were going to use to develop all of those resources so that we had a portfolio. Even though we were an economy that was going to be dependent on commodities, that working with Nalcor we could develop them in such a way to bring wealth to the province and to develop them in such a way that we wouldn't always be in a slump together and on a high together.

So, in terms of Nalcor, they were critical to the path that we had laid out for ourselves. And so clear communication between the CEO of Nalcor and government was critical to ensure that that happened.

**MR. SIMMONS:** Right.

So from the description you've given me, would it be correct to describe the Energy Corporation – later named Nalcor – as being an instrument of public policy of the province?

**MS. DUNDERDALE:** Absolutely.

**MR. SIMMONS:** And that the objectives, the goals given to Nalcor as espoused in the Energy Plan, were public policy goals?

**MS. DUNDERDALE:** Absolutely.

**MR. SIMMONS:** And the relationship with Mr. Martin as CEO, and whoever the CEO happened to be, was one that involved the discussion of public policy goals and the implementation of them?

**MS. DUNDERDALE:** Absolutely. He was a participant –

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

**MS. DUNDERDALE:** – and scribe of the Energy Plan.

**MR. SIMMONS:** Right.

And you said communication, of course, is very important, as it would be. In the absence, though, of clear demarcations of how these decisions get made and what is to be communicated and what maybe doesn't need to be communicated, you would have to rely on the CEO of Nalcor and the people that work for him to be able to do the same sort of filtering that the

people in your department would do when they determine which issues rise up in importance enough that they need to be communicated with you for the alignment of government and for you to be properly informed and, if necessary, to get your involvement in decision-making on. Is that a fair –

**MS. DUNDERDALE:** Yes.

**MR. SIMMONS:** – description?

**MS. DUNDERDALE:** When Mr. Martin walked away –

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

**MS. DUNDERDALE:** – from Confederation Building and back to Nalcor, then – you know, with whatever people he had brought with him –

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

**MS. DUNDERDALE:** – then it was their job to communicate within Nalcor. That's not a role that we would have taken on.

**MR. SIMMONS:** Right. And coming from Nalcor to government, would you agree with me that it's also their role to do filtering of what it is that needs to come back to you, either as minister or as premier?

**MS. DUNDERDALE:** Yes, and they would come back with asks from time to time in terms as we develop policy, you know, as we firmed up our resources, for example, you know, if we were going to expand our exploration program to the West Coast of the Island, for example, or we were going to do seismic in Labrador to see – you know, to see if there were opportunities there that we weren't aware of and so on.

They would come back – you know, they would come back with a recommendation, they would discuss it with us and they might rely on us for funding to make that happen or approval of funding that was somewhere outside the budget that had been approved for them. So there was that give and take on a regular basis.

**MR. SIMMONS:** This afternoon you've answered a number of questions about the Public



Utilities Board process and the referral to the PUB.

The Lower Churchill Projects had been exempted from some time from PUB jurisdiction, so the PUB didn't have a standing role in approving or not approving anything to do with projects on the Lower Churchill. We know that. And government chose not to remove the exemption but, instead, to make a referral of a specific question to the PUB.

So I'm interested in knowing at the time that that referral was made, what were government's expectations about how much weight was going to be put on whatever the answer was that came back from the PUB. Because I know you didn't get the answer you expected. You didn't get an answer, really.

**MS. DUNDERDALE:** That's right, we didn't get that.

**MR. SIMMONS:** But the PUB could have come back and said: Yes, it's the least-cost option or, no, it wasn't.

**MS. DUNDERDALE:** Yes.

**MR. SIMMONS:** And if they came back and said, no, it wasn't, was that the end of the Muskrat Falls Project?

**MS. DUNDERDALE:** I'm not sure that – it would have certainly meant that we had to consider something else –

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

**MS. DUNDERDALE:** – if that were the question that came back.

You know, I was confident in the work that was being put before the PUB.

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

**MS. DUNDERDALE:** So confident that I could put it to the PUB. I didn't have any reservations about putting it to the PUB.

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

**MS. DUNDERDALE:** I understood the work to be of a high quality and it'd be surprising to me if they came back with a different conclusion. But if there was a different conclusion I wanted to know what it was.

**MR. SIMMONS:** Right. So –

**MS. DUNDERDALE:** I wasn't committed to building a project for the sake of building a project.

**MR. SIMMONS:** Right.

So the PUB decision itself was not going to decide the question of whether the project was going to be built, the PUB decision would be a – would have the status of a recommendation to accept this as least-cost option or not. But am I correct that it would still be the prerogative of government to determine whether to approve the project or not, regardless of what the PUB recommended?

**MS. DUNDERDALE:** That's correct.

**MR. SIMMONS:** Okay.

Now, I think you also said this afternoon that you referred to the decision to refer to the PUB, in which question to oppose, as being a public policy decision itself. Did I understand that correctly? I might not.

**MS. DUNDERDALE:** Well, I look at it in that way because, for me, again, it was trying to satisfy a call or independent review – independent from government and independent from Nalcor.

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

**MS. DUNDERDALE:** And these certainly were the most critical questions as we move forward. And until they were answered and people had a – I wanted people to have a comfort level that all of the work that needed to be done around these two critical questions had been done and we were ready to move to next stages. And if they found that it hadn't been done properly, then we need to go back to the drawing board because now this is in the public arena. I have no control over what the PUB is going to say.

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

**MS. DUNDERDALE:** So I have to be prepared for their answer, whatever it is.

**MR. SIMMONS:** Yeah.

I understood Mr. Learmonth to be asking you about the choice of question that was put to the PUB. So the choice of question he described it as binary. It was: Which is the least-cost option rather than doing what the UARB was given which was –

**MS. DUNDERDALE:** Yes.

**MR. SIMMONS:** – a broader question?

Now, I may have misunderstood but I thought I heard you to say that that choice of what to refer to the PUB, you regarded as being a public policy to question.

**MS. DUNDERDALE:** Yes, it is. And it's a thing that, you know, in terms of the electrical control act is –

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

**MS. DUNDERDALE:** – is what we're required to do. You know, we have to do the least cost and that's half the question that's in the electrical control act, the other pieces we have to have certainty of supply.

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

**MS. DUNDERDALE:** And so that didn't get addressed exactly. But, you know, do we need the power is the other critical piece.

**MR. SIMMONS:** Right.

**MS. DUNDERDALE:** 'Cause you don't build for the sake of building and ask ratepayers to pick up the tab.

**MR. SIMMONS:** Right.

So, if the choice of question is a public policy decision to be made, that's a decision that falls within the mandate of government. Correct?

**MS. DUNDERDALE:** Yes.

**MR. SIMMONS:** Okay.

So, the decision that was ultimately made in December of 2012 to sanction the Muskrat Falls Project, was that a public policy decision?

**MS. DUNDERDALE:** I think it's a public policy decision. It – and, in fact, I had been to the electorate on that particular question in 2011 –

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

**MS. DUNDERDALE:** – after the referral to the PUB.

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

**MS. DUNDERDALE:** I went to – I called an election in the fall of 2011, and that was after the PUB review and everything that had happened up to that point, and I won a majority government, Commissioner.

**MR. SIMMONS:** Okay.

**MS. DUNDERDALE:** And the theme –

**THE COMMISSIONER:** I don't think the PUB review would have been done by the fall of 2011.

**MS. DUNDERDALE:** No, but the fact that we were gonna refer and so on, and where we had advanced to and that we were clearly going down this path. And, in fact, the theme of my election was: New Energy.

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

**MS. DUNDERDALE:** And so it was a pivotal piece of the discussion, but it had been in the two prior elections as well, but never as clear as it was in 2011. It was, you know, we were on a pathway to development of the Churchill River, unless something extraordinary happened between the fall of 2011 and the time of sanction.

**MR. SIMMONS:** Good. Thank you.

Commissioner, it's coming up on 4:30, that might be a good time now to break for the afternoon.

**THE COMMISSIONER:** Okay.

Yes, we'll take our break then and we'll start again in the morning and you can continue on tomorrow –

**MR. SIMMONS:** Yeah.

**THE COMMISSIONER:** – morning at 9:30.

So we can return tomorrow morning at 9:30.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.