



COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 61

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

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

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Good morning.

MS. DUNDERDALE: Good Morning.

THE COMMISSIONER: Ms. Dunderdale, you remain under oath at this time.

Mr. Simmons, when you're ready.

MR. SIMMONS: Thank you, Commissioner, and good morning, Ms. Dunderdale.

MS. DUNDERDALE: Good Morning, Mr. Simmons.

MR. SIMMONS: I'm going to start this morning with a few questions about the DG2 decision around the time in the fall of 2010. And, after that, I'm going to have some questions for you about sanction in December of 2012. And that'll be the bulk of what I'm going to ask you about; there's a number of things we'll work in as we go through there.

So the Decision Gate 2 decision was made in November of 2010. Now, you were still the minister of Natural Resources at that time, correct? And Premier Williams resigned shortly after that decision.

MS. DUNDERDALE: Yes.

MR. SIMMONS: That was when the Emera term sheet –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – was announced.

MS. DUNDERDALE: Yes, he was – I didn't move into the premiership until December.

MR. SIMMONS: Until December, right. So it was – so at the time that the decision was made that the selection of the Muskrat Falls and Labrador Island-Link option as the project to

move forward for further examination towards eventual sanction in – at the time that decision was made, you were minister of Natural Resources and had been for about four years or so by that time, I think.

MS. DUNDERDALE: I came – we came to government in 2003 and I went into the ministry in 2006.

MR. SIMMONS: Okay, all right.

So I'm going to start with Exhibit 00216, please.

So this is a – it'll come up on the screen in a moment. I'm not sure if it's in your materials.

THE COMMISSIONER: Tab 15.

MR. SIMMONS: Tab 15.

THE COMMISSIONER: Book 1.

MR. SIMMONS: Volume 1. Yes.

So it's a presentation from Nalcor and it's one that Mr. Thompson answered some questions on and looked at. And he had described as being a cornerstone presentation leading up to this DG2 decision. The date of it is September 23, 2010.

So do you have any independent recollection of this? You can take a look at it, if you want, to see if it looks familiar.

MS. DUNDERDALE: This is familiar to me.

MR. SIMMONS: It is familiar?

MS. DUNDERDALE: Yes.

MR. SIMMONS: Well, let's look at page 3 first because the topics addressed in it are just listed there. There's three bullet points here as an overview of the presentation. It says it's going to deal with the Island demand analysis for capacity and energy – which sounds like the do-we-need-the-power question – and then supply alternatives analysis and then there'll be a recommendation here.

So let's go now directly to page 9, please. So here on page 9, it's headed: "Options for Meeting Island Supply Requirements." The

earlier slides have dealt with this question of the demand for power and the load forecast. And on 9 it says there are five options for evaluation. Now, in your direct examination by Mr. Learmonth, I had understood you to say that as options were examined by Nalcor and narrowed down, this started with a wide range of options and it got narrowed to five before it was reduced to Isolated Island and Interconnected Island. Am I recalling that correctly?

MS. DUNDERDALE: Yes, you are.

MR. SIMMONS: And this slide has five options listed here; number one is the Isolated Island option.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Two, three, and four are variations on building a Link, an HVDC Link to the Island and supplying power either from Muskrat Falls, being option 2, or Gull Island, option 3, or importing via Hydro-Québec as option 4.

MS. DUNDERDALE: Yes.

MR. SIMMONS: And then the fifth one is described as imports from, it says, N-E-I-S-O. And I understand that to be the New England electricity market –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – via a Maritime Link.

MS. DUNDERDALE: Yes.

MR. SIMMONS: So are those the five options that you were referring to?

MS. DUNDERDALE: Yes.

MR. SIMMONS: Okay, all right.

So the Isolated Island Option, at this stage, we've heard a fair bit of evidence about what the Isolated Island Option was – and we've been at this since September – and how that was developed. And I'll tell you what I understand that option to be, the one that was under consideration, you can tell me if that fits with what your recollection was here. And my

understanding is that Newfoundland and Labrador Hydro had a process in place for a long time, which involved doing annual or nearly annual load forecasts.

MS. DUNDERDALE: Yes.

MR. SIMMONS: And then looking at what the – and then doing system planning to ensure that looking ahead a reasonable period of time the electrical power system was going to have adequate generation to meet the forecasted load. And in doing that, there would be a range of potential new generation sources that could be considered. And on a regular basis they'd plan ahead to see what would be the least-cost way to use these potential generation sources to meet what the load was going to be in the future. Does that sound –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – familiar as what your understanding was? Okay.

And by the time we get here to DG2, the Isolated Island Option under consideration, first of all, did not involve building any connection to either Labrador or Nova Scotia, so the Island would remain an isolated electrical grid.

MS. DUNDERDALE: That's correct.

MR. SIMMONS: Yes. Okay.

And that the potential generation sources that were considered as – in different configurations, to come up with the optimal configuration – included – well of course, the existing power sources, which is Bay d'Espoir and so on. But new things would include more wind.

MS. DUNDERDALE: Yes.

MR. SIMMONS: It would include three small hydroelectric sites –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – that could be developed. And it would include continuing with the Holyrood plant with some refurbishment and upgrade until it had to be replaced, and then replacing it.

MS. DUNDERDALE: Yes.

MR. SIMMONS: As well as adding new thermal power sources, combustion turbines as needed.

MS. DUNDERDALE: That's correct.

MR. SIMMONS: So that –

MS. DUNDERDALE: That was it.

MR. SIMMONS: – that fits with your understanding.

MS. DUNDERDALE: Yes.

MR. SIMMONS: And that was the Isolated Island Option as it was looked at, at DG2. And it evolved a bit by the time we got to DG3, I think.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Still a similar thing, but the configurations of these elements changed a bit.

MS. DUNDERDALE: And there was testing, Mr. Simmons, going on. For example, in 2008, I think it was, we had two wind farms –

MR. SIMMONS: Yes.

MS. DUNDERDALE: – established. One in Fermeuse and one in St. Lawrence and roughly about – between the two of them – 50 megawatts of power. And the whole purpose of that was to try and better understand how we could integrate wind in an Isolated System with the other sources of generation that we had.

MR. SIMMONS: Mm.

MS. DUNDERDALE: So, there's examination and study going on in a number of different ways to see how we could meet power needs, either under the Isolated System or in the Interconnected System.

MR. SIMMONS: Right.

And between these sort of two landmark points here – DG2 in November 2010 and the sanction decision in December of 2012 – this, I think, is

the period in which there was a lot of public debate.

MS. DUNDERDALE: Yes.

MR. SIMMONS: This is when people like Dr. Bruneau, Mr. Vardy and Mr. Penney and others came forward with questions challenging some of these assumptions that had been made at DG2, about what the best way forward was.

MS. DUNDERDALE: That's correct.

MR. SIMMONS: Okay.

So it was in that time period that there was debate about whether there were other options or power sources that should be considered. So one of those, I think, was wind and we've heard a lot about that at different points here. So I just want to ask you a couple of questions about that first.

So you've said that it started with the Fermeuse and St. Lawrence wind farms being developed before DG2 and this was kind of a test to see how it would work –

MS. DUNDERDALE: How we could integrate –

MR. SIMMONS: – in the system.

MS. DUNDERDALE: – wind into the system.

MR. SIMMONS: Right.

MS. DUNDERDALE: So these weren't things that we had a lot of experience –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – with. We knew we had great wind regimes –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – in the province, particularly in Labrador –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – but we needed to understand what was happening in the province with wind. So we did the two wind projects but

at the same time, we were doing another project in Ramea – which is one of our isolated communities – and was being – power was being generated by diesel.

And we were putting significant money into a project there that was using wind, storing energy and hydrogen; and only when the wind dropped out and the hydrogen was used up, would we go to diesel. And the science and technology had to be in the integration, how we made that work. So there were a number of things going on particularly with wind, on one hand, as we moved through this process and the other.

MR. SIMMONS: So would it be fair then to say that there was an open-minded approach to the use of wind even before DG2, when these projects were undertaken?

MS. DUNDERDALE: Yes, very much so.

MR. SIMMONS: Now you just said: we did that. Now I'm curious about why you would say we. Was it Hydro, Newfoundland and Labrador Hydro that did that? Or Nalcor that did that? Or was your department involved in that, when you say we. Who do you mean when you say that?

MS. DUNDERDALE: Because government is the shareholder –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – it certainly has the responsibility in terms of meeting the needs of people of the province. And energy is certainly a need that is critical here in the province, not only in terms of householders, but in terms of driving our economy and so on.

So my approach and, I think, the approach of government was to see it as a shared responsibility in terms of the policy piece; what is it that we're going to do.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And here are identified needs in the province. So how do we best meet them? And how do we do that under the laws that have been laid down that cover, you know, in terms – like the Electrical Control Act?

So, you know, how do we provide energy to the people of the province in the way that is required? And how do we do that as a least-cost option? And how do we make sure that we got a secure supply of power; that we've done the correct planning. That when people get up in the morning and flick a switch, the lights are going to come on.

MR. SIMMONS: So we've heard in other evidence that by DG2, Newfoundland and Labrador Hydro had done its own internal reports on the amount of wind that could be integrated into the Isolated System.

MS. DUNDERDALE: Yes.

MR. SIMMONS: We heard that they, afterwards, commissioned Hatch to do some study on that.

MS. DUNDERDALE: Yes.

MR. SIMMONS: And we've also heard that later, after DG2, and before DG3, government, through the Department of Natural Resources commissioned MHI to do a study of wind. Now, given that Hydro and Hatch had already done that work, why did government commission MHI to have another look at it?

MS. DUNDERDALE: To try and provide – when some of the proponents for these different generation methods put forward their arguments, and they did it – government is sometimes constrained in how much access we can get to the forums that are used for public debate. Some of the proponents are not restricted in any way at all.

So for example, if somebody wanted to go on the radio every day and talk about wind generation and replacing Holyrood – 500 megawatts of power of fossil-fuel-fired generation – in Holyrood with wind, they could do that everyday and make their argument everyday. We didn't have that kind of access.

And then when you thread through that, that you can't rely on the information that government is giving you – or Nalcor is giving you, because they're determined that they're going to develop the Churchill regardless of what else may be available to them.

And in order to allay any misgivings or fears that they – that the people of the province might be misled by hidden agendas, it was felt that it might be prudent to go arm's length from all of the parties involved in the debate and get an objective analysis of what we could or couldn't do with wind. And so, that was the driver more than anything else – to provide clear, objective information in the public arena so that the debate could be well informed.

MR. SIMMONS: Okay, now in the time between the DG2 decision and sanction, were you aware that the amount of wind that was incorporated into the Isolated Island plan actually increased and there was a change as it went forward through that process? Is that something you would've been aware of?

MS. DUNDERDALE: I can't say that I was aware of that, Mr. Simmons. I might have been but I don't have any recall.

MR. SIMMONS: Okay, so by the time the sanction decision was made in December of 2012, government had the report that had been commissioned from MHI, and you described what initiated getting that report. Were you and the decision-makers – I guess Cabinet and government – were you satisfied that you and they felt that the wind option had been fully explored and that it had been adequately incorporated into the considerations that were on the table for selecting the option for power supply?

MS. DUNDERDALE: Absolutely. I can tell you that we were excited about the resource that we had in wind.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And as I said, Commissioner, we had some of the best wind regimes in North America, especially in Labrador. And we were also blessed with hydro. We had vast quantities of hydro available to us to backstop wind because, as most people know, you can't store wind. Thus our project in Ramea.

So PEI, for example, produces as much wind as they can. But they have to sell it at a price that includes their backstop. Because when you make a contract with somebody, you can't say I'm

gonna provide energy to you as long as the wind is blowing and you'll have to do without until the wind comes up again. You have to provide constant energy. So that means you have to rely on a more dependable source of energy that you can call on if the wind drops out and you're not able to generate.

And in Newfoundland and Labrador, because we're blessed with our hydro resources and we can store water to be used – store electricity, in fact, to be used at a later date, our wind becomes even more valuable than the wind other jurisdictions have. Because we don't have to buy a backstop. So we can sell our wind energy in the marketplace cheaper than a lot of others can. So that's a great thing for the people of the province.

MR. SIMMONS: And what you're talking about now is the opportunity presented with wind once there is a connection to the Mainland electricity grid –

MS. DUNDERDALE: Absolutely.

MR. SIMMONS: – which creates those options you're talking about. Okay.

MS. DUNDERDALE: So we were paying a lot of attention to wind, trying to understand wind and where its role was in the portfolio –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – of providing energy to the people of the province or as a resource –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – part of our economy.

MR. SIMMONS: And when – again, when you say we there, that is government through the department of Natural Resources in co-operation with Nalcor, is it?

MS. DUNDERDALE: Absolutely. And that's what gets laid out in the Energy Plan.

MR. SIMMONS: Okay.

Now, within the Isolated Island Option, with the generation sources that were considered, another

question that arose after DG2 and that we've heard about here is whether natural gas from the Grand Banks or liquefied natural gas imported from world markets could have been an alternative source of fuel if the Island remained isolated.

Now, you've given some evidence about that already, in particular concerning the prospect of bringing gas onshore. And I've understood you to say that it was well-known to government that one of the root issues was getting access to gas, which was under the control of the oil companies who held the rights to that gas offshore. Have I got that right?

MS. DUNDERDALE: Absolutely, and we were using every means at our disposal to try –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – and entice them to monetize that gas, to bring the gas ashore, either to do something in terms of a refinery, for example, that was on the table, or other things that we might be able to do, including generation of power.

Even if we had been in a position where we were negotiating a new find of gas offshore, in the same way that we negotiated equity, Mr. Commissioner, that could have been part of our negotiation.

But at the time that all of this was being considered, there were no new finds that we were in negotiations about. After Hebron, you know, we have it – and the extensions, there was nowhere, then, to look to say what leverage can we use, perhaps, to get oil companies to bring that natural gas ashore.

MR. SIMMONS: So, at the time of the DG2 decision, and when this presentation that we're looking at here with the five options was given – this was September, DG2 decision was November of 2010 – the Isolated Island Option that Nalcor was working with did not include bringing natural gas onshore as an option. So that was known to government and known to you as minister at the time.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Right. And is it fair to say that you understood why it was not included?

MS. DUNDERDALE: Yes.

MR. SIMMONS: Okay. And that you agreed that that was an appropriate decision to take to not consider natural gas as a potential generation source in this option.

MS. DUNDERDALE: Absolutely, because we were directly involved with the oil companies trying to convince them to bring their gas ashore, to monetize the gas.

MR. SIMMONS: Right.

Now, in the period from November 2010 up until sanction of the project in December 2012, government, through Natural Resources, revisited this question by retaining Ziff and having Wood Mackenzie comment on the Ziff report.

Now, those were initiatives of government, not of Nalcor. Is that correct?

MS. DUNDERDALE: That's right.

MR. SIMMONS: Correct.

So, and you've probably explained this before, but I'll get you to tell me again, why did government take the initiative to get those reports and have that examination done, knowing what you knew at DG2 about the prospects for natural gas?

MS. DUNDERDALE: These reports were Minister Kennedy's idea. And, again, it was about getting as much factual information into the public debate as possible –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – so that people who were listening to all of the information could refer to reports that they could have a high degree of certainty that had been prepared, objectively, and that could inform their opinion and make a decision as to whether or not they considered the direction in which government was moving.

MR. SIMMONS: Okay, good.

So that's the Isolated Island Option, and on this slide, the next group of options are the ones that are described as enabled by the HVDC Island link, and I won't ask you any questions about Muskrat Falls or Gull Island.

On item 4 there, which is: Imports from/via Hydro Quebec at CF, you've been asked some questions about that already by Mr. Learmonth, and you've spoken to that already. But do I understand correctly, that government – that this wasn't a question that was left to Nalcor for it to decide independently whether it was appropriate to seek to engage in discussions with Hydro-Québec about purchase of power, that was an issue that government was involved in. Have I got that correct?

MS. DUNDERDALE: My understanding –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – is that Nalcor was well aware of the amount of energy that was available in the market generally –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – on the eastern seaboard of Canada and the United States, and they were in lots of forums where they were having discussions, we were making applications under the Open Access tariff and so on. So, generally, there was an understanding that power wasn't available to us from Quebec from all of the information that was in that was made public around those issues.

In terms – so nobody ever approached me to say should we go and see if we could buy some power from Quebec –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – and can we meet our needs that way. And I –

MR. SIMMONS: Other than in this presentation here, where we see that it's one of the options –

MS. DUNDERDALE: Absolutely.

MR. SIMMONS: – that's under consideration.

MS. DUNDERDALE: So the answer to that would've been, well, you know, as far as we can see, there isn't a supply. And then part 2 is there's a political consideration –

MR. SIMMONS: Yes.

MS. DUNDERDALE: – around security of supply.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And, as I said yesterday, I personally would have had the greatest difficulty – as would others in our government – in putting all our reliability on Hydro-Québec to provide service to the people of the province under any circumstance –

MR. SIMMONS: Hmm.

MS. DUNDERDALE: – given some of their actions completely outside of anything to do with the Upper Churchill.

MR. SIMMONS: Right.

So this presentation was September 23, 2010. This is almost three months before the Emera term sheet and the DG2 decision, the announcement of the Emera deal and so on. So clearly Nalcor is communicating this presentation that the option of import from Hydro-Québec – or through Hydro-Québec – has been considered as one of these five options but we are not pursuing it.

MS. DUNDERDALE: That's right.

MR. SIMMONS: So government – the province at – of that time certainly had the opportunity to re-evaluate or to direct or to suggest or to say hold on a minute, maybe that's one you should chase down and look further into. But was anything like that done at that point, or did the government, through Natural Resources and you as minister, accept that it was appropriate not to take that option any further that time?

MS. DUNDERDALE: We would have accepted –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – the information that was presented by Nalcor –

MR. SIMMONS: Yes.

MS. DUNDERDALE: – in terms of knowing that they did their due diligence, that they were doing what they ought to be doing.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: If it had come forward as a proposal, I don't think that it would have proceeded very far, because there would have been another overlay then from government on the political side.

MR. SIMMONS: Okay. Thank you.

Okay, can we go please to Exhibit P-01069?

So that presentation we just looked at was a Nalcor presentation on September 23 –

THE COMMISSIONER: You won't have that in your book.

MR. SIMMONS: Oh – it's not in there. Sorry

THE COMMISSIONER: You'll have to look at on your screen.

MR. SIMMONS: So what I'm going to bring you to now is a Department of Natural Resources presentation. The first page is a cover note. This is where we get the date: October 26, 2010. It's a note to Charles, and I forget if he was the assistant deputy minister –

MS. DUNDERDALE: I –

MR. SIMMONS: – I think he was the associate deputy minister, at that point.

MS. DUNDERDALE: I can't help you, Mr. Simmons.

MR. SIMMONS: Okay. But he was in the chain – he was reporting to you at that point.

MS. DUNDERDALE: He was a deputy minister of some sort.

MR. SIMMONS: Yes. Okay.

So go, please, to – just to the next page, perhaps – page 2 – first so we can see what this is.

So this is a slide deck presentation – Future Island Electricity Supply. It's dated October 2010. It's called the Review of Considerations and Findings, and we've heard that this was prepared within Natural Resources by – there was three different analysts in Natural Resources who were involved in this.

So – and before we get into it, does this ring a bell with you? Were you – you were minister at the time. Is this work that you commissioned? Because we know Mr. Thompson was aware of it and had some involvement in it.

MS. DUNDERDALE: I certainly would have been aware in the department. I – you know, it's all so long ago now.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And when you're completely and totally away from it, sometimes recall is difficult.

MR. SIMMONS: Right.

MS. DUNDERDALE: If I'm in the department as minister and this work is being done –

MR. SIMMONS: Yeah.

MS. DUNDERDALE: – I'm familiar with it.

MR. SIMMONS: Okay. So having had this presentation done in September, that Mr. Thompson described as being an important one from Nalcor, do you have any recollection, then, of either directing or knowing that Mr. Thompson had asked this kind of analysis to be done inside the department.

Do you have any recollection of that before we look at the presentation?

MS. DUNDERDALE: Again, I don't have a firm recall.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: But I know that we would have been doing the supplemental work, the supporting work. The piece of work would, obviously, happening at Nalcor in terms of the options that were available to us –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – and what we needed to consider.

But to the degree that it could be tested in Natural Resources, that would happen as well. Because the premier would ask –

MR. SIMMONS: Yes.

MS. DUNDERDALE: – have you tested, what's the department saying about this –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – are we on the right path.

And certainly in terms of the responsibility of the department, if we – if, in our analysis, we identified shortcomings or flaws or misinformation, it would be incumbent on us –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – to make that known to the premier.

MR. SIMMONS: Okay. Page 4, please?

So this one – this slide is headed Electricity Forecast. And I'm going here because if you scroll down a little bit ... And I've gone here with a couple of other witnesses. On the bottom left there's a graph, there, headed "Provincial Load Forecast," and it's a bit hard to make out, but there's two lines on it. And the legend at the bottom describes the blue one as NLH and the red one is DNR.

And if you go to the right of that, there's three bullets under the heading "Considerations." And the last one refers to DNR and NLH forecasts.

And so were you – what can you tell me about what sort of electricity load forecasting work was done inside the Department of Natural

Resources independently from that done by Nalcor?

MS. DUNDERDALE: I really can't speak to it, Mr. Simmons.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: I'd like to get down in my department five or six levels, but there's only so far that you can go.

MR. SIMMONS: Right.

MS. DUNDERDALE: And I knew that there was competencies in the department around forecasting, because it was necessary to have that, given that we're the shareholder for Newfoundland and Labrador Hydro, and submissions were being made to the PUB and so on, and so there had to be knowledge in the department so –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – that the proper analysis of that work and understanding of that work and explanation of that work –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – could be known throughout government. So I knew that expertise was there.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: But in terms of how they did their work, I didn't have any knowledge –

MR. SIMMONS: Mmm.

MS. DUNDERDALE: – of that.

MR. SIMMONS: So one of the things you identified as being an important question for you as we – as you worked up to sanction was do we need the power.

MS. DUNDERDALE: Yes.

MR. SIMMONS: And we know that, in late 2011, the Department of Natural Resources even put out a paper addressing that.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Like, a public paper.

So let me just run through what I understand to be how that question got addressed and see if that matches your recollection to see if I'm missing anything.

So first of all, Hydro did its ordinary work to develop load forecasts in the ordinary way, inside Hydro?

MS. DUNDERDALE: Yes.

MR. SIMMONS: Secondly, it appears that Natural Resources applied some internal expertise to load forecasting here, prior to DG2, in order to assess that?

MS. DUNDERDALE: That's right.

MR. SIMMONS: And we know that Nalcor retained Navigant after DG2 to do a review of the work that led to this DG2 decision and that some of that included looking at the load forecast. Would you have known that? Would that have risen up to the level where you would have been aware that the Navigant review included looking at Hydro's load forecasting methodology?

MS. DUNDERDALE: I can say, in the normal –

MR. SIMMONS: Mmm.

MS. DUNDERDALE: – briefing and discussions that went on within the department –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – I would have been made aware of that.

MR. SIMMONS: Mm-hmm

MS. DUNDERDALE: Remember that it went to the meetings in the premier's office that we had to come prepared to those meetings as well.

MR. SIMMONS: Mm-hmm

MS. DUNDERDALE: So the premier would be hearing from Nalcor. But they – he'd also be hearing from his own resources –

MR. SIMMONS: Mm-hmm

MS. DUNDERDALE: – within government.

MR. SIMMONS: Yeah. So the Navigant – Navigant was retained by Nalcor; Nalcor obtained the report.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Did that report reach your desk?

MS. DUNDERDALE: No.

MR. SIMMONS: Did you read that report?

MS. DUNDERDALE: No, I did not.

MR. SIMMONS: Okay.

Would that be normal for the – what would be expected of a minister in government that a report – 'cause it's seemingly a fairly important report at the time. Would that be a normal thing, that the report would be dealt with at lower levels and the report itself not reach you?

MS. DUNDERDALE: If it's Navigant's report at Nalcor –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – it wouldn't necessarily fall to the ministry –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – to read and report on that report.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: To – we'd be briefed by Nalcor –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – in the department and the premier’s – we’d probably be briefed at the same meeting –

MR. SIMMONS: Right.

MS. DUNDERDALE: – about the findings of Nalcor – or Navigant, and so on.

MR. SIMMONS: Right, so you’d receive a briefing from Nalcor about the – Nalcor’s consultants reports and findings –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – and I presume, then, the opportunity would be there that if you had any question or wanted to do follow-up you could request the report –

MS. DUNDERDALE: Absolutely.

MR. SIMMONS: – and get it then.

In your time as minister and premier, did you ever encounter any difficulty with Nalcor not being responsive to requests for information, documents or reports, of any kind, when the department actually sought them?

MS. DUNDERDALE: I wasn’t aware. Any information that was sought any time I requested information, I got that information in a timely way.

MR. SIMMONS: Okay.

So the Navigant report addressed the “do we need the power” question. And then following that your government referred the question to the PUB for the least-cost option, and we know the PUB retained MHI and MHI in its work for the PUB looked at Newfoundland and Labrador Hydro’s load forecasting as well.

Is that something that you were are of? That MHI had done that work for the PUB?

MS. DUNDERDALE: Yes.

MR. SIMMONS: Okay. And then, of course, we know that following that government retained MHI itself –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – in order – and that if we go to their report, there’s some more commentary on the load forecasting there.

So by the time you reached the sanction decision in December of 2012, was there any doubt in your mind through Nalcor’s work and the reviews that had been of Nalcor’s work – done of Nalcor’s work, as we’ve talked about, that the need for power was real and needed to be addressed?

MS. DUNDERDALE: I never had a doubt.

MR. SIMMONS: Okay.

So what we’ve got on the screen then is this Department of Natural Resources presentation from October of 2010 – we’ll go back to that. And just turn up page 5, please. Let’s bring this to your attention.

This is headed: “Island Supply Options Considered.” And if you look at the scenarios – there’s five scenarios there. If we scroll down a little you can see all five. And these appear to match the five we just saw on the Nalcor presentation from October. Do you see that?

MS. DUNDERDALE: Yes, I do.

MR. SIMMONS: So this appears to be analysis or consideration within the department of those supply options.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Do you agree with that? Okay.

And just go to page 21, please.

Now, even though Nalcor’s presentation didn’t deal with gas – natural gas as a potential supply option. We have here, on page 21, a section headed: “Oil to Gas Fuel Switching.”

MS. DUNDERDALE: Yeah.

MR. SIMMONS: And then go to 22, please. And here it’s “Holyrood (LNG Fuel Option).”

So it appears from this presentation that Natural Resources at this point, before DG2, was itself considering whether natural gas in one form or – provided in one form or another would be an alternative option.

Do you have any recollection of the department doing this work –

MS. DUNDERDALE: Yes, I do.

MR. SIMMONS: – prior to DG2?

MS. DUNDERDALE: And we had to examine every option.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: You know, again, our mandate was to provide the least-cost power to ratepayers in the province. So you look at every opportunity you have to meet your mandate. What's available? What's practical? What's sensible? What's doable?

But always, you know, the most important question that you need to ask yourself: Is it the least cost?

MR. SIMMONS: Mm-hmm, right.

MS. DUNDERDALE: Two – the two critical questions that we put to the PUB were at top of mind all the time. Do we need the power? And if we do, what's the least-cost option? So you had to consider everything.

MR. SIMMONS: Right. So even though we saw in the September presentation that Nalcor wasn't actively considering natural gas, the government through the department took – seems to have taken it upon itself to make sure that was considered –

MS. DUNDERDALE: Absolutely.

MR. SIMMONS: – before the matter moved forward.

MS. DUNDERDALE: Absolutely. You know, we weren't gonna be directed by Nalcor –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – in terms of work that was going on within the department.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: So whatever we thought – and, you know, with the minister in consultation with the deputy and so on –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – and the other members of the executive – what should be examined was certainly something that we were going to examine. Because, as well, when we went to meetings to brief the premier, if he asked a question: Have you done your due diligence? Have you examined this, that or something else? You wanted to be able to answer in the affirmative yes, we have and this –

MR. SIMMONS: Okay.

MS. DUNDERDALE: – is what we found.

MR. SIMMONS: Okay, good.

Now, I have some questions for you about the sanction decision, so we'll move up to December of 2012. And can we go to Exhibit P-00067, please?

THE COMMISSIONER: That's at tab –

MR. SIMMONS: This –

THE COMMISSIONER: I'm sorry. Tab 129 at book 3.

MR. SIMMONS: Okay. Thank you, Commissioner.

So this was Minister Kennedy's Cabinet paper submitted on, I think, the 5th of December 2012. I think you were brought to this yesterday. And I'm gonna bring you to page 5, please.

MS. DUNDERDALE: Could you give me the tab number?

MR. SIMMONS: Oh.

THE COMMISSIONER: 129.

MR. SIMMONS: 129.

MS. DUNDERDALE: In book –

MR. SIMMONS: Volume 3.

THE COMMISSIONER: It will probably be 29 –

MR. SIMMONS: Yeah.

THE COMMISSIONER: – in volume 3.

MS. DUNDERDALE: Yes.

THE COMMISSIONER: Yeah.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Now, when we ended off yesterday, I'd asked you whether you regarded the sanction decision as being a public policy decision, and you'd agreed with me then. And I've brought you to this page because there are a number of benefits listed here starting in the first full paragraph on the page. And you can take your time looking at that if you want, but I'm going to list, I think, the four things that are identified there.

And the first is that there are – said to be "... significant economic benefits through substantial employment and income to businesses." So that's an economic-spinoff benefit.

There is the facilitation of mining expansion.

MS. DUNDERDALE: Very important.

MR. SIMMONS: Very important.

Okay, now, maybe you can tell me a little more about why that was so important.

MS. DUNDERDALE: Because commodity prices were – in minerals were very, very high and there were a significant number of mines in various stages of development in Labrador. And as they were trying to find investors and firm up their business plans, they had to have a secure source of energy.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And so they were engaged with my department and government, in terms of power supply, on a weekly basis.

We had also done a piece of work around Vale, who as you know have the nickel mine in Labrador –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – which is – and they were working on the ovoid layer, right on top of the ground. And that deposit was gonna be depleted in about 2023, but we have a huge plant down in Long Harbour that needs that material to function. They can get it elsewhere in the world, but it would be much better to have a supply here.

And in the Voisey's Bay contract, Voisey's Bay – they were required to spend a significant amount of money – trying to go underground – researching whether or not they could go underground.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: I think it was something like \$800 million. They did all of that work. They spent every cent of that money but there was no requirement in the contract that they go underground.

And because of a set of circumstances around their development plans and the late filing it allowed the contract to be partially reopened and that was a great opportunity for us –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – because now we could go in and renegotiate some of the terms. And we did go in and we did renegotiate terms. And the term was – they had a specific date under which they had to go underground.

So, it was a difficult piece of work. They weren't very happy about it but we had a firm date now for Voisey's Bay to go underground. And so the plant in Long Harbour wouldn't be under threat of not having a supply in 2023. While the question also became then – they were going to require enormous amount of power, where were they going to get it?

So, there were significant opportunities in Labrador to drive the whole mining sector. As well, a very important political consideration was at work as well. If we were going to develop the Lower Churchill and – to the benefit of the people of the Island of the province, they're also, in terms of adjacency, made it to be a benefit to the people of Labrador.

And so there were two things we had to consider 'cause we still had to do least cost for ratepayers on the Island.

MR. SIMMONS: Yes.

MS. DUNDERDALE: But there had to be a benefit to the people of Labrador as well – given that this energy was coming from the lands that they occupied.

MR. SIMMONS: Right.

MS. DUNDERDALE: And I can tell you – anybody who knew John Hickey and Patty Pottle, that this development wasn't going to take place if there wasn't some benefit for the people of Labrador.

MR. SIMMONS: Right.

MS. DUNDERDALE: So, all of these considerations, you know, it was – this was a good thing for ratepayers on the Island. It was a good thing for the economy of Labrador because not only would you get the economic benefit of building the whole thing but it enabled all kinds of other developments.

MR. SIMMONS: Apart from a development of new electricity generation capacity in Labrador – was there, at the time, enough existing power available for the demands that were anticipated from the iron ore mining sector?

MS. DUNDERDALE: No, we had our recall power.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: 300 MW of power – I often refer to it as two [sp 200], because two [sp 200] was available for us to sell in the summer, you know. We needed all of that 300 MW in the winter for heating in Labrador but in the warm

summer they only needed about 80 MW of power and we could sell the other 200 MW of power on the spot market.

MR. SIMMONS: Right. So the recall power wasn't sufficient or available in order to meet the anticipated needs of the mining sector in Labrador, –

MS. DUNDERDALE: And it wasn't reliable.

MR. SIMMONS: – is that what you're saying?

MS. DUNDERDALE: There was no mining company going to take a business plan to an investor and say: We can guarantee that we got power to run the mine four months of the year, –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – the other 4 months were going to have to see what we can get.

And that's the other reason why we sold the non-firm power associated with Muskrat Falls. But it was never our intention – and there's many speeches and writings and so on about the fact that the 40 per cent – that the amount of the 40 per cent of power that was firm was to be held for economic development in Labrador. You could sell it on the spot market if nothing was available, but you wouldn't do long-term contracts around the firm power.

MR. SIMMONS: Right. Okay.

So, two of the benefits that are identified there then, are the economic spinoff from the project itself and facilitating mining, and then the next two that are there, I see, are: the dividends that will accrue to the province and – you may have to scroll down Madam Clerk to see that, it's on the same paragraph – and also the environmental benefits that will accrue from it.

So as I understand, the dividends would be funds that would accrue to the benefit of the tax payer –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – of the province, ultimately as opposed to the ratepayer.

MS. DUNDERDALE: Yes, because dividends do come back to the province. And we talked a little bit yesterday or the day before about the benefit, you know, the whole business case –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – of Muskrat Falls, which included significant benefits to the people of the province and part of that is dividends.

MR. SIMMONS: Right.

Now, Mr. Martin has given evidence that – to the effect that the dividends are something that would potentially be available to be used in the event that rate mitigation was required for the ratepayers of the province.

Is that something that was discussed prior to the sanction of the project?

MS. DUNDERDALE: Absolutely, because as Jerome Kennedy testified when he was here: Mitigating rates, rates, rates, rates. And their was a great deal of concern being expressed by the people of the province around rates –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – and where the opportunities were to mitigate rates and how did you do that and what was it gonna look like and how much would you take and so on.

MR. SIMMONS: Mm.

MS. DUNDERDALE: And he often encouraged me to make a public statement to say that when the 40 per cent of excess power was monetized, that that money would be used to mitigate rates.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And, you know, I would push back and say: No, it's too early. It's not time yet, we need to get this built and, you know, I don't expect to be here by the time that, you know, this is commercialized –

MR. SIMMONS: Right.

MS. DUNDERDALE: – and so the government of the day can make the decision how best to use the benefit coming out of the project.

MR. SIMMONS: So prior to sanction then, there was two potential sources of revenue that were known that could be used in the future to mitigate the rates paid by ratepayers. It's – it was the dividends that were to be paid to the province for its equity investment in the project and the proceeds from the sale of excess power that wasn't needed to supply the province or Emera, right?

MS. DUNDERDALE: Water rentals –

MR. SIMMONS: And water rentals as well.

MS. DUNDERDALE: – return on equity –

MR. SIMMONS: Yes. Yep. Yep.

MS. DUNDERDALE: – significant value.

MR. SIMMONS: Now, under what circumstances was it anticipated that it might be necessary to do that – to mitigate the rates? What would have to happen for the need to arise to mitigate the rates? Because, you know, the decision was made on the basis that the Interconnected Option was the least-cost option – that was gonna be cheaper than continuing on the Isolated Island plan for ratepayers.

So what would the circumstances be that would make it necessary to even mitigate the rates?

MS. DUNDERDALE: I – I can't recall a conversation about using the dividends or the return on equity or any of those kinds of things. But there was a real discussion in the House of Assembly, particularly around the 40 per cent excess power.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And given the fact that ratepayers were paying for it, the argument was being made that it really should apply to rates.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And that's really – that was as narrow as that – as that whole debate was.

And, you know, my position was the people of the province owned the money that would be earned from that 40 per cent of the power. But by the time that the project was in service and so on, you know, I couldn't predict where the province would be and what our needs would be or what would have manifested itself.

MR. SIMMONS: Mm.

MS. DUNDERDALE: So let's not spend the money, basically, before we earn it.

MR. SIMMONS: Mm.

MS. DUNDERDALE: So when the money is coming in, was my position, then the government of the day, on behalf of the shareholder, can make a decision on how best to spend this money.

It might be to reduce rates, absolutely, but there might be something more pressing that the people of the province felt took a higher priority. I felt that question was – I could be – I could have been really crass and said yes – very political and say, yes, we're gonna, you know, reduce rates right down. That would have worked for me politically, I'm sure. But I thought it was better left to the government of the day to make a decision in concert with people of the province about what to do with that money.

MR. SIMMONS: So, very clearly, then, that wasn't a decision for Nalcor to make or that Nalcor could make. That was a decision not just for government, but you're saying, even, the government of the day?

MS. DUNDERDALE: Yes.

MR. SIMMONS: Of the time. Okay.

And the fourth one is environmental benefits, and we see that – there's a couple things there – one is reducing emissions from Holyrood in the sense that – of pollutants – local pollutants, and the other is reducing the greenhouse gases –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – that are being produced within the province.

MS. DUNDERDALE: Yes.

MR. SIMMONS: I suppose there's a social value in that, and there's also a potential cost saving if and when taxation – carbon taxes –

MS. DUNDERDALE: Absolutely.

MR. SIMMONS: – come in –

MS. DUNDERDALE: There was an –

MR. SIMMONS: – to play on that.

MS. DUNDERDALE: – economic value, to it –

MR. SIMMONS: Economic, yeah.

MS. DUNDERDALE: – 'cause we're gonna have to pay for carbon.

MR. SIMMONS: Yeah.

MS. DUNDERDALE: And it's already started, and, you know, it becomes more pronounced every day –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – as we come to a better realization of what's happening to the planet.

So there is no question about the fact that, whether we like it or not, there's gonna be a cost to carbon.

MR. SIMMONS: Mm-hmm.

Now, to what extent did that sort of consideration – the environmental considerations on both counts – to what extent did that play into the analysis done by you and by Cabinet when the decision was made to sanction the project?

MS. DUNDERDALE: It was a very important time. There was an international debate –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – taking place about climate change and the urgency to do something about it. And we had something to contribute. We were being encouraged by the governors, for example, in New England, despite the shale gas and what that meant to them, economically, in terms of the price –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – of fuel. But they also understood that they may get shale gas very cheaply on one hand, but the cost of carbon that they were gonna have to pay would probably be significant on the other hand. And the climate –

MR. SIMMONS: Mmm.

MS. DUNDERDALE: – the planet was warming, and we all needed to play a role.

Newfoundland and Labrador was positioned beautifully at this time because there's an economy around climate change as well.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And we were blessed in energy. I spoke yesterday of the SWOT analysis we did. We had to find a way to grow the economy. We had to get off this roller coaster. You know, we had been dealing with commodities as the basis of our economy for 500 years. And it was all highs and lows, feast and famine. You know, we were getting lost in debt.

You know, and now, you know, industries were shrinking. We're making more money from our fishery today than we've ever done in our history, but we've got fewer people employed, and communities don't have an economic reason to exist anymore. You know, what else was available to us?

Very unlikely IBM was gonna come in and say – you know, we went to Ireland. We had a relationship with Ireland. We went and talked to them extensively about what they did to revitalize their economy, but we didn't have the same connectivity and so on.

So doing some of the things they did around technology for example – IT – probably weren't

going to happen here in the province. And we're coastal people, and – all kinds of challenges. But in that SWOT analysis, we started looking at what we did have. And as I said, we had the best wind regimes in North America.

We invested, through Nalcor, some millions of dollars in seismic because people told us to ignore the oil that kept coming in on the surface of the water off Labrador because there was no oil up there because there hadn't been any organic matter; it was just the earth's crust. And, you know, in one of our discussions, it was decided that we test that theory.

And so we put some millions of dollars into seismic that we did ourselves, and what we found since is, you know, we probably got four very large oil fields there that dwarf what already exists off the Grand Banks. And so we found opportunities in minerals – rare earth elements that we use in all our technologies. You can almost pick them up on the sides of the Churchill River. Lots of opportunity, but we needed power to drive it all.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: And so, you know, there's where the public policy piece came. You know, if we were going to get ourselves on a solid financial footing – and we saw through our time in government what that could do for us. When we came – I talked yesterday about the fact that we were arguing in the Cabinet room about whether people could have teeth.

And we went from that place, because of the price of oil, to where we were able to invest \$8 billion in infrastructure here in the province that we were able to provide better healthcare to the people of the province, better education, while at the same time we were able to pay down \$4 billion worth of debt. You know, there were countries in the world that couldn't say they did that.

MR. SIMMONS: Yeah.

MS. DUNDERDALE: And that was because we were able to maximize the benefit from our natural resources.

So we are going to continue in that theme, in terms of the Churchill River, and once we had connectivity to North America through Quebec on one hand, with our recall power, and through the Maritime Link on the other side, so many more things became possible for people of the province.

MR. SIMMONS: Right. Now, this is 2018 –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – coming on 2019, and you've given us a very concise description, then, of what I'll say was your vision of the future for the province and how energy and electrical energy tied into that.

MS. DUNDERDALE: Yes.

MR. SIMMONS: If you were to put yourself back into December 2012, in the Cabinet meeting where this paper was presented, was that the same vision you had at that time? And would you have presented it in the same way?

MS. DUNDERDALE: Yes, absolutely. Yeah.

MR. SIMMONS: Okay.

I have some questions for you about the capital cost estimate, 6.2 billion, which has been a tremendous focus of the last several months here at this Inquiry.

We've heard evidence that the \$6.2 billion estimate for the Muskrat Falls plant, the Labrador Transmission Assets, which was the transmission line to Churchill Falls, and the Labrador-Island Link to Soldiers Pond, including the Strait of Belle Isle crossing, all those things together, were estimated to cost 6.2 billion made up of, I'll say, three pieces.

One was the base estimate, which was largely prepared by SNC-Lavalin with supplemental work done by staff at the Nalcor Energy-Lower Churchill Project team. And then it included a contingency that we now know was called a tactical contingency of 7 per cent, and it included an escalation number to account for a change in pricing during the time it takes to build the project.

Now, did you understand at time of sanction that that's what the 6.2 was built of?

MS. DUNDERDALE: Yes, I did.

MR. SIMMONS: Okay. So let's take each of those for a moment.

For the base estimate, did government, the department, Cabinet Secretariat, anyone, have the supporting documents for the base estimate, the paper that said what the items were that built up the base estimate?

MS. DUNDERDALE: I can't speak to that directly because I didn't ask the question. I don't know, Mr. Simmons.

MR. SIMMONS: Would you expect that that's something that the department would have wanted to get to see for itself.

MS. DUNDERDALE: Absolutely.

MR. SIMMONS: You'd think it would be.

MS. DUNDERDALE: Yes. Absolutely.

MR. SIMMONS: But you don't know if it –

MS. DUNDERDALE: I can't say that they did.

MR. SIMMONS: Okay.

Now, what about the determination of the amount of tactical risk. Did government have any documentation from Nalcor that was the report – 'cause there was a report from Westney that determined the tactical risk? Do you know if government had that report?

MS. DUNDERDALE: I don't know. I remember the discussions around tactical risk.

MR. SIMMONS: Yes.

MS. DUNDERDALE: What did tactical risk cover?

MR. SIMMONS: Yes.

MS. DUNDERDALE: You know, there was more, for example, risk on the powerhouse, for example, I think.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: It was a higher level of risk on the powerhouse than there would have been on the transmission and so on. So I remember all of those discussions.

MR. SIMMONS: Yeah.

MS. DUNDERDALE: But I couldn't tell you if the department had requested Westney's report –

MR. SIMMONS: Right.

MS. DUNDERDALE: – on risk.

MR. SIMMONS: Did you personally know that Westney had been engaged to do risk analysis work?

MS. DUNDERDALE: I knew Westney had been engaged. I don't know that I knew they had been engaged to do risk analysis work. I don't have that level of recall.

MR. SIMMONS: Okay.

So when you were premier, would you ever have considered asking for copies of Westney's reports because you knew they had been engaged and you knew there'd been an assessment of tactical risk? Did you ever consider asking for the tactical risk report?

MS. DUNDERDALE: No. You know, we were being briefed on – I can't say – I wouldn't be able to – under oath here, say, Commissioner, that we were fully briefed on Westney's work for Nalcor –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – because I don't know that.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: But I know that we were reported on pieces of work for Westney –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – that Westney was in reporting to government.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: Nalcor referred to Westney and Westney's work on several occasions.

MR. SIMMONS: Right.

MS. DUNDERDALE: So, I was well aware of Westney –

MR. SIMMONS: Yeah,

MS. DUNDERDALE: – and some of the pieces they were doing, but the information that I had would have come from Nalcor.

MR. SIMMONS: And similarly for the escalation piece, the 6.2, did you look for any of – any sourced documentation or back-up documentation that showed how the escalation had been calculated in order to satisfy yourself that it was done right?

MS. DUNDERDALE: I didn't as premier.

MR. SIMMONS: Do you know if in your department they did?

MS. DUNDERDALE: I don't know if the minister did in the department, I can't speak to it.

MR. SIMMONS: Right. Okay.

So, if any of those things had been reviewed directly by people in your department you wouldn't know and it wasn't reported up through the minister to you one way or the other whether that had been done.

MS. DUNDERDALE: It may have been noted in a meeting. If we were in the meeting, you know, the minister might say, well, the department has checked these numbers, Premier, and, you know, they all bear out or whatever. But there wouldn't have been a formal reporting up through around those things.

MR. SIMMONS: Mm-hmm. Okay.

But where you sat, you knew that there was some contingency included in the 6.2. And I gather you'd had discussions and been party to discussions with Mr. Martin at least –

MS. DUNDERDALE: Oh, yes.

MR. SIMMONS: – about what sort of risks there were that were being identified and how they were being dealt with?

MS. DUNDERDALE: And spoke about them publicly.

MR. SIMMONS: Yes.

MS. DUNDERDALE: And you will find them in *Hansard*; and spoke about them in the debate in the House of Assembly.

MR. SIMMONS: Right.

Now, you told us in your direct questioning by Commission counsel that you had questioned Mr. Martin about something to the effect of: What's the worst it could be? Or if there's overruns, how large could they be? Or what might we have to be prepared for?

Can you tell me a little more about that, please?

MS. DUNDERDALE: Well, my mantra had been through the whole piece –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – is let's get this number –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – as tight and as close as it can be. So whatever it takes to do this, whatever engineering you need to do, whatever double-checking you need to do, let's get the number right.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: You know, I don't want surprises. If the project is going to be 5 billion or 6 billion or 8 billion, I want to know, to the degree that you can determine it, what the number is. And then we're gonna have a discussion about whether or not we can afford to do this. Is this still the least-cost option? And do we have the funds to cover this.

You know, I don't want to sanction this project and start the build in 2013 – and I might be still here in 2015 or 2016 and find that the number is nowhere near where you told me it was going to be.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: So let's get that nailed down. So, you know, everybody who worked with me and around me knew that that was extremely important as far as I was concerned.

But, at the same time, as I said, if we had done \$8 billion dollars worth of work over 10 years in government, you know, we were, you know, billions of dollars were flowing through on an annual basis. We were building everything. So, you know, I'm a sensible, practical person too I believe. So I know there's a chance that this might not come at 6.2.

So they're telling me 6.2 is the number. That's a solid number. That's really good. And we're gonna do this on a P50, which means, you know, it's a 50-50 chance it might go over.

MR. SIMMONS: Mm-hmm. So you recognized that.

MS. DUNDERDALE: Yeah.

MR. SIMMONS: You were aware of that.

MS. DUNDERDALE: But it very likely might come under as well.

MR. SIMMONS: Mm-hmm. So if it's going to go over –

MS. DUNDERDALE: So the question I asked was: Okay, on our 50-50 –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – if it goes over – if you think this might go over – give me a number. Tell me what you – what is the worst that could happen here?

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: Because I need to make sure that I'm –

MR. SIMMONS: Right.

MS. DUNDERDALE: – not putting us in a vulnerable place.

MR. SIMMONS: And this is a number over and above the 6.2, which already –

MS. DUNDERDALE: This is over 6.2.

MR. SIMMONS: – includes some contingency.

MS. DUNDERDALE: So this is great. I, you know, I'm really glad that you're confident that 6.2 is the number, because that's what I want.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: I want that – I want to know that you've done the amount of work necessary to confidently come to me –

MR. SIMMONS: Yeah.

MS. DUNDERDALE: – and say –

MR. SIMMONS: Right.

MS. DUNDERDALE: – this is 6.2

MR. SIMMONS: So when you asked – since it's P50 and it's a 50 per cent chance that it can go over –

MS. DUNDERDALE: Yeah.

MR. SIMMONS: – how much is it going to go over.

MS. DUNDERDALE: How much?

MR. SIMMONS: And in your evidence you said, I think, 6.7 billion instead of 6.2 billion.

MS. DUNDERDALE: Could go – could go, maybe, 200 or 300 million.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: Might go five, tops.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: Which is fine, 'cause I thought, okay, if we go to 6.7, at the end of the day we bring this in at 6.7. Do we have the funds –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – to cover off \$6.7 billion without putting anybody at risk or anything at risk here? And I knew that we had far more – we could, you know, we could have gone higher than that and still – but, you know, I still have to –

MR. SIMMONS: Yeah. Did you communicate that to Mr. Martin, that if it went to 6.7 billion that that was a manageable number and government could work with that –

MS. DUNDERDALE: No.

MR. SIMMONS: – and that wouldn't change the decision –

MS. DUNDERDALE: No, Mr. –

MR. SIMMONS: – or did you hold that yourself?

MS. DUNDERDALE: Mr. Martin knew that that was a manageable number in terms of what was in the business case.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: He would have to, I mean –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – he shouldn't be in charge of the project if he didn't know.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: But it doesn't matter how much money we're gonna earn from the project, what the benefit of the project is gonna be, you know, you have to be practical and sensible and know that it can carry –

MR. SIMMONS: Sure.

MS. DUNDERDALE: – you can cover off, you can meet your responsibilities. But if we’re gonna build something for 6.2, then I don’t wanna build it for 10.

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: You know, we’ve done a whole lot of work and we’ve done a comparative analysis and we’re doing least-cost option – everything that we’ve done for the last eight years is been around ensuring that we’re gonna bring this project in as the least-cost option for the –

MR. SIMMONS: Okay.

MS. DUNDERDALE: – people of the province.

MR. SIMMONS: Okay.

I’m gonna bring you now to the Westney report on what we’ve been calling strategic risk.

MS. DUNDERDALE: Yeah.

MR. SIMMONS: Which is the one that had been prepared for Nalcor. First, I think I’ll just go to P-00829 for a moment, which is a version of the report that was prepared in June of 2012. And this is probably not in your book.

THE COMMISSIONER: No, it’s not. You’ll have to look at your screen.

MR. SIMMONS: Yeah.

And I’m gonna use this primarily as a reference point and then we’re gonna go to the later one from September that I think Mr. Learmonth brought you to earlier.

Scroll down, please.

Okay, actually, go to page 3. So there’s a report here, it’s actually stamped in red there: June 12, 2012, Draft For Review. It’s called “Analysis of Potential Owner’s Contingency For Financing of Lower Churchill Project.”

And – go to page 7, please. So this is a slide that’s essentially the same as the one that you’ll see in September. This is where the 497 million

unmitigated impact of strategic risk is quantified.

So this is from June, and then when we come to the September report that we’ll go to next, it’s the same number there. So let’s go to P-00832, please?

THE COMMISSIONER: That one’s at tab 100, book 3.

MS. DUNDERDALE: Which binder?

MR. SIMMONS: And –

THE COMMISSIONER: Book 3 – binder 3.

MR. SIMMONS: Yes. Thank you, Commissioner.

MS. DUNDERDALE: And the tab number again, Commissioner?

THE COMMISSIONER: Tab 100.

MS. DUNDERDALE: Thank you.

I’m doing something wrong, Commissioner.

THE COMMISSIONER: First – it’s right at the beginning of your book. You’ll see 100 there on the bottom? No, it should be right –

MS. DUNDERDALE: Mine starts at 96.

THE COMMISSIONER: Just keep going after – if you look at the (inaudible).

MS. DUNDERDALE: Oh, I got it now, 100? Sorry.

THE COMMISSIONER: Yeah, 100.

MR. SIMMONS: So the first page is just a cover email, and this gives us the date on which it was transmitted which is September 19, 2012. We’ll go to page 3, please? This is just the cover page: “Analysis of Potential Management Reserve and Lender’s Owner Contingency for the Lower Churchill Project.”

And now go to page 7. And this is the same slide that we’ve seen in the June version of the report with the same numbers for four different

itemized categories of strategic risk, the first one being a schedule risk, and then it's performance risk and then skilled labour risk. And Mr. Martin has spoken to the mitigation efforts on steps taken in relation to all of those. Did you hear his testimony regarding that?

MS. DUNDERDALE: Yes, I did.

MR. SIMMONS: Okay, well, I'm not going to take you through all that again, because that's all on the record. But what I do want to bring you to – if I can find it here, is – let's start at page 10, please.

So we've heard it explained to us how these risk curves work. Now is this – this is probably not something you would have seen –

MS. DUNDERDALE: No.

MR. SIMMONS: – before. And as I understand it, this particular one is illustrating how much strategic risk should be quantified at, based on what the tolerance for risk is as measured in the P-factor. The P-factor measures the tolerance for risk.

So if you look on the point of the curve, there's a box that says P50. Here it actually says 469 million instead of 497 and it points to a point on the curve. And if you get a higher P-value, to P75, you quantify the risk at a higher number; a lower P-value, P25, you quantify it as a lower number, so that's the chart for strategic.

Go to the next page, please, page 11. Here's the one for tactical risk and it works in kind of the same way. And in the description of it on the right it gives us a predictive range of between P25 and P75 what the cost would be and then says at a P50 value the project contingency would be 368 million. So that's where the 7 per cent number came from that found its way into the 6.2.

MS. DUNDERDALE: Yes.

MR. SIMMONS: And what I want to bring you to is the next one now at page 12. Now, page 12 is a chart that's called Total Cost Risk Exposure.

And I'll read the notes on the right there because I've got a question about this. It says: "The

Predictive Range (P25-P75) of the Total Cost Risk Assessment for the Lower Churchill Project is \$5,946 MM-\$6,737 MM. These results reflect the full impact of both the Tactical Risk Assessment and the potential Strategic Risk Exposure.

"Please note that, due to the nature of probabilistic analyses, the Tactical Risk Assessment results and the potential Strategic Risk Exposure are not directly additive to the Total Cost Risk"

So if we went back to the prior two charts and saw the P50 number for strategic and the P50 number for tactical and added them up, we'd get a bigger number than what they've got here. But this tells us what Westney's assessment was of what the project cost would be, taking into account their assessment of tactical risk and strategic risk.

Now, if you look on the chart, it's – at the P75 value it says 6.737 billion. So I'm just wondering if there's a coincidence here that if you were to include both strategic and tactical risk and apply a higher – a lower risk tolerance at the P75 level, that the number turns out to be 6.7 billion. And that's the same number that Mr. Martin gave you when you pushed him on what the worst-case scenario would be.

Does this trigger any further recollection about any discussion you may have had or any discussion about Westney analysis or anything in relation to that?

MS. DUNDERDALE: No, it doesn't. It really doesn't.

MR. SIMMONS: It really doesn't. Okay, all right.

Just a couple other topics; yesterday, you gave some evidence about – this is a post-sanction matter – about the federal loan guarantee and what you understood to have been a misunderstanding regarding – with the federal government about it.

Now, we heard evidence from Mr. Derrick Sturge on this same topic. And if I understand correctly, he said that this arose in about March of 2013 and that there had been a sanction

agreement put in place with Emera at sanction. And that it was understood that the sanction agreement satisfied the federal government's condition precedent for Emera's sanction of the project.

MS. DUNDERDALE: Yes.

MR. SIMMONS: And in March they learned that the federal government regarded it differently and regarded Emera as only having conditionally sanctioned the project.

MS. DUNDERDALE: Yes, that's exactly –

MR. SIMMONS: Does that ring a bell with you?

MS. DUNDERDALE: That was exactly the situation.

MR. SIMMONS: Okay, so that's the explanation.

Now the other thing – the last thing I want to bring you to is Exhibit P-00868, please.

THE COMMISSIONER: P – what was the number again, Mr. –

MR. SIMMONS: 00868.

THE COMMISSIONER: 00868.

MR. SIMMONS: Probably have this one.

THE COMMISSIONER: It's 110, book 3.

MR. SIMMONS: Book 3, 110.

So this is the October 18, 2011, letter to Nalcor Energy and I believe this one is signed by you.

MS. DUNDERDALE: Yes.

MR. SIMMONS: This is the one where on page 2 there's a commitment made to fund not just the base equity, but also contingent equity. So am I correct that contingent equity would only be necessary if the project went over budget?

MS. DUNDERDALE: Contingent equity would only be necessary if the project went over budget, yes.

MR. SIMMONS: Okay.

So, as of October 18, 2011 – had anything been done within government to quantify or assess the extent of the risk that government would be called upon to provide contingent equity?

MS. DUNDERDALE: I can't recall it, Mr. Simmons.

MR. SIMMONS: Do you recall there being any question raised about that or it being an issue that was even considered –

MS. DUNDERDALE: Not at that point.

MR. SIMMONS: – at the time, in October?

MS. DUNDERDALE: Not at that point.

MR. SIMMONS: So, it was recognized that the contingent equity would be intended to cover cost overruns on the project, but there was no consideration given to what type of – to how much that might be or whether there should be some kind of reserve put in place to address it.

MS. DUNDERDALE: I don't – no – there was no discussion around that, at least that I was aware of. Something might have been happening in the Department of Finance around that piece –

MR. SIMMONS: Yeah.

MS. DUNDERDALE: – but I don't remember –

MR. SIMMONS: Yeah.

MS. DUNDERDALE: – a discussion around that.

MR. SIMMONS: Well, you were the premier at the time –

MS. DUNDERDALE: Yes, I was.

MR. SIMMONS: So, one would think that that would be an issue of some significance and importance to you, as premier.

MS. DUNDERDALE: I just don't recall, Mr. Simmons, a discussion or that there were – and

the discussion very well may have happened. There was a lot of things going on –

MR. SIMMONS: Hmm.

MS. DUNDERDALE: – at that time –

MR. SIMMONS: Right.

MS. DUNDERDALE: – in terms of the budget, response to the budget. There were a lot of things happening in government at that time.

MR. SIMMONS: Well, in December of 2012 then – when the project was actually sanctioned –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – you had the \$6.2 billion estimate –

MS. DUNDERDALE: Yeah.

MR. SIMMONS: – the cost. You’d had your conversation with Mr. Martin.

MS. DUNDERDALE: Yes.

MR. SIMMONS: So you had a 6.7 number in the back of your mind –

MS. DUNDERDALE: Yes.

MR. SIMMONS: – as a potential number.

MS. DUNDERDALE: Yes.

MR. SIMMONS: Was anything done then, to connect that to the potential –

MS. DUNDERDALE: (Inaudible.)

MR. SIMMONS: – to have to provide contingent equity?

MS. DUNDERDALE: Yes. There would have been a discussion with the Finance minister because we knew that we had the money within the project itself, within the business plan –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – to pay for any overruns that might be incurred and so on. But, you know, that’s over a 50-year period. So –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – if we’re going to be called on for funds during construction then there had to be an understanding of where that was going to come from. So, yes – that would have been a conversation that was taking place.

MR. SIMMONS: Okay. So, the conversation with Finance then wasn’t just about where do we get the money for the base equity. It was about – can we also fund contingent equity.

MS. DUNDERDALE: Absolutely. So, where are we going here, ’cause we’re taking on a big responsibility here.

MR. SIMMONS: Yeah.

MS. DUNDERDALE: And are we in a position to be able to do that?

MR. SIMMONS: Did that conversation include how much for contingent equity? How much to prepare for it?

MS. DUNDERDALE: No. Not that I recall.

MR. SIMMONS: Hmm.

MS. DUNDERDALE: It may have been within the – they may have come back to me and said – you know, this is what we’re able to do –

MR. SIMMONS: Mm-hmm.

MS. DUNDERDALE: – you know, if we get the worst-case scenario here – this is how much we have. This is how much we can raise. This might be our ability to borrow and whatever. But I don’t remember specific numbers; it’s all in around that.

MR. SIMMONS: Is that a conversation that you had with your minister of Finance?

MS. DUNDERDALE: I certainly would have. That – that conversation would have taken place at the Cabinet table.

MR. SIMMONS: At the Cabinet table?

MS. DUNDERDALE: Yes.

MR. SIMMONS: So not just the minister of Finance, all participants –

MS. DUNDERDALE: Absolutely.

MR. SIMMONS: – would have been aware of that –

MS. DUNDERDALE: Yes.

MR. SIMMONS: All the people involved to make –

MS. DUNDERDALE: Absolutely, 'cause –

MR. SIMMONS: – the decisions to sanction the project –

MS. DUNDERDALE: – I've got the commitment letter here now, we've got a Cabinet paper, we're gonna do this. And we're responsible. You know, until this thing is up and running and paying for itself, we're responsible. So there was clear understanding of that, within government.

MR. SIMMONS: Thank you very much, Ms. Dunderdale; I don't have any other questions for you.

MS. DUNDERDALE: Thank you.

THE COMMISSIONER: The Consumer – or I'm sorry the Concerned Citizen's Coalition. Actually we're at – I just noticed – 10 to 11. So if you want to start now, we'll break when you're – when you feel that you're – it's appropriate to break.

MR. BUDDEN: It's up to you – if the witness would like a break? I'm fine either way.

MS. DUNDERDALE: I'm fine.

THE COMMISSIONER: Okay, well let's go, and when you come to a natural point where you –

MR. BUDDEN: Sure, okay

THE COMMISSIONER: – break, we'll break.

MR. BUDDEN: Sounds good.

Good morning Ms. Dunderdale; my name is Geoff Budden, as you may know. I'm the lawyer for the Concerned Citizens Coalition, which as you probably know, as well, is an organization consisting of individuals who for a number of years have been critical of the Muskrat Fall's Project.

MS. DUNDERDALE: Yes. Good morning, Mr. Budden.

MR. BUDDEN: Good morning. I've a few questions for you. This is a sort of a preliminary point: you're in Cabinet, I guess, a little over 10 years, from late 2003 until early 2014. Am I correct on that?

MS. DUNDERDALE: From the time I was elected until I left.

MR. BUDDEN: Yes. And I'd like – I'm just going to ask you a few questions about the process by which capital-cost expenses were approved. So you can use examples, say a high school or a hospital; something like that. But perhaps you can just walk us through how that would go and get through Cabinet and so forth. Could you do that?

MS. DUNDERDALE: Yes. In terms of schools for example –

MR. BUDDEN: Mm-hmm.

MS. DUNDERDALE: – a package of money will be made available through the Department of Education for capital construction. That will be then made, you know – information on that made available to the school boards, and some allocation regionally and so on in terms of monies available.

The school boards would make their own assessment of need within their district. They would make application for the funding. And in the department and working with the boards that'd be prioritized and a decision would be made on what schools were gonna be funded.

MR. BUDDEN: Mm-hmm.

MS. DUNDERDALE: And then the school board itself would engage engineers and designers and so on to draw up a design for the school, and the Department of – the particular school board and the Department of Education would work together in terms of design approval and so on and –

MR. BUDDEN: Mm-hmm.

MS. DUNDERDALE: – final sign-off on the school.

MR. BUDDEN: Okay, and my understanding, as well, is that the – obviously the Department of Education on its own would not necessarily have the authority to approve a \$20 million high school in the west end of St. John's or – let alone a hospital, something like that.

MS. DUNDERDALE: No, no – those approvals would come to Cabinet.

MR. BUDDEN: Yes, and as I understand as well, they would be – and we've seen examples of it here in other contexts – but there would be a memo or a paper that would come from the department to be circulated amongst other departments and then go to the premier's office and Cabinet for ultimate approval.

Am I correct on that?

MS. DUNDERDALE: There's a – there is a process that is followed in government for any Cabinet paper.

MR. BUDDEN: Mm-hmm.

MS. DUNDERDALE: And there's a series of committees; there's an economic policy committee, a social policy committee; there's Treasury Board.

So, if a department had progressed far enough along that they were prepared to submit a Cabinet paper for approval – if it was to do with the economy in any kind of a way or had an economic aspect to it, it would go to economic policy committee. If it had financial implications, it would also go to Treasury Board –

MR. BUDDEN: Mm-hmm.

MS. DUNDERDALE: – and it would also be sent out to all the relevant departments for commentary and considerations. And it would also go to – Cabinet Secretariat for their analysis.

MR. BUDDEN: Sure.

MS. DUNDERDALE: So, all of that information, then, would be presented with the Cabinet paper. So, all the different opinions that had been sought or put forward would be included in the Cabinet paper.

MR. BUDDEN: Sure.

MS. DUNDERDALE: You know, if it had social policy implications, then it might not go to economic policy committee; it would go to social policy committee. But it would get a thorough vetting across government before it came –

MR. BUDDEN: Sure.

MS. DUNDERDALE: – to the Cabinet table.

MR. BUDDEN: Okay.

The – at sanction, of course, which was, at its heart, a decision to approve a capital-cost expense of several billion – at least \$6 billion. That didn't go through that same process, did it?

It may have gone through another process, but it didn't go through that process.

MS. DUNDERDALE: It went through a serious vetting – you know, they may – we may – I can't recall the process exactly, but that didn't come from the department straight through to the Cabinet table. All committees might have been brought together, for example, for –

MR. BUDDEN: Do –

MS. DUNDERDALE: – an –

MR. BUDDEN: Do you know that or are you speculating?

MS. DUNDERDALE: I can tell you that that Cabinet paper went through vetting before it came to the Cabinet table.

MR. BUDDEN: Okay.

MS. DUNDERDALE: It would never – you would never short circuit that process. That process was put in place for very good reasons, been tested over the years as a valid process. And so you wouldn't short circuit that, especially not something as important as this.

MR. BUDDEN: So you're saying that the sanction decision to build the Muskrat Falls dam went through that process. They went through Treasury Board, for instance.

MS. DUNDERDALE: If it were appropriate for it to go through Treasury Board. And I don't make that determination. So I didn't influence the Cabinet paper. The Cabinet paper went through its normal processes and came to the Cabinet table in due course.

MR. BUDDEN: So you're saying your understanding is that the sanction decision went through its normal processes, meaning the ordinary process that you described a moment ago.

Is that your understanding?

MS. DUNDERDALE: That's my understanding. There was no instruction from me and I can't imagine that the clerk would take on responsibility for short circuiting Cabinet process without talking to me that this would go straight to the table. You know, Cabinet wouldn't stand for it. This was an extremely important, sensitive information – decision and, you know, they were gonna be heard on this issue and so they should have been.

MR. BUDDEN: So you would be surprised to learn that it didn't go through, say, the same vetting process that – let me finish, please – that like a high school would go through or some other capital cost expense?

MS. DUNDERDALE: There was never any decision ever made in government that had as much scrutiny as the Muskrat Falls Project.

MR. BUDDEN: Yeah. That was my question – my question was would you be surprised to hear that it did not go through the same departmental

vetting that you just described as would take place, say, for a high school?

MS. DUNDERDALE: It would go through the process that was – the clerk knew the processes that Cabinet papers were to follow and where they needed to be routed and so on. And, you know, it was my understanding that this paper followed that process.

MR. BUDDEN: This paper meaning – the paper sanctioning the Muskrat –

MS. DUNDERDALE: The sanction paper, yes.

MR. BUDDEN: And you would be surprised to learn otherwise.

MS. DUNDERDALE: Yeah, it would be a bit of a surprise to me that another process was followed.

MR. BUDDEN: Okay.

A couple of questions about some of what you said about the federal loan guarantee and the P1 factor

It's my understanding from your evidence, and you seemed pretty emphatic about this, that if the federal loan guarantee had not been granted by the federal government in the fall of 2012, you would not have, as premier, approved the sanctioning of Muskrat Falls?

MS. DUNDERDALE: That's my view, yes.

MR. BUDDEN: Okay.

And I understand as well that if you were aware that Muskrat Falls was – had been evaluated quite recently by Westney and other risk assessors as being a P1 project, meaning that it would not be completed by July 17, but would be at least a year, perhaps two years behind that – that would've also caused you not to sanction the project.

MS. DUNDERDALE: The delay wouldn't have been as serious to me as the overrun.

MR. BUDDEN: But it still would've caused you not to sanction the project?

MS. DUNDERDALE: But it would've caused me concern, yeah. I – if somebody told me back then that my \$6.2 billion project that was being considered by government – that our project of 6.2 billion was gonna turn out at \$10 billion, I can tell you that I would've said: No.

MR. BUDDEN: Sure, but then that's not my question, of course. My question – and you made this point and several points in your evidence. I'm essentially just asking you to confirm that if you had known at the time of sanction that this was a P1 project, meaning that –

MS. DUNDERDALE: I wouldn't have approved, Mr. Budden.

MR. BUDDEN: You wouldn't have sanctioned?

MS. DUNDERDALE: No.

MR. BUDDEN: Approved sanction. You also understood – my understanding is that you were also of the belief that – because Nalcor had told you so – that Newfoundland really was going to have a power and energy shortfall by perhaps as early as 2015, so Newfoundland needed this power that was being forecast.

MS. DUNDERDALE: That's correct.

MR. BUDDEN: Okay.

And you were also understood that the – we're really by this point, we're down to two options: either sanction Muskrat Falls or go with the Isolated Island Option. But really, it was a choice between those two options in order to meet Newfoundland's upcoming power needs.

MS. DUNDERDALE: And Nalcor had taken us through the process and the thinking that had gotten them to that place.

MR. BUDDEN: Sure, and so that was a place you were at. This was really a choice between these two options.

MS. DUNDERDALE: When I first came to the department, we weren't even there. There were a number of considerations about developing –

MR. BUDDEN: Sure.

MS. DUNDERDALE: – the Churchill River and at that time, it was Gull and Muskrat. And even though in the papers that have been presented here in evidence, Commissioner, there's always a consideration that it could be used for island supply –

MR. BUDDEN: Sure.

MS. DUNDERDALE: When I went to the department, that wasn't where the main thrust was, as you can see –

MR. BUDDEN: Sure.

MS. DUNDERDALE: – by all the applications and so on. The thrust of the consideration was to develop this power for export.

MR. BUDDEN: Sure.

If I was to bring you back now to, I guess, the sanction decision by – certainly by the fall of 2012 – you understood that there were really two options on the table, being the Isolated Island or Muskrat Falls. Those were the choices by that point.

MS. DUNDERDALE: That's correct.

MR. BUDDEN: And you further understood that the – I guess the price difference between the two – use the terms loosely – was about \$2.4 billion.

MS. DUNDERDALE: That's correct.

MR. BUDDEN: Okay.

Here's what, I guess, I'm having trouble following – if the federal loan guarantee – my understanding there is that what that would have resulted in would be a lower interest rate, saving the province approximately \$1 billion in financing costs.

Is that your understanding as well?

MS. DUNDERDALE: Yes, 1.1 billion.

MR. BUDDEN: 1.1 billion. That's a lot less than 2.4 billion. You would agree, obviously?

MS. DUNDERDALE: Yes.

MR. BUDDEN: So why would you allow the absence of the federal loan guarantee, which would cost 1.1 billion, to stand in the way of a sanction decision when the price differential between the options was so much more?

MS. DUNDERDALE: It was 4.5 billion, Mr. Budden, if something went wrong. It wasn't – my main thrust on securing a loan guarantee – while it was really important to get those lower interest rates and be able to keep a billion dollars in the pockets of ratepayers – people of the province – that was really, really important.

But was also an insurance policy. I mean it was a loan guarantee if something went wrong on the project. Something unimaginable happened. They were going to pick up \$4.5 billion of the money that we had spent. And that was important to me.

MR. BUDDEN: Okay. But you –

MS. DUNDERDALE: It just wasn't about the savings and the interest.

MR. BUDDEN: Okay.

But had you not already in the fall of 2011 signed that commitment letter to the federal government that essentially backstopped the project?

MS. DUNDERDALE: Absolutely, but I hadn't sanctioned.

MR. BUDDEN: Okay.

But you were at sanction, almost at sanction. Mr. Kennedy talks about, you know, his sort of vivid recollection of being at the hockey game – of going to the hockey game. You were now getting this feedback from Premier Harper and Nigel Wright that the federal loan guarantee was being yanked back. And your evidence was that that would cause you not to sanction.

And I guess my question is: How again does the 4.5 billion factor into that?

MS. DUNDERDALE: Yeah, but if we haven't sanctioned, the commitment letter was null and void. So it didn't factor into it at all.

MR. BUDDEN: Yes, but if you hadn't sanctioned, what would Newfoundland do for this necessary power?

MS. DUNDERDALE: We'd have to go back to the drawing board, again. I mean the piece – at that point in time, the rub between the prime minister and me was there was – the loan guarantee was promised –

MR. BUDDEN: Oh, yeah, I understand that. And –

MS. DUNDERDALE: – so now there were no conditions attached. None. And so now we've negotiated the loan guarantee; everything is signed off, everybody is happy, we're saying goodnight, everybody is going home, and somebody says: Just sit down for a minute because the prime minister has this letter that he wants your premier to sign.

MR. BUDDEN: The CETA letter?

MS. DUNDERDALE: Yeah.

MR. BUDDEN: Yeah.

MS. DUNDERDALE: And he wants a commitment on this before we're gonna finally put the last seal of approval on the loan guarantee. And I –

MR. BUDDEN: I understand all that –

MS. DUNDERDALE: So no – so now we don't have a loan, but I'm not gonna go without a loan guarantee. I don't want – personally, I don't want to do it. My Cabinet might want to do it; all of government might want to do it. But I've had in my head from early days that I wanted that backstop to this project: the loan guarantee.

For two reasons: one, that'd be a million – a billion dollars in the pockets of the people of the province. The second thing was, if something catastrophic happened, that we would have the support of the federal government in the loan guarantee to a value of \$4.5 billion to find our way out of it if something went wrong.

MR. BUDDEN: But that of course was a backstopped – 4.5 billion backstopped –

MS. DUNDERDALE: Yes.

MR. BUDDEN: – by your government. Consequent to your commitment letter.

MS. DUNDERDALE: Yes.

MR. BUDDEN: So how – under what scenario was Newfoundland being possibly saved \$4.5 billion by –?

MS. DUNDERDALE: If something went wrong – anything could've happened with the project. It was an insurance policy. You know, it was – if the project went bankrupt for some reason or other, couldn't be completed and we were at \$6 billion spent but it all ground to a halt and we didn't have any power, but we owed \$6 billion, the federal government were going to come in and pay 4.5 of it. All of that burden wouldn't land on the people of the province.

MR. BUDDEN: But the province had indemnified the federal government for that 4.5 billion, you understood that?

MS. DUNDERDALE: All I know is, is that we had a 6.5 – we had a 4.5-billion loan guarantee, then if push comes to shove we had support from the federal government if something went astray, because this loan was guaranteed by the federal government. And that's why the banks gave us the money. Because they knew that whatever happened, at least this part of their repayment was secured.

MR. BUDDEN: But you've also testified the banks were prepared to give you the money anyway.

MS. DUNDERDALE: Yes, they were.

MR. BUDDEN: Okay. So what the FLG meant was they'd give you the money at a lower rate.

MS. DUNDERDALE: Yes, but we still had an insurance policy, Mr. Budden –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – and that was important to me.

MR. BUDDEN: And is not your understanding of the letter of commitment that that insurance policy was in turn, I suppose, insured by Newfoundland. The Newfoundland Government was a backstop to that insurance policy. Was that not your understanding?

MS. DUNDERDALE: Yes, but – and together, you know, the loan guarantee was only gonna kick in if we got in really real – if we got in big trouble and couldn't meet our commitments.

MR. BUDDEN: But the interest rate benefit kicks in immediately, obviously.

MS. DUNDERDALE: Immediately, yes. So there – it was a win-win. Again, if we had a billion dollar reduction to the benefit of ratepayers in the province by having the loan guarantee and if something that we couldn't imagine happened and we, you know, we weren't able to meet our financial commitments on the project that the federal government had made a commitment and, in fact, had booked \$4.5 billion to step in to support us.

MR. BUDDEN: Okay.

MS. DUNDERDALE: And that was important to me.

MR. BUDDEN: Okay.

Well, I won't belabour the point more than I have. But if you hadn't sanctioned, where would Newfoundland have been? We've already been through DG1, DG2; there are now two options, those are Muskrat Falls or the Isolated Island.

MS. DUNDERDALE: I don't know where we would've been. But we would've come back to the drawing board. You know, Premier Williams once told me that, you know, he would've considered going without the loan guarantee – that he would've gone without the loan guarantee.

But I can't speak to what other people would do or how much risk that they were prepared to undertake on behalf of the people of the province. I'm just telling you where I was.

MR. BUDDEN: Okay.

And your understanding, again, was that \$4.5-billion federal loan guarantee potentially could save Newfoundland from that debt in the event of a catastrophe.

MS. DUNDERDALE: No, not in terms of that. But it was a layering that began right from the beginning, Commissioner, in terms of making sure that we were – that we had the best people around us that we could find, that the planning was thorough and professional, the expertise that were – that was required was seconded into the planning process, that the correct engineering had been done, that the pre-sanction work had been done, that risks were well understood and mitigated to the degree that they could be mitigated –

MR. BUDDEN: Are you talking about the independent engineer?

MS. DUNDERDALE: I'm talking about all of it now, Mr. Budden, the whole planning process. And then in terms of what the cost was gonna be to ratepayers in the province and how could we lower that cost and fulfill our mandate to make sure that we provided the least-cost option.

And in a disaster scenario, if something really bad happened, was there another level of protection that we could provide to the people of the province. And for me, that was the loan guarantee. That was the second, bonus part of the loan guarantee.

MR. BUDDEN: Okay.

To do with the scheduling delay –

THE COMMISSIONER: Can we – sorry. I think we will –

MR. BUDDEN: Take a break?

THE COMMISSIONER: – take our break here now –

MR. BUDDEN: Sure. Okay.

THE COMMISSIONER: – if you don't mind.

So we'll take 10 now.

MR. BUDDEN: Thank you.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Mr. Budden?

MR. BUDDEN: Yes, Mr. Dunderdale, one – Ms. Dunderdale, sorry – one last question about the FLG.

At sanction, it was still conditional, of course, on the Maritime Link being built, which, in turn, was conditional on the quasi-judicial board in Nova Scotia, the UARB, approving the contract with Emera. So even at sanction that – the federal loan guarantee was not really a guarantee at that point, was it?

MS. DUNDERDALE: No, not until we got to economic close.

MR. BUDDEN: Right. Nevertheless, you sanctioned?

MS. DUNDERDALE: Yes, because there was enough certainty around where we were and where Nova Scotia and Emera were that we felt it was prudent to do that.

MR. BUDDEN: Okay.

Though, of course, there was one element of the equation – the UARB – that nobody had any control over. It was a quasi-judicial board.

Did that cause you any concern?

MS. DUNDERDALE: No. Given the conversations that I had had with Premier Dexter, with the work that Emera and Nalcor had done together and with the arrangements that had been made in terms of the hearing and conditions precedent and all of those kind of things, I had a high level, and my Cabinet had a high level of – comfort that we could proceed through sanction and through economic close without any difficulty.

MR. BUDDEN: Okay.

So you're taking the chance that the UARB ultimately would approve the contract?

MS. DUNDERDALE: Yes.

MR. BUDDEN: Okay.

Perhaps we could call up Exhibit 01636, Madam Clerk?

THE COMMISSIONER: 01636 –

MR. BUDDEN: I believe that's just a one-page exhibit, Ms. Dunderdale, and you probably have it here.

THE COMMISSIONER: Yes. It's at tab 137, book 4.

MR. BUDDEN: Are we there?

MS. DUNDERDALE: Yes.

MR. BUDDEN: Perhaps you could read that last paragraph under – at page 1 – under the heading Schedule Risk?

MS. DUNDERDALE: “Until recently I had never heard about a P-1 schedule risk associated with the project. I would be very surprised to learn that at the time sanction the schedule risk was a P-1. If I knew that was the case I would not have sanctioned

“I understood from Nalcor that there were some risks associated with the schedule but I was assured that those risks were being mitigated. I understood that the contractors said they could achieve the schedule.”

MR. BUDDEN: Sure.

What did you understand the potential cost of not closing on time? In other words, what would be – what was your understanding of the potential cost if this project was delayed, say, for a year, say, for two years?

MS. DUNDERDALE: Well, when I had a discussion with Mr. Martin, what was the worst-case scenario if things didn't proceed as

planned, I was told that we could – at the outside – have an overrun of about \$500 million.

MR. BUDDEN: Okay.

And you understood that the overrun would cover scheduling delays?

MS. DUNDERDALE: No, it wasn't identified as scheduling delays.

MR. BUDDEN: Okay.

MS. DUNDERDALE: We had had that discussion prior to sanction. And when Nalcor talked to us about spending money on early works, like to build the tote road, to start on the camp, there was a tremendous amount of work that went around securing a labour supply. Productivity was addressed in terms of the seven-day week and so on.

So all of those considerations and conversations has taken place prior to sanction.

MR. BUDDEN: Okay.

So getting back – and I digress, not you – but getting back to my question: What would you – what was your understanding of the cost of scheduling delays or did you have any understanding at all?

MS. DUNDERDALE: I thought the scheduling delays had been mitigated.

MR. BUDDEN: Sure.

MS. DUNDERDALE: That's what I understood.

MR. BUDDEN: Okay, but when we look at this now you're saying: If I knew that was the case, I would not have sanctioned the project. Perhaps I should do it this way.

Why would you not have sanctioned the project?

MS. DUNDERDALE: If somebody had told me – if I had been – told that Nalcor had been advised that there was only a P1 chance of them completing on schedule and there could be several years delay, and that the project would be billions of dollars over budget, if that

information had been relayed to me and to Cabinet, we wouldn't have sanctioned.

MR. BUDDEN: Okay.

Let's focus it a bit because the P1, of course, is an indicia of the likelihood of completion by date. And I believe the full scope of Westney was that the possible delay was 11 to 21 months. Let's take the outside, let's say a two-year delay, from July '17 to July '19.

Is your understanding that the cost of the two-year delay would drive the project cost up to the point where it was no longer a cheaper option than the Isolated Island Option? Is that why you were concerned?

MS. DUNDERDALE: Let me give you a little context, Mr. Budden, as to how I provided this statement to the Inquiry.

MR. BUDDEN: Okay.

MS. DUNDERDALE: When I was doing my interview, Commissioner, with Mr. Learmonth, he brought to my attention the Westney report and the information around the P1 schedule – significant delays and significantly over budget. And I don't know how specific – it wasn't specific. And my response to him at the time was that I was not aware that this was the circumstance at sanction – if that's what he was telling me.

MR. BUDDEN: Sure.

MS. DUNDERDALE: And if this were the case – and I was making a general observation that if the schedule was going to put the project behind significantly and would cost billions of dollars overrun, that I could tell him most assuredly that it would not have been approved.

MR. BUDDEN: Sure.

Was it your understanding that a P1 schedule would lead to billions of dollars in overrun?

MS. DUNDERDALE: It was a general discussion between Mr. Learmonth and I.

MR. BUDDEN: Okay. But this is –

MS. DUNDERDALE: This was not a discussion that I ever had with Nalcor.

MR. BUDDEN: I know that, but you're saying here – you're saying black and white – and you said it in your evidence and in your interview at various points. You're saying, quote: "If I knew that was the case" – meaning that the schedule risk was P1 – "I would not have sanctioned the project."

And I guess my question to you is: What was it about a P1 that would have let you not to sanction the project?

MS. DUNDERDALE: P1 would have been – that the information that we had been given and on which we made our decision to move forward with the project wasn't correct.

MR. BUDDEN: Yes.

MS. DUNDERDALE: That it wasn't reliable. You know, P50 was one thing, but a P1 meant that the number that we had worked so hard to achieve and had put so much – so much significance on – and the fact that, you know, the numbers we had identified that – if push come to shove – we could be comfortable with and that the business plan could cover. If none of that meant anything then, you know, we – you – I wouldn't go and – my Cabinet for sure would not agree – to go to sanction unless we had more surety than is offered by a P1.

MR. BUDDEN: Okay.

And again, your issue was – I presume – that a scheduling delay would lead to extra costs?

MS. DUNDERDALE: Well, I was being told that a scheduling delay would lead to costs and that's why all of the effort was put into mitigating those costs before sanction –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – and I understood that that had been done.

MR. BUDDEN: And in your thought process behind the quote: if I knew this was the case, I would not have sanctioned the project.

Did you take it to the next level of figuring out what the cost implications were and how they compared to the \$2.4 billion spread between the options?

MS. DUNDERDALE: This is all after the fact, Mr. –

MR. BUDDEN: I realize that.

MS. DUNDERDALE: – Budden.

MR. BUDDEN: Yeah.

MS. DUNDERDALE: This discussion – this whole consideration by me started at the end of August during my interview with Mr. Learmonth.

MR. BUDDEN: Okay.

And even now, sitting here on December 17, do you have any sense at all of what the cost implications of a P1 schedule would have been for the Muskrat Falls Project? Are you able to tell us – are we talking tens of millions, hundreds of millions –

MS. DUNDERDALE: Well –

MR. BUDDEN: – billions?

MS. DUNDERDALE: – it certainly would have meant – it could have meant a year or two and it could have meant hundreds of millions of dollars.

MR. BUDDEN: Okay.

So on the one hand you have hundreds of millions of dollars and a year or two delay, on the other hand you have the Isolated Island Option which is \$2.4 billion more. I'm curious – why, on the one hand, hundreds of millions of dollars would cause you to turn away from an option that's \$2.4 billion cheaper than the only alternative?

MS. DUNDERDALE: Mr. Budden, you have to be able to rely on the information that you're given. And the information that we were given at sanction was that these numbers are pretty reliable, as much as humanly possible in terms

of testing, inputs, takes, all of those kinds of things; this is where we are.

If, you know, if somebody is telling us this and then they make a report available to us that's saying something else completely different than that, and you haven't told us how you're gonna mitigate that risk, then you have to say we need to stop right now.

MR. BUDDEN: Okay.

So, you're not saying abandon Muskrat Falls. You're simply saying put the sanction process on hold?

MS. DUNDERDALE: Yes, absolutely –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – 'til we see where we're going here.

MR. BUDDEN: Okay. Perhaps, Madam Clerk, we can move on – call up Exhibit P-00395. And while that's happening – I believe you likely have this here as well – you do. It's –

THE COMMISSIONER: That's tab 51.

MR. BUDDEN: – binder 2.

Mr. Learmonth went – this is the email that Clift – Thomas Clift sent Robert Thompson. You probably remember it because Mr. Learmonth spent a bit of time on it.

MS. DUNDERDALE: Yes.

MR. BUDDEN: I'm not gonna spend as much time as him but I do have some questions.

Firstly, what is your understanding of, I guess, the role and responsibilities of the board of directors of Nalcor – of any board of directors of a corporation?

MS. DUNDERDALE: It is oversight of the board, and ratification of the decisions that are made and the fiduciary responsibility to ensure that the company is in good standing and there are good practices within the –

MR. BUDDEN: Okay –

MS. DUNDERDALE: – company.

MR. BUDDEN: – so when you were appointing board members throughout your tenure as premier, what sort of qualities did you have in mind with – would be required to meet that oversight function? What were you looking for in people?

MS. DUNDERDALE: People of character –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – and good sense.

MR. BUDDEN: Okay. Character and good sense.

MS. DUNDERDALE: Yes. They –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – were the pre-eminent qualifications that I looked for.

MR. BUDDEN: Okay.

There are, of course, other qualifications, I would suggest, that are necessary for a role of that sort. You have people on the board – Mr. Shortall, for instance, had been a chartered accountant for many, many years. So that would be a quality, obviously that would be –

MS. DUNDERDALE: Absolutely –

MR. BUDDEN: – (inaudible).

MS. DUNDERDALE: – they're not the only two qualities, but they would be where I would start.

MR. BUDDEN: Sure.

And some of the other – if we can scroll down a little bit, and this – well, you would have been through this already, so perhaps – that's good, Madam Clerk.

You can see here in this email that Mr. Clift has said – he is saying that “Our Board would benefit greatly from the

addition of individuals with large-scale engineering project experience, international project experience ...” and so on. So – and as you advised yesterday, you would have been – this would have been brought to your attention by your clerk, Mr. Thompson.

MS. DUNDERDALE: Yes –

MR. BUDDEN: You –

MS. DUNDERDALE: – it was.

MR. BUDDEN: – acknowledge that. Okay.

In the first line of that – I'll read that as well: “In spite of the numerous requests that we have made of the previous and current administration, we are still really short of Board members.”

What do you recall of those numerous requests?

MS. DUNDERDALE: I don't recall anything of numerous requests. I recall hearing of one request while I was minister that was brought to my attention, and a secondary request by the clerk when I was premier.

But I was aware that we were short board members –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – with Nalcor – not only in terms of the main board, but the subsidiary boards that were being set up within the new energy company.

MR. BUDDEN: Sure.

So, at this point you had been premier from late 2010, and this was now early 2012.

MS. DUNDERDALE: Yes.

MR. BUDDEN: So you had been in the job quite a while.

MS. DUNDERDALE: Yes.

MR. BUDDEN: And yet, the board was still short.

MS. DUNDERDALE: Yes.

MR. BUDDEN: So that's really – that falls on you, doesn't it?

MS. DUNDERDALE: Yes, it does.

MR. BUDDEN: Okay.

Why did you not address that – to allow them to properly carry out their oversight function?

MS. DUNDERDALE: We were trying to address it; it's not something I applied myself to every day, but I certainly applied myself to it in thinking about who I knew who might be suitable and so on. We had discussions, as I talked about here yesterday, about paying board members – not only in terms of Nalcor – but across all our board's agencies and commissions.

You know, we called on an awful lot of people in Newfoundland and Labrador, basically, to volunteer their time, energy, effort, knowledge, skills to the running of the province with little or no compensation. You know, not even, in some circumstances, were people's – just the immediate time they took off of work – compensated. And we needed to do something about that.

The challenge was – there were two challenges with regard to the Nalcor board – was getting – identifying and bringing the kind of expertise that Mr. Clift, particularly, talked about: the amount of compensation that would be required to get that kind of expertise; the necessity to pay everybody on the board, whether they had that high competency or not the same amount of compensation. And then to spread that right across all of the – as I said – boards, commissions and agencies that we had and what the price tag of that was.

So it was a matter of what was available and what could we afford. There was never a question about whether it was justified.

MR. BUDDEN: Okay. So –

MS. DUNDERDALE: Now we were taking advantage of people's good nature to a large degree, to do this work on our behalf.

MR. BUDDEN: Okay. So – and of course as government, I realize there are political considerations and so on, but you obviously had the power to headhunt and find – I mean the – clearly there are people out there with large-scale engineering project experience and the government, if they had chosen to, clearly had the power to appoint such people to the board. You'd agree with me there?

MS. DUNDERDALE: We certainly had the ability to headhunt. The question was whether or not we were going to take the position that we were going to pay members of boards, commissions and agencies for serving on those organizations.

MR. BUDDEN: You paid the PUB, as you've said in your evidence, something like \$2 million. MHI were paid several hundred thousand. All these other experts are well paid. So you guys would pay money for experts but not for board members for Nalcor.

MS. DUNDERDALE: No, that's unfortunate and – but it is true and it's a situation today that still hasn't been rectified.

MR. BUDDEN: Okay. So, you've got your board member calling out for large-scale engineering project experience. You were aware of that.

MS. DUNDERDALE: Yes.

MR. BUDDEN: What efforts were made to reach out, even within Newfoundland, say, to former chairs of Newfoundland Hydro, Mr. Vic Young, Mr. Bill Wells? Were any efforts made to reach out to people like them to see if they'd be prepared to do this at the pittance that was being offered?

MS. DUNDERDALE: I can't tell you what efforts were made, because – you know, I asked my clerk to work with staff from the premier's office to identify people who might be prepared to fill these positions. I understood that it was gonna be a difficult thing to do because there wasn't compensation associated with it. It didn't

happen, and – but I can't speak to their specific efforts.

MR. BUDDEN: Okay. So what you did do, in fact, was you appointed Mr. Terry Styles as chair, not even as a board member. You put him right in the chair in this very crucial period leading up to sanction.

MS. DUNDERDALE: He's one of the people that I appointed.

MR. BUDDEN: He is. And, of course, none of those people, as we've established, had large-scale project experience, international project experience. They had none of those skills, did they?

MS. DUNDERDALE: No, they didn't.

MR. BUDDEN: They may have had other characteristics, not saying they didn't, but what the board was calling out for, you didn't provide the board?

MS. DUNDERDALE: I didn't have the means to provide the board. At the time, I didn't have a nominee that I was able to put there.

MR. BUDDEN: Were you aware that Mr. Styles was in a personal relationship with your Cabinet minister, Joan Shea?

MS. DUNDERDALE: I can't tell you if I was aware at that time or not. It's not something that would've had concerned me.

I certainly wasn't looking for a way to influence the board through personal relationships. I wouldn't have been doing a very good job of it, in any case, because I appointed somebody who was a known Liberal at the time to the board as well.

MR. BUDDEN: Mr. Hawkins, I presume?

MS. DUNDERDALE: Mr. Hawkins who became a Liberal Cabinet minister. Cathy Bennett was appointed to the board during my tenure as minister or premier.

MR. BUDDEN: Not by you, though?

MS. DUNDERDALE: Pardon?

MR. BUDDEN: You didn't appoint Cathy Bennett, I take it?

MS. DUNDERDALE: I was minister –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – and would've made the recommendation to the premier.

MR. BUDDEN: Okay.

MS. DUNDERDALE: I didn't have any issue with Ms. Bennett being there –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – at all. So, you know, we looked for people who brought value to the board one way or the other. Not in the way that Mr. Clift was asking, but people who brought value nevertheless.

MR. BUDDEN: Do you not see – perhaps with the benefit of hindsight. But you were premier at the time; this was brought to your attention. Do you not see how the lack of such expertise – large-scale project expertise – would've severely limited the board in its ability to provide oversight on this biggest capital cost project in Newfoundland history?

MS. DUNDERDALE: I was aware that we didn't have that expertise on the board, and I did speak to Mr. Martin in terms of the expertise that was available within the company and also expertise that they contracted to help with the planning and asked that the board be exposed and be able to question and these other experts – and it – not the same as having somebody with that expertise at the table at every meeting, but certainly that they have access –

MR. BUDDEN: But this –

MS. DUNDERDALE: – to that expertise.

MR. BUDDEN: Is that not in fact asking Mr. Martin: Do you need further oversight, Mr. Martin? Is that what – when you're asking him about board appointments, is that not what in fact you're doing?

MS. DUNDERDALE: I wasn't asking him about the board appointments, Mr. Budden.

MR. BUDDEN: Okay.

MS. DUNDERDALE: I was saying the expertise that you have within the company, and that you contract into the company, in – like Navigant, or the different consultants you're bringing in – when possible can you make them available to the board members, so that they can question them and any questions they have, that they want to put directly to the consultants, that they have an opportunity to do it.

So while you may not have access to that expertise on your board – as a member of your board, you can ask somebody who does have that expertise and has knowledge of the project.

MR. BUDDEN: And he said he'd do that?

MS. DUNDERDALE: Yes.

MR. BUDDEN: And you are aware that the board have testified that much of this information was never brought to them. They were never, for instance, into the – the Independent Project Review was never brought to their attention.

MS. DUNDERDALE: Well, I can only tell you what I did in terms of trying to bridge that gap.

MR. BUDDEN: So you specifically said to him, I want you to bring the expert reports you've obtained to the attention of your board of directors.

MS. DUNDERDALE: We had a general conversation about board membership, the gaps in the board membership, the challenges around filling those gaps and what could be done to bridge the gaps.

MR. BUDDEN: And you specifically –

MS. DUNDERDALE: You know, I can't recall specifically saying, but I do remember talking about making expertise available to them and so on and he – you know, Mr. Martin didn't object to that.

MR. BUDDEN: But a moment ago you said he'd do it. He said he'd do it.

MS. DUNDERDALE: Well, I understood that he was going to do it. That was my understanding. Mr. Martin wouldn't have said to me: No, I'm not going to do that.

MR. BUDDEN: Okay.

Okay, perhaps we could move on to Exhibit 00727. We're gonna talk about Manitoba Hydro International now.

THE COMMISSIONER: 00727.

MR. BUDDEN: That is probably here as well.

THE COMMISSIONER: In tab 63.

MR. BUDDEN: (Inaudible) – same volume, tab 63.

What this is, as you don't – no doubt recall, this is a press release that your office and Natural Resources put out just a day or two after the PUB report. And at this point – it's paragraph four I'm interested in, Ms. Dunderdale, if we can scroll down that far.

Perhaps you could read paragraph four to us – the one that begins: "The next steps will involve"

MS. DUNDERDALE: "The next steps will involve analysis of Decision Gate 3 information – the most up-to-date information on load forecast, fuel price forecast, defined capital costs, and system integrated studies. The Premier announced today that the Provincial Government has engaged Manitoba Hydro International, the same experts engaged by the PUB, to provide external and independent analysis of the Decision Gate 3 information prior to any decision on whether or not to sanction."

MR. BUDDEN: Sure.

What did you understand to be meant by defined capital costs and system integrated studies?

MS. DUNDERDALE: Well, I understood that we engaged Manitoba Hydro to do the same scope of work that it had performed for the PUB

on Decision Gate 2 numbers, to do that now on Decision Gate 3 numbers.

MR. BUDDEN: And what was your understanding of that retainer? Of what MHI had been engaged to do by the PUB?

MS. DUNDERDALE: Generally, this information here.

MR. BUDDEN: Okay. And again, what did you understand capital costs – defined capital costs to mean?

MS. DUNDERDALE: Well, it was to review the capital costs. It wasn't to go out and do all the engineering and everything again.

MR. BUDDEN: Sure.

MS. DUNDERDALE: But to take the inputs from Nalcor that had been arrived at with SNC-Lavalin and others, and to do a financial analysis around that.

MR. BUDDEN: The business case.

MS. DUNDERDALE: Business case, yes, absolutely.

MR. BUDDEN: Okay. And for what purpose, like, why did you feel this to be helpful and necessary?

MS. DUNDERDALE: Again, as part of the public debate and to provide arm's-length independent analysis of the business case, and how it had evolved from Decision Gate 2 to Decision Gate 3.

MR. BUDDEN: Okay.

Are you aware that – obviously, you're aware that MHI testified here back in late October, and were you aware that the chair of the review panel, Mr. Paul Wilson, specifically said that MHI was not engaged to review the business case?

MS. DUNDERDALE: I didn't see that testimony, so I can't –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – speak to that.

MR. BUDDEN: Okay. Well, we'll (inaudible) couple copies of the transcripts here.

MS. DUNDERDALE: Sure.

MR. BUDDEN: It's from the 29th of October, page 30. Just find it here now – the bottom of page 30, Ms. Dunderdale.

And you see Mr. Wilson says: "And the question is the business case? We weren't engaged ... to analyze the business case.

"**MR. LEARMONTH:** – that's what you're saying.

"**MR. WILSON:** Yes."

So how does that square with what you just said absolutely to?

MS. DUNDERDALE: That the work that had – my understanding was that the PUB engaged MHI to test the CPW on Isolated Option and the Interconnected Option to find out, first of all, did we need the power and was Muskrat Falls the least-cost option. And they gave them a number of considerations in doing that work.

MR. BUDDEN: You said a moment ago, Mrs. Dunderdale, that you understood that MHI were reviewing the business case, but that wasn't the case, was it?

MS. DUNDERDALE: Well, I understood that they were progressing the work that they had done on DG2 numbers, and the analysis that they had done on DG2 numbers, on the completed DG3 numbers.

MR. BUDDEN: Did you not just say that you understood MHI were reviewing the business case?

MS. DUNDERDALE: Well I'm – to me, the project is the business case. You've got to talk about what the costs were, what all the inputs are, how do you arrive at this conclusion that there's a \$2.4-billion difference between the two. So – and is there enough – so that's what we want to know, is this –

MR. BUDDEN: That's what you understood to be the business case?

MS. DUNDERDALE: If it – well, the business case then includes the benefits and so on. What we want to know at this point: Is this the lowest cost option and do we need the power? And so you did that piece of work for the PUB at Decision Gate 2, and now we're asking you to do the same kind of analysis but now on DG3 numbers.

MR. BUDDEN: The business case?

MS. DUNDERDALE: Well it's the case for either Muskrat Falls or the Isolated Option.

MR. BUDDEN: Okay.

As recently as yesterday you were still saying that you took comfort from the report of MHI, of them being experts and answering the questions. I guess what were you – even as recently as yesterday, what did you mean by that? What comfort were you drawing from MHI?

MS. DUNDERDALE: That we did need the power.

MR. BUDDEN: Mm-hmm.

MS. DUNDERDALE: That that conclusion was correct and that Muskrat Falls was the least-cost option by a value of \$2.4 billion.

MR. BUDDEN: You're aware now that strategic risk was excluded from MHI's review?

MS. DUNDERDALE: Yes, I am now.

MR. BUDDEN: Okay and you're – Mr. Taylor, who I believe was your chief of staff, and Ms. Power were briefed on that on the 6th of April.

MS. DUNDERDALE: Yes.

MR. BUDDEN: So we presume – or at least I presume, correct me if I'm wrong – that if your chief of staff was briefed on that, you, too, would have been briefed on it. You would think so, wouldn't you?

MS. DUNDERDALE: Mr. Budden, I would have no problem owning that if I could swear to that being the case.

MR. BUDDEN: You don't remember?

MS. DUNDERDALE: I don't recall –

MR. BUDDEN: But you –

MS. DUNDERDALE: – ever knowing that strategic – I understood that apples were being compared to apples. And that was the consideration that was most important to me. Whatever had been considered in DG2 and reported to the people of the province through the PUB was the same analysis that was taking place on DG3 numbers.

MR. BUDDEN: But surely by the spring of 2012 you knew that strategic risk was an important element of the analysis – of the comparison.

MS. DUNDERDALE: It would've been significant – it certainly was significant to me in terms of the work that Nalcor was doing around strategic risk, but we were trying to address, for the people of the province, the two critical questions. And so we had done it on DG2 numbers. I wanted the exact process followed on DG3 numbers so they could compare apples to apples.

In the case itself, we were comparing apples to apples as best you could in terms of Isolated versus Connected, but also from DG2 to DG3 that we were comparing the same things, that there hadn't been other elements introduced that would have confused the comparison.

MR. BUDDEN: But even – I mean how can it be an apples-to-apples comparison when strategic risk, among other things, is being left out? There goes the comparison, right?

MS. DUNDERDALE: I wasn't aware that strategic risk was being left out. All I can tell you is that as a Cabinet we understood that what was considered in DG2 was under – the exact same thing was under consideration in DG3.

MR. BUDDEN: Your chief of staff, Mr. Taylor, was aware. Would – are you saying he would

not have briefed you about something so important?

MS. DUNDERDALE: He – as I said to the Commissioner, I can't definitively say one way or the other. I can tell you I don't have any recall of it, but I'm not going to say because I can't remember, that, no, they didn't, because they are thorough, professional people.

MR. BUDDEN: And you would expect them to brief you about that?

MS. DUNDERDALE: It depends on the conversation that they were having and what importance they put to risk and all of those kinds of things.

MR. BUDDEN: Hmm.

MS. DUNDERDALE: But I would expect them to ensure that we were comparing apples to apples.

MR. BUDDEN: Okay and if that wasn't the case, to advise you of that?

MS. DUNDERDALE: Absolutely.

MR. BUDDEN: Okay.

I'll ask you the same question, I guess, Mr. Learmonth asked you with P1. If you'd been aware this MHI report was not an analysis of business case, was not a consideration of strategic risk and had been edited in the manner that has emerged at this Inquiry, would you have relied on it to go forward to sanction?

MS. DUNDERDALE: I wasn't so much relying on the MHI report to go to sanction.

MR. BUDDEN: Yeah.

MS. DUNDERDALE: I was relying on the work that Nalcor did. What we were trying to achieve with the MHI analysis was an independent arm's-length analysis of the work that Nalcor had done for the people of the province, particularly. So that they –

MR. BUDDEN: So you were – yes, sorry.

MS. DUNDERDALE: – they could have confidence in what Nalcor and the government were saying to them.

MR. BUDDEN: So you're relying on MHI to confirm your reliance on Nalcor?

MS. DUNDERDALE: No, what I'm saying is the people kept calling for an independent analysis. I was satisfied with the information that I was getting from my department and from Nalcor on all kinds of information that were relevant to the development of Muskrat Falls.

You know, I'd be in a funny place if I didn't have confidence in those organizations, if I had to go outside for validation on everything they said to me. That would tell me that I had a big problem inside government if you couldn't trust the information that you were given.

MR. BUDDEN: Well, why have oversight at all –

MS. DUNDERDALE: But –

MR. BUDDEN: – if that's your belief?

MS. DUNDERDALE: But you do have oversight, but you still have confidence in the work you're doing. But you – as we've said here before, Mr. Budden, you don't have Nalcor one and then Nalcor two and Nalcor three – that everybody's got to test and retest and do the same work over and over again.

MR. BUDDEN: Oh, sure, nobody is saying that.

MS. DUNDERDALE: No.

MR. BUDDEN: Nobody is advocating a Nalcor two.

MS. DUNDERDALE: So what I'm saying is MHI came about because of a call from people in the public arena who were debating the pros and cons of the development of the Churchill River on the information that was being provided.

MR. BUDDEN: What your press release says – I'll read the last sentence of that paragraph again: "The Premier" – yourself – "announced

today that the Provincial Government has” retained MHI, “the same experts engaged by the PUB, to provide external and independent analysis of the Decision Gate 3 information prior to any decision on whether or not to sanction.”

MS. DUNDERDALE: Okay.

MR. BUDDEN: So they’re being retained to provide analysis prior to the decision of sanction –

MS. DUNDERDALE: Yes.

MR. BUDDEN: – so it only makes sense in the plain reading that would somehow play a role in the decision whether or not to sanction.

MS. DUNDERDALE: Well, certainly, we would be very interested in what MHI had to say. But the main reasoning for putting it to the PUB was so that the people of the province could have confidence in what was being said by Nalcor and by government in terms of the information they had.

Now, if they turned up something different than was being put forward, then that was certainly something that – and that was the risk we took when we put it there. Once it went out of our hands to the PUB or to MHI or – we didn’t have any control over it.

MR. BUDDEN: You entirely did. I mean, it was edited; the terms were changed. You had total – or at least you had considerable control over that report. You did hear that evidence, didn’t you?

MS. DUNDERDALE: Yes, but I – the PUB report went directly to the people at the same time that it came to us.

MR. BUDDEN: Yes, but we’re now talking about this report –

MS. DUNDERDALE: But, you know –

MR. BUDDEN: – which was edited by your deputy minister of Natural Resources. You are aware of that evidence?

MS. DUNDERDALE: I am aware of that evidence; I’m not aware of any substantive

changes to any of the information that MHI put forward.

MR. BUDDEN: Okay. Well, we’ll leave that to others.

On Monday, you testified as follows – and what you’re talking about here was experts you relied on, and you mentioned MHI again – excuse me – Navigant, the federal government and Wade Locke. And so I take it that you – taking that last name; you referred to Mr. Locke at a couple of points, relied on him because he was a tenured professor in the Department of Economics at Memorial and he had expertise in mineral and petroleum production – economics rather. So that’s why you relied on Mr. Locke, right?

MS. DUNDERDALE: It was a testing of information from a variety of sources, and cumulatively it painted a picture for us. So there wasn’t an overreliance on any particular report, but there were a number of reports from different constituencies who had different interests or had been engaged in a different way, and, together, they painted a picture. I wouldn’t say that we were over reliant on any of them. And –

MR. BUDDEN: But you –

MS. DUNDERDALE: – some of them were detailed or more detailed than others; some were high-level reviews and so on.

MR. BUDDEN: But you will acknowledge, in your evidence this week so far, you’ve testified that among the experts you relied on was Dr. Wade Locke?

MS. DUNDERDALE: Yes, absolutely.

MR. BUDDEN: Okay.

I’m going to read a little section from your interview transcript. This is the second interview and it’s Mr. Collins who’s examining you. And I don’t have a copy but it’s pretty brief and I’ll read it. I’ll let you see it if you want.

Mr. Collins asked you: What about Jim Feehan and Pardy – he obviously meant Vardy and Penney – are they – do you consider them to be experts? And you say: I personally would not.

And he says: No? And you say: I would say that they – and he said: Who’s the first person you said – Ms. Best says actually. And Mr. Collins says: Jim Feehan. And you said: They would certainly have knowledge but I wouldn’t rate them with MHI, for example.

Mr. Collins says: How do you decide who’s an expert and who to trust? And you say: The people who can provide validation for the conclusions they’ve come to and have a proven expertise in the field, whose work I can take, see what it’s based on. See – I’ll see what – I saw what Nalcor did. I can see what Nalcor’s experts, the – or the expertise that they relied on, where – sorry – where they went to, to test their information or get information and so on. And then I rely on people like MHI who are gonna test what Nalcor has done, and whether or not what they’ve done is reasonable and sensible. I don’t have any of that information, for example, from Mr. Penney.

So, Mr. Feehan was somebody there who you said you would not personally regard as an expert. Do you recall saying that? Okay.

I guess that surprises me because Dr. Feehan, who, of course, was a critic of the project, was also a professor of economics at Memorial, also a tenured professor, roughly the same age and experience as Dr. Locke and his expertise includes, as I understand it, energy economics. So I guess I’m asking you: Why would you regard Mr. Locke as an expert, but Mr. Feehan is not an expert.

MS. DUNDERDALE: And I certainly wouldn’t have weighted Dr. Locke’s findings in the same way, for example, as I would MHI. The difference – the most significant difference between Dr. Locke and Mr. Feehan is the fact that Dr. Locke had access.

MR. BUDDEN: Both doctors.

MS. DUNDERDALE: Yes, both doctors – excuse me, Dr. Feehan and Dr. Locke. Dr. Locke had access because he had been engaged. So he had access to far more information than Dr. Feehan did, so I’d have a higher degree of reliability in the information that he put forward as being correct.

MR. BUDDEN: Oh really? Can you tell us what information Dr. Locke had that Dr. Feehan didn’t have?

MS. DUNDERDALE: I can’t tell you because I wasn’t part of the piece of work that he was engaged in.

MR. BUDDEN: It wasn’t that Dr. Locke approved of the project and Dr. Feehan didn’t. That wasn’t the reason you’d regard one as an expert and the other not?

MS. DUNDERDALE: I was – that wasn’t a big consideration to me, Mr. Budden, who was for and who was against. People have a right to their opinions and they have a right to express their opinions. And it is incumbent on government to listen to what people have to say.

MR. BUDDEN: Okay.

MS. DUNDERDALE: And, as I said yesterday, not only did we listen to them, we spent hundreds of thousands of dollars testing their positions. You know –

MR. BUDDEN: But at the end of the day –

MS. DUNDERDALE: – when we got Ziff and MHI, for example, to give reports, you know, these were matters put into the public debate by some of these people that was different from the position taken by Nalcor, for example. And so, again, you know, not saying – not getting into an argument about who’s right and who’s wrong, the best way – you know, this is our position, this is their position.

If it’s going to help clarify the debate any, lets go get somebody who’s completely independent of all of us who has expertise in this area to give us a report – a review. And that’s what we did.

MR. BUDDEN: Okay.

You’re also familiar with Dr. David Vardy –

MS. DUNDERDALE: Yes, I am.

MR. BUDDEN: – Mr. Vardy? You’re aware that he was, for seven years, Clerk of the Executive Council – Privy Council it was then.

MS. DUNDERDALE: Yes.

MR. BUDDEN: For another seven years the chair of the PUB.

MS. DUNDERDALE: Yes.

MR. BUDDEN: That he's received a honorary doctorate at Memorial for his contribution to governance in this province?

MS. DUNDERDALE: Yes.

MR. BUDDEN: Surely that would amount to some degree of expertise, would it not?

MS. DUNDERDALE: I've listened to what Dr. Vardy and Mr. Penney and others had to say very carefully. And went back to people within government and people within Nalcor to say: This is what they're saying, I want you to take into account what they're saying and tell me if they're correct.

MR. BUDDEN: Okay.

You, yesterday in your evidence, said – this is page 21 in your transcript – and I'll just read it to you. This is – and this is, again, it's a draft. So if anybody feels there's an error here, well, by all means speak up.

You said in answer to a question of Mr. Learmonth's you said: There were many, many sets of eyes on this, Commissioner, the federal government, MHI, Navigant, Wade Locke, I mean the list goes on. But it's an awful lot – and here's the part I'm really interested in – 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 a – there was no mission, that something that needed to be done hasn't been done. I don't remember anybody ever bringing that to my attention.

Do you remember saying that yesterday?

MS. DUNDERDALE: I said that yesterday, and I need to correct that to some degree.

MR. BUDDEN: Okay. I'll let you do that because I have some questions to put to you.

MS. DUNDERDALE: Because in terms of some of the independent reports that were made to us, there were suggestions that things could be done differently or additions needed to be made or a further analysis was required. The point that I was clumsily trying to make was that, in terms of any of the reviews that we got that related directly to whether or not we should sanction Muskrat Falls, I never saw a report that said no, don't do it, it's not a good decision.

MR. BUDDEN: You did read the report of the – or at least it was brought to your attention, the report of the Joint Review Panel?

MS. DUNDERDALE: Yes.

MR. BUDDEN: And you were aware that they found that the business case of Muskrat Falls had not been made out by Nalcor.

MS. DUNDERDALE: Well, they asked that – they didn't feel that the business case –

MR. BUDDEN: Yes.

MS. DUNDERDALE: – was brought out, and they asked for an independent analysis, an independent review of the business case.

MR. BUDDEN: Yes.

MS. DUNDERDALE: Which is my – and my understanding is that Natural Resources Canada did that. So -

MR. BUDDEN: Really? We haven't seen that that I know of.

MS. DUNDERDALE: That's what I'm told, and if I can –

MR. BUDDEN: Who told –?

MS. DUNDERDALE: – or my counsel can find – and I understood it was in evidence that NRCan had done a review.

MR. BUDDEN: That's the independent engineer you're talking about, I believe, is it?

MS. DUNDERDALE: I can't be specific about it, but I – you know, the review that had been asked for was done as far as I understood.

MR. BUDDEN: And that's what you relied on at the time of sanction?

MS. DUNDERDALE: No, I'm just – No, Mr. Budden, you said to me people asked that things be done so they could have a higher degree of comfort, and for the most part, in my consideration, the things that I understood – that they were done.

MR. BUDDEN: So you understand that a federal government response to the Joint Review Panel would have, at least in your mind, satisfied the Joint Review Panel's call for that independent review?

MS. DUNDERDALE: My understanding was that there was a call for a review, NRCan did the review.

MR. BUDDEN: Okay.

MS. DUNDERDALE: You know, these are recommendations, and we take them very, very seriously, and to the degree that they can be met or satisfied or we believe that they ought to be satisfied in consultation with our own Department of Environment and the federal Department of Environment, that's exactly what was done.

MR. BUDDEN: But what you said yesterday wasn't true, was it? I mean, obviously the Joint Review Panel raised concerns, so there were in fact people who were – like a duly commissioned, federal-provincial panel, for instance – who raised concerns about the business case.

MS. DUNDERDALE: No question, and we were appreciative of the work they did, and they made good recommendations, and we followed a number of them, and others, we decided not to take up, for example, this full clearing out a reservoir and so on and, when we didn't agree with the recommendations of the joint panel, to have a strong rationale for doing that.

You know, as I said to the Commissioners yesterday, in all of this process, you know, and

every agency or group we got involved it, they wanted to go to replan, you know, start right from the beginning and do it all again. Some are –

MR. BUDDEN: Doesn't that tell you something?

MS. DUNDERDALE: Well – not necessarily because you can go around, around, around – that's a political debate. But somewhere in – or certainly can be a – and lots of elements of this were political debate. You know –

MR. BUDDEN: The joint review –

MS. DUNDERDALE: – somewhere in the mix of it all, you have to put the stake in the ground and make a decision. That's what leadership requires.

MR. BUDDEN: Oh, I'm not disagreeing with you there, but what I am suggesting to you, you can't say that, in making that decision, that no panel or expert had said anything negative, contrary to the decision. You can't say that.

MS. DUNDERDALE: But I – you know, what I can say to you is two reviews by MHI didn't say that we didn't need the power or this wasn't the least-cost option. A review by the Consumer Advocate's office, with Knight Piésold's report, didn't say that this is – you know, you don't need the power and this is not the least-cost option. When we brought it to the federal government for review and consideration of the loan guarantee, they didn't say to us this is not the least-cost option and you don't need the power. When we went to the banks, they didn't say to us this is not a good project and you shouldn't be doing it.

I mean, it was – you know, it's an awful lot of people to get into the tent on a project that are all conspiring here, somehow, together, to give a green light to a project that's not in the best interest.

MR. BUDDEN: I think MHI would be surprised to be accused of conspiring, because sitting in that very chair you're in, the chair said he was angry at being denied information by Nalcor and by your government. So he wasn't part of the conspiracy. He was upset because he

was outside of this. You do recall that, or at least you're aware of it?

MS. DUNDERDALE: No. I didn't watch that part of the testimony, but I can tell you from the perspective of Cabinet, there was not attempt made to limit the information that MHI had to do the piece of work that it was doing, following on the templates set down in – by the PUB.

MR. BUDDEN: But if you say something has to be done by a certain date and your pure – civil – your – public servants are scrambling and trying to meet that date and have to start cutting corners, are you not in fact dictating the result as happened here?

MS. DUNDERDALE: No, I don't agree with that.

MR. BUDDEN: Okay.

MS. DUNDERDALE: You know there are time limits and things need to get done in a timely manner sometimes, and that puts a lot of pressure either on somebody who's contracted to do it or do it in government and so on. I mean, that's a pressure point we had all of the time. But you have to follow process; you have to be thorough. But, you know, you put down benchmarks as well, and part of the rationale for doing that is making sure that the work does get done in a timely way and so that you can move the process along.

MR. BUDDEN: You – so – well, we discussed the Joint Review Panel, of course. The Public Utilities Board also found that Nalcor had not made out the business case. That's essentially what they found, wasn't it?

MS. DUNDERDALE: I –

MR. BUDDEN: Not enough information had been provided for them to –

MS. DUNDERDALE: The PUB –

MR. BUDDEN: – make that conclusion.

MS. DUNDERDALE: – didn't find anything, as far as I know.

MR. BUDDEN: Well, I think –

MS. DUNDERDALE: They didn't –

MR. BUDDEN: – I can bring you to it.

MS. DUNDERDALE: – make a recommendation.

MR. BUDDEN: Because they said they lacked sufficient information to make a recommendation. That's why. You agree with me there?

MS. DUNDERDALE: I agree that that's what they said.

MR. BUDDEN: Okay. And we'll get, later, to some of your other conspiracy theories around the PUB. But I say where we're to, basically, Ms. Dunderdale, is that if an expert agrees with you, you cherry pick that expert. If an expert or panel or other body disagrees with you, you ignore them. That's what happened here.

MS. DUNDERDALE: I don't agree with that, Mr. Budden.

MR. BUDDEN: Okay. And beyond that, critics of the project were actually attacked on occasion. Would you agree with me there? Some –

MS. DUNDERDALE: Not by me.

MR. BUDDEN: Not by you?

MS. DUNDERDALE: No.

MR. BUDDEN: Okay. Well, we'll again get to that.

But you did hear the evidence of the present chair of the Public Utilities Board, the vice-chair at that time, that, in the days following the release of the report, she actually packed up her office. She thought she was gonna be fired, given that because the tenor of remarks made in the House and this press release and other comments made. Were you aware of that evidence?

MS. DUNDERDALE: No, I wasn't.

MR. BUDDEN: Well, does that concern you, that a senior, respected public servant would feel that way – to actually pack up her office?

MS. DUNDERDALE: I can't speak to why she felt that way. I can tell you unequivocally that there was no intention anywhere in government that I was aware of to penalize anybody for the work or – they had done or their involvement toward decisions that had been made. Don't operate that way, Mr. Budden.

People make those kinds of accusations on a pretty regular basis to politicians, you know, and I've had – I've been accused in terms of people – public servants – participating in opposition campaigns that were frightened to death. I can't help the fact that they were frightened to death, that they might get fired if somebody found out or something like that.

But I would like somebody to come forward who was fired as a result of political participation, or because they gave a negative – response to government when they felt government wanted something else, and say: Here I am – I'm evidence that this has happened. 'Cause I've asked for it every time – that anybody who's made the accusation, and nobody has ever come forward.

I mean, that's, you know, that is beyond the pale. People have a right to disagree; public servants, more than anybody else, are – and public servants have been attacked and found wanting, in recent days, even during this Inquiry – and accused of failing the people of the province. I find that extremely offensive, to tell you the truth.

We have the finest public service that you could find, I think, anywhere in the country. And they don't have, you know, they're not in a position to come forward and defend themselves. So I mind –

MR. BUDDEN: That's a good segue –

MS. DUNDERDALE: – that people attack them.

MR. BUDDEN: – okay, well let's talk about that.

You heard Mr. Kennedy's evidence.

MS. DUNDERDALE: Yes.

MR. BUDDEN: You heard Mr. Kennedy – I put to him some comments he made about David Vardy –

MS. DUNDERDALE: Yes.

MR. BUDDEN: – you know, who I would suggest – as – to quote his citation when he was made a honorary doctorate, is a quintessential public servant – a man who devoted his life to the public service of Newfoundland.

And Mr. Kennedy stood up in Corner Brook – attacked him for wanting to close down the Corner Brook mill. And when I put that to Mr. Kennedy, he admitted, on page 93 of his evidence, that he attacked Mr. Vardy because Mr. Vardy was a critic of the Muskrat Falls Project.

So, there's your senior – your minister of natural energy [sp Natural Resources] is doing it, you know, in the (inaudible) –

MS. DUNDERDALE: And I wouldn't approve of that, Mr. Budden.

MR. BUDDEN: Okay.

MS. DUNDERDALE: That – you know, I don't support those kinds of comments.

I'm on – I have been on the receiving end of those kinds of commentary by people who are represented here at the Commission – are parts of groups and so on. You know, some of the positions taken by people opposed to Muskrat Falls have been very personal, and to some degree scary, with me.

So –

MR. BUDDEN: Has Mr. Vardy ever attacked anybody in those terms –

MS. DUNDERDALE: Not Mr. Vardy, but –

MR. BUDDEN: – once?

MS. DUNDERDALE: – others within the group have had – have taken some poor decisions around comments they have made with regard to me, particularly, during that process.

MR. BUDDEN: Your lawyer –

MS. DUNDERDALE: You know, I'm not gonna –

MR. BUDDEN: – had a chance to question the group; I'm questioning you now. What I'm saying: As premier, you do acknowledge that your minister of Natural Resources attacked a leading critic of the project – a former civil servant –

MR. T. WILLIAMS: Mr. Chairman – Mr. Commissioner, if I may. I mean, in fairness Mr. Budden has raised his point, I think it's only fair he put to the witness as well that Mr. Kennedy's follow-up comments were with respect that it was done in the heat of a political moment, maybe not appropriate at the time.

So, I mean, we're creating a perception here that's been addressed by Mr. Kennedy. He addressed that, and while I'm not going to suggest that he necessarily recant it; he did put in context his comments.

And I think that's only fair that that be put to the witness.

THE COMMISSIONER: Yeah, I think that's certainly was said by Mr. Kennedy.

MR. BUDDEN: Mm-hmm.

THE COMMISSIONER: But I don't see a problem with the question that's being asked.

Go ahead, Mr. Budden.

MR. BUDDEN: Thank you.

So what – my point here is not to defend everything that was said to you – that's not my role, my role is to hold you accountable for decisions made by you when you were in government. At least question you on them –

MS. DUNDERDALE: Yes.

MR. BUDDEN: – for the Commissioner ultimately to hold you accountable.

What I am saying: In that particular instance, it was Mr. Vardy, a critic of the project, who was being attacked by Mr. Kennedy.

MS. DUNDERDALE: Yes, and I don't support Mr. Kennedy's remarks, nor do I support making those kinds of remarks. And I certainly would have made my feelings known, and I'm glad that Mr. Kennedy publicly acknowledged that that wasn't an appropriate thing to do.

MR. BUDDEN: Let's go to 01113. That would be in your book at volume 2, same volume, tab 83.

Again, you were asked about this yesterday. That's the email with Mr. Thompson.

MS. DUNDERDALE: Yes.

MR. BUDDEN: You acknowledged yesterday – I don't know if you did it directly, but certainly you seemed to acknowledge that the comments he makes there in this private email to you, again, in the months leading up to sanction, quote: "I hope Mary was able to get the material on the Nalcor Board to you. Purely for your use in any informal thanks to the board you may wish to extend. Here are just a few extra thoughts."

Of course, as you probably guessed, the one I'm interested in is, quote: "won't be deterred on MF by detractors pursuing narrow and petty agendas."

And you thought that was an inappropriate comment by Mr. Thompson as he himself acknowledged? You would agree with me there?

MS. DUNDERDALE: I think I felt badly that Mr. Thompson felt moved to make such a comment to me. I listened to his testimony on it. He was very circumspect in how he described why he made it.

MR. BUDDEN: I realize he was doing it out. I'm not really concerned about why he said it, I'm more concerned about what he said, and even more concerned about what, if anything, you said to him in response to this comment.

MS. DUNDERDALE: He's – I didn't say anything to him in response to it other than "Don't worry about, Robert – is what I would've said to him."

MR. BUDDEN: Okay.

MS. DUNDERDALE: That was a personal comment to me. That wasn't a public statement that Robert was making, and if Robert hadn't put it in that email to me, no one would've been aware. I mean, the point that I wanted to make –

MR. BUDDEN: That doesn't comfort us.

MS. DUNDERDALE: Well, you know, perhaps some of the information that were – for example, if you went on the internet, there would be horrible postings about me personally.

One of the members of your group would notify people if I happened to be downtown after supper, with friends, out to dinner, where I was and where I could be located and where I could be found and so on. Created some danger for me that made me very uncomfortable.

MR. BUDDEN: We're talking, now, about the –

MS. DUNDERDALE: What I'm –

MR. BUDDEN: – clerk of the Executive Council.

MS. DUNDERDALE: And the clerk of Executive Council would have been aware of these things. These were on – these remarks were on Twitter; there were Facebook groups; there were blogs that – we weren't having a discussion about the merits of Muskrat Falls or power generation in the province.

These were personal, directive, vindictive and mean, and he knew that I was aware of them, that I was being exposed to them. He saw them every day when he went through the email and so on. And in an effort – to offer some comfort to me, he used language and expressed himself in a way that personally I find foreign to Robert Thompson.

That is not how Robert Thompson talks about people. He's an extremely professional – he's a

very professional person; he's a very sensitive person. He's very respectful, and he doesn't talk to or about people in that way. And I felt that the aberration we see – what I see as an aberration – in how Robert expressed himself in this email was because he was – he had read some of this horrific material that was coming in directed at me around Muskrat Falls. But really, it doesn't have anything to do with Muskrat Falls; it has do with what people think my character and my motivation is.

MR. BUDDEN: I mean, the Joint Review Panel aren't saying these things. David Vardy –

MS. DUNDERDALE: But he's not –

MR. BUDDEN: – is not saying these things.

MS. DUNDERDALE: He's not saying that all of these people are saying these things. He's just saying to me: Look, I know that you're getting exposed to this everyday, that you're being inundated with this every which way you move. Don't be – don't concern yourself with small, narrow opinions that don't have anything to do with Muskrat Falls or the work that we're about here. Stay focused. Stay focused on your arguments, go and have your meeting with the board and stay to the high ground. That is what he said to me.

MR. BUDDEN: Ms. Dunderdale, this is your senior civil servant, public servant, advising you on a message that you were to deliver to the board of Nalcor: Don't be deterred on Muskrat Falls by detractors pursuing narrow and petty agendas.

MS. DUNDERDALE: But that's – the narrow and petty agendas is the piece. Not – detractors with narrow and petty agendas –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – that don't have anything to do with what we ought to be talking about here.

MR. BUDDEN: Mr. Thompson never told us any of this when he testified.

MS. DUNDERDALE: And he wouldn't and I could realize – and I saw how circumspect. And

all he said to you was, you know, just it was in response to the tone of the time. Now –

MR. BUDDEN: He also said it was inappropriate.

MS. DUNDERDALE: Absolutely.

MR. BUDDEN: And I guess my ultimate question for you: Did you challenge him? In any way did you say: Robert, you know, we can't let this –

MS. DUNDERDALE: Absolutely.

MR. BUDDEN: – take this personally. We have to evaluate this.

MS. DUNDERDALE: Don't worry about it.

MR. BUDDEN: Okay.

MS. DUNDERDALE: That's how I would have approached that. That's nice, Robert, that you're concerned for me but you don't have to be. I'm okay, don't you worry about any of that.

MR. BUDDEN: Okay.

Your government – at virtually the same time, bureaucrats of your government, some people in the PR department, were meeting with similar people from Nalcor formulating messages that they labelled hit squad.

MS. DUNDERDALE: Yeah.

MR. BUDDEN: You heard that.

MS. DUNDERDALE: I heard it. I never heard it in terms of political discussions, or in the House of Assembly, or in our preparations for debate in the House of Assembly. It is a new – not a new term but a new term in this context to me.

MR. BUDDEN: Totally inappropriate.

MS. DUNDERDALE: Yes, absolutely.

You know, people would take – you know, now we're really into the political arena, Commissioner, when you go into the House of Assembly and people take positions.

MR. BUDDEN: You said – it's not to get – digress, but you said questions were asked to you in the House of Assembly, as is proper, and you answered them, as is proper.

MS. DUNDERDALE: Yes.

MR. BUDDEN: But to be briefed by a Crown corporation to – you know, under terms such as this, that's not proper, is it?

MS. DUNDERDALE: Well, you know, as I've said, I never heard that term before I saw it. I mean I don't know who a hit team would be.

MR. BUDDEN: Well –

MS. DUNDERDALE: I mean the designated speaker, just as you can see in materials that are before this Commission, you know, we talked about who's going to speak. And you have to plan all of that and you have to plan the different positions you're going to take, and you have to talk about who's going to knock down arguments that we know are being put up by the other side. They're doing exactly the same thing on the other side of the House.

MR. BUDDEN: I guess I – well, they're not being briefed by a Crown Corporation to do it. But I guess I'd put it this – to wrap it all up, because we're about to break for lunch, you have – you were running a government in which your top civil servant is using terminology such as this – top public servant. Nalcor is briefing your MHAs and using terms such as hit squad and your minister of Natural Resources is attacking a critic in the terms he did. What does that say about you and about your government?

MS. DUNDERDALE: I don't know that that particular term came from the – came from Nalcor. There were government people and government people who directed political positions and so on or how to deal with political positions and so on. So I really don't know who made the comment and –

MR. BUDDEN: Charles Bown was in the room, deputy minister of Natural Resources.

MS. DUNDERDALE: Yes, but I wasn't in the room.

MR. BUDDEN: Dawn Dalley was in the room.

MS. DUNDERDALE: I wasn't in the room, so I don't know who designate – who decided to designate a group of people hit squad; I don't know if it was Nalcor people or government people so I can't speak to that. In terms – you know, MHAs are elected by citizens and they work for them. They work for the people. Like, Mr. Kennedy worked, was hired by the people in his district of Carbonear - Harbour Grace.

MR. BUDDEN: And appointed to Cabinet by yourself?

MS. DUNDERDALE: Yes, absolutely. And at no time would I approve of denigrating any citizen for a point of view in a public policy debate for their own opinions. It's not what I support.

MR. BUDDEN: I guess –

MS. DUNDERDALE: And I would have drawn attention to it when it happened. That that's not the way we go about our business. Now, people did it –

MR. BUDDEN: But yet that was the way you went about your business, your government did.

MS. DUNDERDALE: That's not the way I went about my business, Mr. Budden.

MR. BUDDEN: But it's the way your government went about its business at this time.

MS. DUNDERDALE: Well, the – yeah, it's a political arena and that is certainly true, you know. From 2003 right up until I left in 2014, I can't make an argument that politicians didn't get into it with people and made personal remarks about them. I didn't do it. That and – you know, change can only start with – you can only be responsible for what you do yourself and I was responsible for how I conducted myself and how I spoke to people.

And I encouraged, as vigorously as I could, that – especially where citizens were concerned – debate in the House of Assembly, in the political arena, can get a little rough from time to time. But when you're dealing with citizens, expressing their point of view, whether you

agree with them or not, and whether you appreciate what they're saying or not, that, you know, you don't get down hurling insults back and forth. That's not appropriate.

As I said yesterday: Move on. You hear what people have to say. You know, there's nothing to be gained from getting in to a – in my view, from a – in a public spat, where you're hurling insults at one another. It's not productive and it's not conducive to good debate.

MR. BUDDEN: But yet all this happened on your watch.

MS. DUNDERDALE: It did so.

MR. BUDDEN: Right.

MS. DUNDERDALE: And, you know, to the degree that I could encourage better behaviour, I did that.

MR. BUDDEN: Okay.

Should we break here, Mr. Commissioner?

THE COMMISSIONER: Yes, I think it's a good spot. So we'll break until 2 o'clock.

MR. BUDDEN: Thank you.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: Okay.

Mr. Budden, when you're ready.

MR. BUDDEN: Madam Clerk, could we please bring up Exhibit 00206?

You – that would be – as I said earlier, that's volume 1, tab 9, I believe.

MS. DUNDERDALE: Yes.

THE COMMISSIONER: Tab 9, yes

MR. BUDDEN: Okay.

What this is – we’ve had – many witnesses have spoken to this, and the understanding we have is that this was a presentation made by Nalcor to certain individuals, who I’ll name in a moment; that it took place at The Rooms; that it took place on April 23, 2010.

And our understanding from Mr. Sturge, in his notes, is that it was attended by, on behalf of Nalcor, Mr. Martin, Mr. Gilbert Bennett, Derrick Sturge himself and Chris Kieley. On behalf of the government, you were there.

MS. DUNDERDALE: Yes.

MR. BUDDEN: Premier Williams was there. Gary Norris was there, and we understand the handwriting is Gary Norris’s handwriting. Brian Crawley, Elizabeth Matthews, Robert Thompson and Charles Bown were also there, and that appears to, as far as we know, to have been the total of who was there.

Do you remember that meeting?

MS. DUNDERDALE: Yes, I do.

MR. BUDDEN: Okay.

And the – I’m gonna ask you a few questions about it. What – my understanding from other witnesses, not all of them remembered, but at least a couple of witnesses testified that this was a presentation and that the handwritten comments, as you go through it, perhaps reflect a back and forth, a discussion arising out of the presentation. I’m not stating that as a fact, but that is what some witnesses seem to believe.

Is that your understanding as well?

MS. DUNDERDALE: I have no idea, but that sounds sensible to me.

MR. BUDDEN: Okay. Do you actually remember this meeting or any of this – these discussions?

MS. DUNDERDALE: I remember the meeting. The meeting stands out in my mind because it was at The Rooms –

MR. BUDDEN: Mmm.

MS. DUNDERDALE: – so it was a different – that’s what I remember about it –

MR. BUDDEN: Sure.

MS. DUNDERDALE: – more than anything else.

MR. BUDDEN: Okay.

The – what I’m – perhaps you can go to page 5. Perhaps we can all go to page 5, Madam Clerk.

And what you’ll see if you look at page 5 is – what I’m suggesting to you, again, not as a fact, but what I propose is my understanding, is that you have the presentation as it was made, this preprinted – what we see here, this printed document, and then the handwriting perhaps reflects the comments, so this page is a good example of that.

As you glance through this, does this refresh you in any way as to that meeting? I’m not asking you to read word for word, and I realize some of it’s handwriting, but just, generally, does this refresh you at all?

MS. DUNDERDALE: But this is – you know, this is the context of many of these types of meetings, the issues that are being discussed and examined and advanced or, you know, where are we now is –

MR. BUDDEN: Sure, so you almost move through the presentation, almost like an agenda?

MS. DUNDERDALE: Yes.

MR. BUDDEN: Gotcha. Okay.

Well, perhaps we can move on to page 17, which is where my real interest lies.

What we have here, I would suggest – and again, the context here is the discussion of the Lower Churchill, and at this point – I suggest to Mr. Martin this was to do due with Muskrat Falls,

and he said no. He thought it was a broader discussion about Muskrat and Gull.

But – so that’s the evidence we have. But what we have here, it clearly says that the general assumptions for all cases is a P75 capital cost estimate – you can see that there?

MS. DUNDERDALE: Yes, I can.

MR. BUDDEN: So it would appear, I would suggest, that Nalcor went into this meeting with the general assumption of a P75 capital cost factor being used. Do you take any issue with that?

MS. DUNDERDALE: No.

MR. BUDDEN: Okay.

And we also see handwriting there – Mr. Norris’s handwriting – and perhaps you could just read that into the record for us? The handwriting immediately opposite the “P75 capital cost estimates” print.

MS. DUNDERDALE: “More stress placed on the project cost – very” –

MR. BUDDEN: Conservative, I believe that word is.

MS. DUNDERDALE: – “conservative approach.”

MR. BUDDEN: Yeah. Okay.

So what that – I would suggest to you is that that was Nalcor’s presentation. That was some of the comments arising out of that, that this is a very conservative approach that presses – that puts more stress on the project cost. Does that – firstly, do you recall that?

MS. DUNDERDALE: I don’t recall very specific discussions around the P-factor. It was not something – P-factor labelled risks. We talked about risk, but we didn’t talk about tactical risk as opposed to management reserve or those kinds of things.

MR. BUDDEN: Okay.

MS. DUNDERDALE: We generally talked about things, and I think we’re talking about Gull and Muskrat –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – at this point. But generally again, you know, I was familiar with P – I knew that we had had any number of discussions around P-factor throughout the 10 years – or eight years we were doing this. But I don’t remember particular instances where I can apply to say, yes, that absolutely – we talked about that in terms of P75 at that meeting on this issue.

MR. BUDDEN: Okay.

MS. DUNDERDALE: I can’t speak to it now. I don’t recall.

MR. BUDDEN: Sure. Well, it is eight years. I realize that.

MS. DUNDERDALE: But I knew that I – you know, in some instances, we had talked about P-factor.

MR. BUDDEN: Okay, and it is also true – I think – many witnesses have established this – that certainly within a few months of this meeting – certainly by August, and this meeting was in late April – Nalcor had – were committed to using a P50 factor with respect to developing Muskrat Falls.

So, is that – excuse me – is that your understanding as well?

MS. DUNDERDALE: Yes, again, Mr. Budden, I wouldn’t be able to say definitively here today that that was the P – because we didn’t have our discussions – you know, it certainly could have come up, and did come up somewhere in our discussions and presentations and so on, but what it was particular to, or how it was being applied – for me to recall –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – that, I would have questioned it; I would have made sure that I understood it in the context of the discussion that day, but it wasn’t something that

consistently flowed through the work that we were doing –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – so that I could say to you, with honesty and comfort today, that yes, I knew all about P-factors and we discussed them this number of times in this –

MR. BUDDEN: Sure.

MS. DUNDERDALE: – kinds of situations.

MR. BUDDEN: You did, though, in your evidence – and correct me if I'm wrong, but I understood your evidence as being that you and Mr. Martin had a discussion around using the P-factor in a comparative sense – comparing, again, the Isolated Island and the Muskrat Falls Interconnected Option.

MS. DUNDERDALE: Yes, we did.

MR. BUDDEN: And your evidence was that the – if I understand correctly – that the P50 factor was being used because to go to with a P75 for Muskrat would have unfairly compared it to the Isolated Island unless you also went P75 on the Isolated Island.

MS. DUNDERDALE: We weren't even as precise as that. When we talked about the CPW analysis, we talked about it as – approaching it very conservatively. And, you know, what we needed to do was compare the two projects to find out which was the least-cost project and not include too much ancillary stuff that would have skewed the comparison on least cost.

MR. BUDDEN: Okay.

Ask a couple of questions there – one is that, obviously on the one hand, we're looking at building a megaproject beyond the scale of anything Nalcor had ever done before – and really an unusual, unique thing – while on the other hand, we're talking about relatively incremental changes, I would suggest, to the Isolated Island, and a lot of which were – at least some of the major components were virtually off the shelf. That's an expression some of the experts have used.

So, in that respect, I would suggest that the Muskrat Falls option was inherently riskier. Do you have any thoughts or comment on that?

MS. DUNDERDALE: I certainly never approached it that way. You know, I thought that when it – you know, that there was expertise in – available to construct both projects, and those experts would know what they were doing, and hydro projects have been – our own hydro project in the province had been built in the middle of the wilderness, you know, on time and under budget.

MR. BUDDEN: What are you thinking about there?

MS. DUNDERDALE: Churchill Falls.

MR. BUDDEN: Of course, yeah.

MS. DUNDERDALE: The Upper Churchill. So, I can't say that, you know, that I did a great deal of thinking in that vein.

MR. BUDDEN: Okay. A couple of obvious points: That was 40 years previous, and wasn't Nalcor that had built it.

MS. DUNDERDALE: Oh, no question about it, Mr. Budden. But I didn't think about it in those terms.

MR. BUDDEN: Sure.

Were you also – did you have any sense at all, as to whether the particular components of the Isolated Island Option had already been entered into the CPW – or inputted, I guess, using, perhaps, a P70 or better factor? Is that knowledge that you would've have? I'm not necessarily saying it's true, but there is evidence to that effect.

MS. DUNDERDALE: Yes, and –

MR. BUDDEN: Were you aware of that evidence?

MS. DUNDERDALE: I don't recall.

MR. BUDDEN: Okay. The other thing about the P50, I guess, that surprises me, is the obvious factor of using a P50 as opposed to a

P75, is that it affects the project estimate. You understood that?

MS. DUNDERDALE: Yes.

MR. BUDDEN: This is a project that was going to take some years to be built, was going to be hanging over all of your heads to some degree, and – in an accountability sense.

MS. DUNDERDALE: Yes.

MR. BUDDEN: Why would you use a P50 when a P75 was more in line with what the experts were recommending, and would also be a figure that is less likely to come back and bite you? I just don't understand the self-interest of using a P50 for politicians or senior executives of Nalcor. It totally escapes me.

MS. DUNDERDALE: The P50 was an industry standard for these types of projects, as I understood it. It was the factor that was applied, normally. And in terms of the work that had been completed, that – you know, that a high level of engineering, that a high degree of scrutiny, a high level of testing had gone into it and we were – you know, there was a fair degree of certainty, I felt, around the numbers.

There was also – and I wanted the numbers. It was extremely important to me that we understand what we were taking on. And I felt that that had been through a very thorough vetting in the work that had been done in-house, in government – the work that had been done at Nalcor – the work that had been done by MHI through the PUB because it was a testing of the information and the plan that had been put forward, furthered again by MHI and Decision Gate 3 even though a high level by Knight Piésold over at the Consumer Advocate's Office.

And particularly with the federal government – when the examination of the project to see if it was worthy of a loan guarantee. And subsequent to all of that and the shadow rating that had been given by the – our bond rating agencies and the A-grade that had been given by the banks.

MR. BUDDEN: Okay. Just to break that down a little bit. Of course, the Knight Piésold and the first MHI had been done at DG2 numbers.

MS. DUNDERDALE: Yes.

MR. BUDDEN: And I don't think anybody suggests that P50 is reasonable at DG2 numbers.

MS. DUNDERDALE: No.

MR. BUDDEN: You're not suggesting that?

MS. DUNDERDALE: No. You know, I'm saying in – when these things are examined – and certainly at DG2 – some elements of risk were considered, that the conclusion of those studies such as – you know, at that point in the development of the project – were considered appropriate.

MR. BUDDEN: Okay. I guess I would suggest this to sort of wrap up the discussion of P-factors. We've heard from most of the senior civil servants – public servants. We've heard from Premier Williams, from several other Cabinet ministers, and I would suggest that your discussion of P-factors is probably more detailed than any of them.

So, they certainly weren't participating in an informed discussion about what appropriate P-factor to be used. That's what I would suggest.

MS. DUNDERDALE: Nor was I, Mr. Budden, and if I've led you to understand that –

MR. BUDDEN: Okay. No that –

MS. DUNDERDALE: – you know, I'm saying there was discussion of P-factors enough through the whole piece that I have recollection of a P-factor being discussed. And of course I would. It was in the presentation – I would have heard it here.

MR. BUDDEN: Sure.

MS. DUNDERDALE: I don't – you know, if you had asked me somewhere through the process, you know, tell me about all the different P-factors and what's included and what are the repercussions of and so on – I'm not sure that I could have given you a Coles Notes version of what all of that meant.

MR. BUDDEN: Sure.

MS. DUNDERDALE: But, you know, in terms of where we were when we got to sanction, you know, we're talking about, you know, we got a 50/50 chance of bringing this in, you know, on time and on budget –

MR. BUDDEN: Yes.

MS. DUNDERDALE: – and we could even bring it in, you know, under budget.

MR. BUDDEN: It's theoretically possible.

MS. DUNDERDALE: But there's a 50 per cent chance that we might go over. Now this is the standard that's applied, generally, to projects of this type.

MR. BUDDEN: And I guess the –

MS. DUNDERDALE: Which would take my to the – me to the next place. Like if we're gonna go over – if there's any chance that we're gonna go over, you know, because what's being expressed now is, you know, high confidence –

MR. BUDDEN: Sure.

MS. DUNDERDALE: – in the number.

MR. BUDDEN: I'll take you to that next place. That's my very next train of questions. But just to wrap this one up if I may.

MS. DUNDERDALE: Yes.

MR. BUDDEN: Ultimately though you were relying on Mr. Martin, weren't you?

MS. DUNDERDALE: I'm relying on Mr. Martin on 6.2. I'm relying on the PUB and MHI for 6.2. I'm relying on the other organizations and agencies that did review of the project as well.

MR. BUDDEN: Sure.

I guess to put it another way: Neither you nor any of your Cabinet colleagues nor any of your senior public servants were really in a position to do any kind of independent analysis of this – these numbers or this process. You'd agree with me there?

MS. DUNDERDALE: I mean it had been put to the – you know, the –

MR. BUDDEN: Just – if you could answer my question then –

MS. DUNDERDALE: Well, it was part of the oversight of putting it to the PUB to start with. It was so that we could have confidence in the information that Nalcor was providing to us and at the same time provide confidence to the people of the province that this work was being done properly and, you know, here's the work, here's what they've given us, we've had a look at it inside and now we're gonna put it out externally and they're gonna review it and have a look at it. And if it meets, you know, their standard, you know, and we get the green light from MHI that there is nothing here that would stop, halt the project immediately – which is what would have happened if MHI had come back with an identification of a major flaw in the rationale, reasoning, the inputs. It would have stopped right where it was.

MR. BUDDEN: Okay.

MS. DUNDERDALE: And we'd have had to reset and go back and look at all of that.

MR. BUDDEN: Okay.

We won't get into it again about the – I guess the weakness of MHI. But just the worst-case scenario that you were alluding to. If I understood your evidence correctly, you were told at some point in the period immediately prior to sanction that the worst-case scenario here was the 6.2 might go as high as 6.7?

MS. DUNDERDALE: Yes.

MR. BUDDEN: That's your evidence.

MS. DUNDERDALE: Yes.

MR. BUDDEN: And it was Mr. Martin who told you that?

MS. DUNDERDALE: Yes.

MR. BUDDEN: Okay.

I guess my question is this – and I mean no offence by it, but we’ve heard nothing and – other than Mr. Martin and see nothing that would suggest that conversation took place in that way.

Do you have any – can you think of anybody else, witnesses we haven’t heard from, staff people in your office, anybody else you may have told this to at the time, any document was written down?

MS. DUNDERDALE: I may have within my Cabinet but I can’t give you a specific -

MR. BUDDEN: Okay.

MS. DUNDERDALE: I can’t say yes I told Mr. Kennedy that this was the case.

MR. BUDDEN: Or anybody else.

MS. DUNDERDALE: Or anybody else.

MR. BUDDEN: Okay.

MS. DUNDERDALE: You know, I’m being given a strong assurance that we’re in the ballpark here and this is the number that’s been asked for by you and by your Cabinet and by minister, since we started this project – and especially as we started to get close.

And, you know, I’m telling you with a high degree of confidence that I believed that this is the number.

MR. BUDDEN: Okay.

You – also in your interview with Mr. Learmonth, you said that – and Mr. Learmonth, you know, pursued this point a bit but as I understood your evidence – that you and Mr. Martin did not meet alone to discuss substantive matters.

MS. DUNDERDALE: No, we didn’t.

MR. BUDDEN: Okay.

So, we’re left with a situation, other witnesses we’ve heard from have discussed this worst-case scenario, and again there’s nobody you can think of, not Brian Taylor -

MS. DUNDERDALE: No.

MR. BUDDEN: – not Glenda Power.

MS. DUNDERDALE: No.

MR. BUDDEN: Nobody in your personal life, nobody you can take a stand and say: I knew that at the time because the premier told me.

MS. DUNDERDALE: No, I can’t. No, I just have to stand on my word.

MR. BUDDEN: Okay.

I guess the final thing: Wouldn’t in the ordinary course of events as premier, that’s a pretty significant thing, wouldn’t you note that in some fashion or diarize or otherwise record it?

MS. DUNDERDALE: No.

MR. BUDDEN: Okay.

Sort of a stand-alone question on water management, which is an issue that the Commission is going to be dealing with in a bit of a different way. But I really only have one question for you with regard to water management: What as of the time of sanction was your understanding of Hydro-Québec’s position on that issue as of the time of sanction?

MS. DUNDERDALE: Hydro-Québec was taking issue through CF(L)Co particularly with just about every action we took with regard to development on the Churchill River. So water management was one more of those things.

MR. BUDDEN: So you knew at the time of sanction that Hydro-Québec could well have made an issue of the water supply to the dam.

MS. DUNDERDALE: I can’t tell you what I knew at the time. You know, I was the minister that dealt with water management issues and had brought legislation through the House.

MR. BUDDEN: Of course.

MS. DUNDERDALE: And in due course was made aware of where issues might be, but I can’t give you a timeline on it.

MR. BUDDEN: Okay.

A final couple of questions about the PUB exemption and about what happened in the lead-up to the decision or non-decision. Just by a bit of deep background: What is your understanding of the rationale by which administrations prior to yours had excluded from PUB oversight certain aspects of hydro development?

What was your understanding of why that was so?

MS. DUNDERDALE: I can tell you what our concern would be. And then you might be able to extrapolate that other administrations might have had the same concerns, and I expect that they would have.

One of the reasons, Commissioner, that we developed the energy company, Nalcor, was to be able to do business in real time. One of the reasons we felt that governments weren't very successful at business enterprise is because we're, you know, heavily regulated, things took an awful lot of time, we weren't agile or nimble and not being able to react to the market in a timely way. So to do business deals like PPAs and those kinds of things, we just weren't very good at it.

MR. BUDDEN: Okay.

MS. DUNDERDALE: And we weren't great negotiators, either, when it came to that. That's not where the training was in government or the expertise was in government to negotiate PPAs or negotiate arrangements with oil companies and so on.

So we wanted to have that expertise available. The PUB is a regulatory body, and just by its very nature it requires time and money and can cause delays, because you can't rely on any kind of a timeline. And that would interfere with the agility and the flexibility that it was felt it was required to do business in the real world.

And that was the consideration in not putting the project before the PUB.

MR. BUDDEN: Okay.

MS. DUNDERDALE: And not changing the legislation around that initially.

MR. BUDDEN: Okay.

And you've already discussed, so I won't go in any great detail about the rationale behind your decision to refer these options and only these two options. But since then, in your evidence – at the beginning of my examination of you, as you no doubt recall, I was asking about what you would do if the FLG or the P1 issue caused a failure to sanction. And you said something about going back to the drawing board, looking at all options again.

So, I guess my question – if that was in your thoughts then, and presumably you're not just doing this on the seat of your pants, you would've thought about what would happen if there was no FLG, so since there was some thought of going back to the drawing board anyway, why not put it all before the PUB?

MS. DUNDERDALE: But the –

MR. BUDDEN: Do you see where I'm going?

MS. DUNDERDALE: Yes, but the PUB could've sent this back to the drawing board.

MR. BUDDEN: They did, though, didn't they?

MS. DUNDERDALE: No, they said they, you know, as I said, it's a little broader than that –

MR. BUDDEN: Yeah.

MS. DUNDERDALE: – Mr. Budden.

MR. BUDDEN: But perhaps you'll get a chance to answer that, but perhaps answer my question about –

MS. DUNDERDALE: Sure.

MR. BUDDEN: – why not put it all back to the PUB for some of the same reasons you discussed around the possibility of an FLG failure?

MS. DUNDERDALE: The two critical questions before the PUB were, you know,

again, did we need the power and was this the least-cost option?

And it was an arm's length, objective look at the work that Nalcor had done with its experts to put together the case for Muskrat Falls. So it was testing all of the information that they could get their hands on that we could provide with regard to these two projects.

So to say to government – but just as importantly to say outside of government, to the people in the province – this reasoning is sound, and this planning is sound. And so to this degree, DG2, you can take comfort in the fact that the government and Nalcor are on the right track and they're using the right methodologies, and their conclusions are sound.

If the PUB or – if MHI had come back and said, no, there is something seriously wrong here, you know, this is not sound work or there's a significant issue here, then I can tell you that the project would've stopped right there and then, and we'd have had to go back and have a look at areas that they would've identified and see where we had gone wrong.

MR. BUDDEN: But over all of this, by your evidence, is looming the prospect of power shortages by 2015, and as I understand it as well that was part of the reason you wanted to get this into the House, part of the thing that was driving the – driving this fast agenda. You agree with me?

MS. DUNDERDALE: And that's fair enough, but you only move forward when you've – when you feel that you can move forward.

If the PUB had come back through MHI, in this instance and said, no, there's something seriously wrong here. This is not what's being described, then I can guarantee you that project would have stopped right where it was.

MR. BUDDEN: Okay.

MS. DUNDERDALE: Regardless of what – there was no point moving forward with a project or – that wasn't sound, that wasn't going – it doesn't make any kind of sense. You're not going to get the results you're looking for if

you're moving forward with a plan that's not sound.

MR. BUDDEN: Okay.

Let me try this – putting it this way. You testified this morning and again yesterday that – and at other times in your evidence you've said that if the FLG had not been improved you would not have sanctioned. But that still leaves Newfoundland facing, by the evidence that you believed, facing a power crunch.

So why at that point – then you're in a pickle because you have the Isolated Island Option and nothing else has made it past DG2 and you're now in late 2012, why not, back in 2011, would it not have made more sense to say to the PUB: Look, we know it's going to cost a few dollars, we know it's going to take a bit of time, but you're still better off than you would have been in 2012 with this FLG hanging out there, which really wasn't even nailed down until late 2013.

MS. DUNDERDALE: Yes, but there's a difference, Mr. Budden, it's more than the monetary value that's connected to the FLG.

You know, you noted this morning it's a billion dollars, you know, and according to you that's neither here nor there in the scheme of things, I mean, it's just a billion dollars, why would you cancel on a billion – you know, that's what I understood you to say.

MR. BUDDEN: I specifically stated as opposed to, you know – what I said was, you know, a billion dollars is a lot of money but 2.4 billion is more still.

MS. DUNDERDALE: Yes, but further to that, and, you know, I talked about the 4.5 billion but I suppose I can understand that you wouldn't consider that a – because if everything is – we've got bigger problems if the, you know, if the guarantee kicks in, we got big problems in the province and whether or not we got access to \$4.5 billion, I suppose, at the end of the day, might not be the most meaningful thing in the world.

However, the prime minister had promised a loan guarantee. So, you know, in not getting the loan guarantee I would have to consider that the

project, as it was designed and engineered and so on, put forward to the federal government, didn't inspire enough confidence in them to give us a loan guarantee, and so you'd have to take it right back and re-examine it again: What's wrong here? Because that's part of the oversight as well.

You know, if there's any indication along the way here that this hasn't been – this work hasn't been done to the highest standard and that, to the degree that you can have comfort that, you know – because everything is risk – everything is a risk and you mitigate it to the degree that you can, then you take a deep breath and go forward.

But you're only gonna take that deep breath and go forward if you receive major signals that you're looking for from the PUB or MHI, you know, from the Consumer Advocate's office, from NRCan and from the federal government generally, that this is a go.

MR. BUDDEN: Okay. I'll move on. And this is my final set of questions about the PUB reference to – and the fallout from that.

If I understood your evidence correctly, you – even before they released the report, you'd lost faith in the PUB's ability to fairly consider these options. Did I understand you correctly?

MS. DUNDERDALE: I wasn't confident about the outcome.

MR. BUDDEN: Okay. I'm gonna bring you to a few points in your transcript because I think this is an important point. What you – and you said that, and this is – I'm just gonna read you –

MS. E. BEST: Commissioner?

Sorry to interrupt there, Mr. Budden. I just wanted to point out that Ms. Dunderdale does have a copy of her transcript there so if you want to point her –

MR. BUDDEN: Oh, excellent.

MS. E. BEST: – to the page –

MR. BUDDEN: Okay.

MS. E. BEST: – she can actually read along with you.

MR. BUDDEN: I didn't know that.

THE COMMISSIONER: Thank you.

MR. BUDDEN: That's very good.

I'm looking at the one from yesterday and it's page –

MS. DUNDERDALE: I don't have yesterday –

MR. BUDDEN: You don't have yesterday?

MS. DUNDERDALE: Yesterday's transcript?

MS. E. BEST: Sorry, I thought you were talking about her interview transcript.

MR. BUDDEN: No, I was talking about her –

MS. E. BEST: Oh, apologies.

MR. BUDDEN: – the draft transcript from yesterday.

THE COMMISSIONER: You have a copy there of yesterday's transcript?

MS. E. BEST: No, I don't have yesterdays.

THE COMMISSIONER: Okay.

You don't have an extra copy there, do you?

MR. BUDDEN: I don't.

THE COMMISSIONER: Okay.

MR. BUDDEN: But the quotes I have a relatively short.

THE COMMISSIONER: Okay.

MR. BUDDEN: So I'll show them to you if you want but I'll also read them.

MS. DUNDERDALE: No, that's fine.

MR. BUDDEN: Sure.

And what you said to Mr. Learmonth, talking about Mr. Wells: He skewed that process to such a degree that I couldn't have any confidence. He failed in the first mandate in I – in mine – and there's a blank that never got picked up – 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 really wasn't interested in moving on with Mr. Wells.

So, basically, what I got from that was you had lost confidence in the PUB, at least in Mr. Wells (inaudible).

MS. DUNDERDALE: I had lost confidence in Mr. Wells.

MR. BUDDEN: Okay. I wanna go to some of the reasons.

The previous page of your transcript, you say – quote – 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. You're talking about Mr. Wells now. We all know now, we've heard his evidence, we've seen his transcript, but you didn't have any of that back in – back at this point in March of 2011 and thereabouts.

What conversations are you referring to?

MS. DUNDERDALE: People who were in my life and who were out and about in the city and who were hearing about these conversations were reporting back to me that there was quite a bit of conversation apparently going on between Mr. Wells and some other people in the community that was very prejudicial against Muskrat Falls, while the case was under review by the PUB.

MR. BUDDEN: Okay. The whole –

MS. DUNDERDALE: I didn't do a thing. I didn't speak to anybody with regard to this. I didn't approach Mr. Wells or anybody at the PUB with regard to this. I thought that's unfortunate if that's happening. But I didn't disbelieve what was being said to me because they were people that I knew fairly well.

MR. BUDDEN: Well, let's move on because – well, not move on, it's the same issue.

On page 77, you say: There were commentary going on 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.

Who were they?

MS. DUNDERDALE: I can't tell you at this point in time, that number of years ago, who would have talked to me about that. But friends, associates, people that I had dealings with, you know. There might have been some people in the caucus that may have mentioned it.

Again, I didn't let it interfere in any way with the work that was ongoing at the PUB.

MR. BUDDEN: Okay.

MS. DUNDERDALE: I left them to their own devices to do – when they told me they had a problem, I moved immediately to correct it and make sure that they had the information to do what they wanted to do.

All I can say, Mr. Budden, is, you know, what I was hearing – and I wasn't acting on it – and it was not appropriate for me to act on it because I didn't have hard facts. But all of it got confirmed after the fact. That the information I was – that was being shared with me was correct.

MR. BUDDEN: I'm not interested in after the fact, but I am interested in this. Firstly, we're not talking about the comments he made publicly about Nalcor not providing information. That's not what you're referring to, I take it?

MS. DUNDERDALE: No.

MR. BUDDEN: Okay. So these are comments that he made to people that you – did people come to you, say, look, Andy Wells told me this? Or was it even more remote?

MS. DUNDERDALE: No. It would have been, you know, somebody – so-and-so told me that this conversation was had with them by Andy Wells. I heard – I hear Andy Wells is saying such-and-such and such-and-such. That's what I would have known. Not anything that I would have taken and approached Mr. Wells on. But it was something that I was aware of and paying attention to in my own mind to see how objective this process really was.

MR. BUDDEN: And you cannot tell us today who – one single person who told you this, name one of them?

MS. DUNDERDALE: No, Mr. Budden.

MR. BUDDEN: Okay. You can't or you won't?

MS. DUNDERDALE: No, I can't tell you.

MR. BUDDEN: Okay.

MS. DUNDERDALE: You know, I'd be guessing at it now, and I wouldn't put another person –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – in that predicament here.

MR. BUDDEN: And you never told – you never mentioned this to Mr. Kennedy, one of the most accomplished lawyers in Newfoundland?

MS. DUNDERDALE: I don't know – I'm – I don't know – we may have had conversations about it. I really don't know. It wasn't – I don't know.

MR. BUDDEN: Okay.

Can you name one person who you are certain you discussed this with?

MS. DUNDERDALE: No, I can't.

MR. BUDDEN: Okay.

And you say it didn't impact you, but if we go back to page 73, you say: 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.

This was in the context of the extension.

MS. DUNDERDALE: Yes.

MR. BUDDEN: So I would suggest to you it did influence you. It obviously did. You said it right here.

MS. DUNDERDALE: It influenced me, and then, when we got to the point that you've had nine months, you've had \$2 million, you have an expert that's reached a conclusion and you turn to the people of the province, you turn to the government and you turn to the people of the province and say, no, we can't give you the conclusion.

MR. BUDDEN: Okay.

MS. DUNDERDALE: Like, have you –

MR. BUDDEN: You're jumping ahead there.

MS. DUNDERDALE: Yeah, but that's –

MR. BUDDEN: At that point, you didn't know any of that.

MS. DUNDERDALE: But I'm telling that that was my reaction when I got the report. You're telling me that after \$2 million –

MR. BUDDEN: No, I'm – Ms. Dunderdale, that's not what I'm asking. I'm saying why – when the discussion of the extension came up – Mr. Learmonth was asking you about that – you said you weren't going to grant the extension because you lost faith in Mr. Wells because of these political discussions.

MS. DUNDERDALE: Because we're nine months in; we're \$2 million spent, and you can't give us a report.

MR. BUDDEN: But you didn't know that then. They were simply saying that, look, we need more time, there's a technical conference we want to do, there's a bunch of things happening. And you weren't prepared –

MS. DUNDERDALE: No.

MR. BUDDEN: – Mr. Kennedy was, but you weren't.

MS. DUNDERDALE: No, I wasn't. That's quite right.

MR. BUDDEN: You put the kibosh on it.

MS. DUNDERDALE: No. That's quite right.

MR. BUDDEN: Okay, so you – your minister wanted it, but you didn't?

MS. DUNDERDALE: Well, I can't tell you whether my minister wanted it either.

MR. BUDDEN: Okay. But you didn't?

MS. DUNDERDALE: No, I didn't.

MR. BUDDEN: I think his evidence was that he did, but we'll move on.

MS. DUNDERDALE: I can't speak to it one way or the other, but there's no –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – question, Mr. Commissioner, I own it, completely.

MR. BUDDEN: Mr. Wells was appointed by your own government –

MS. E. BEST: I just wanted to point out – I'm not sure that that was Mr. Kennedy's evidence, might have been in retrospect, in hindsight.

MR. BUDDEN: I thought it was his evidence, but I don't have the quote here, so I'll withdraw it if the Commissioner wishes, but I do think it was his evidence that he recommended it and he was overruled.

MS. DUNDERDALE: I don't think that's true.

THE COMMISSIONER: I will read over that. To be honest with you, I've heard a lot since he spoke, and – so it's something I'll look at and consider and look in – everybody has their perception of what was –

MR. BUDDEN: Sure.

THE COMMISSIONER: – said. Ultimately, mine will be the one that determines it all. But I'll –

MR. BUDDEN: Fair enough.

THE COMMISSIONER: – look at it.

MR. BUDDEN: Yeah.

So your government appointed Mr. Wells just a few years before this?

MS. DUNDERDALE: I was part of the government that appointed Mr. Wells –

MR. BUDDEN: Yes.

MS. DUNDERDALE: – yes.

MR. BUDDEN: And you knew, of course, that he wasn't the only commissioner hearing this? There were three others.

MS. DUNDERDALE: Yes.

MR. BUDDEN: Okay. And Ms. Whalen – and I can't recall her first name, but she had been on the board 12 years, a professional engineer, a vice-chair. You have no reason to believe she was biased, I assume?

MS. DUNDERDALE: No.

MR. BUDDEN: No reason to believe Ms. Dwanda Newman, an accomplished lawyer, also a member of the board – still a member of the board.

MS. DUNDERDALE: No.

MR. BUDDEN: You have no reason to believe she was biased?

MS. DUNDERDALE: No.

MR. BUDDEN: Or Mr. Oxford?

MS. DUNDERDALE: No.

MR. BUDDEN: James Oxford. So why didn't you simply, perhaps, get advice that Mr. Wells should step aside and allow the board to do its job? Did that occur to you?

MS. DUNDERDALE: No.

MR. BUDDEN: Okay. Should it have occurred to you?

MS. DUNDERDALE: I don't think so, Mr. Budden.

We gave the PUB a mandate; we gave them a timeline in which to fulfil their mandate. They accepted the mandate, so one can make the assumption that they felt they could do the work in that piece of time.

You know, if we hadn't given an extension already, there would've been a real understanding that they hadn't been able to meet their mandate because Nalcor was slow in providing the information. But we gave a three-month extension to accommodate for that.

I mean, I felt we were being fair in what we had asked them to do and that we were fair that we accommodated that request for an extension, because the delay had nothing to do with them, and it's hard for them to expect to do their work in six months if they're not getting the information they require.

So even –

MR. BUDDEN: Okay.

MS. DUNDERDALE: – if they were held up a third of the time, let's give them 50 per cent more time, again, to complete their work.

MR. BUDDEN: You rejected – what they basically said, you know, to paraphrase here, is: Look, the information we have is inadequate. It's – there's not much of it; it's 5 to 10 per cent of the engineering base. We just don't have enough here to make a choice between these two options.

MS. DUNDERDALE: But in terms – the question wasn't do we have enough information here to go to sanction? The question was, based on DG2 numbers – so the methodology that's being used, the inputs and so on that are being put into this and the comparisons that are being made, at this – coming through this Gate, moving through DG2 – so far, on the CPW, there's two

questions: Do we need the power and are these the two least-cost options?

That's what we wanted. Based on the information – nobody was going to say to the PUB: Well, you said they should go ahead and build the project based on the information that you had. No. So far in the process, are we on the right track here? You know –

MR. BUDDEN: And what they said was: We don't know. We can't tell.

MS. DUNDERDALE: But what their experts said was: Yes, it is the – yes, you do need the power and, yes, these are the two least-cost options. That's what their experts said.

MR. BUDDEN: So you basically went beyond the board, which you thought was biased, and just picked out their expert report and ran with it.

MS. DUNDERDALE: Well, the expert report was what it was, Mr. Budden. I don't know how to explain it to you any further.

MR. BUDDEN: Okay. That's fine.

MS. DUNDERDALE: We had given them the mandate that had the amount of time that – from – you know, that they were told in the beginning this is the amount of time you have to get this work done. They were thwarted to some degree in being able to finish the work in the timeline that we had asked of them. So we compensated for that and so at the end of that time period and the expenditure of a great deal of money, they weren't able to offer us anything other than the result of their expert's work.

MR. BUDDEN: Okay.

I'll just read the last question I have. I'm not really going to go into the conversation you had or didn't have with Mr. Wells or what exactly was said, but I was struck – surprised, really – by the fact that all these years later you remember that conversation really well. You remember the words that were said, but yet there's so much here you don't remember. Can you explain that?

MS. DUNDERDALE: Mr. Budden, I have, in my life, had two conversations with Andy Wells. And I can tell you almost verbatim in the first conversation I had and what it was about and I can tell you the second conversation. And all I can offer is – Mr. Wells is the type of personality that I personally pay a great deal of attention to any engagement I have with him and what's being said and that, you know, I just remember it.

You know, it was very unusual for me to engage with Mr. Wells. And I'd spent years in municipal government with him and had great friends on St. John's City Council. I was president of the Federation of Municipalities of Newfoundland and Labrador which he was a member. I was always very careful in my engagement with Mr. Wells, and that hadn't changed because I had moved to government.

MR. BUDDEN: And you can't tell us a single person who came to you with these rumours about Mr. Wells.

MS. DUNDERDALE: Not to the degree that I'm prepared to enter it into testimony here, no, Mr. Budden.

MR. BUDDEN: Thank you.

MS. DUNDERDALE: Thank you.

THE COMMISSIONER: Edmund Martin?

MR. SMITH: Mr. Commissioner, no questions.

THE COMMISSIONER: Kathy – oh, no, I'm sorry.

Former Provincial Government Officials '03-'15?

MR. T. WILLIAMS: Good afternoon, Ms. Dunderdale.

My name is Tom Williams. I'm representing a group of, I guess, would have been former colleagues of yours, the elected group of officials from 2003 to 2015. I only have a couple of brief questions for you, some of which I've gone through with other witnesses. But I'd like to put 'em to you, given the fact that you were

both a minister of Natural Resources and the premier.

On one area that I don't think we've spent a lot of time on, and I don't plan to go down the road on it long, but I would like your perspective with respect to issues pertaining to the Energy Plan that was part of the platform for which your government got elected on back in 2003. We're aware that that was part of a blueprint that you put out, as well as there's evidence before the Commission that I think there was a discussion paper and there was consultations throughout the province in 2005. The plan was ultimately released in September of 2007.

Can you give me your perspective with respect to the efforts that went into that formulation of that plan and how it guided government in relation to the development of their energy policy, not only at that point in time, but as a staple going forward?

MS. DUNDERDALE: Well, as part of the 2003 platform, Commissioner, there was a commitment made, I believe, in the Blue Book to develop an Energy Plan, and so that we would have a blueprint going forward as to – so that people could know and we had a guide as we moved through the different opportunities that existed for us in the province.

Coming through that first year or two of governance, the idea of an Energy Plan became much more important as we realized the dire circumstances we were in, the types of opportunities that were available to us to build a prosperous future for people in the province or, you know, could we build a prosperous future. And we did some deep analysis around that and concluded that, yes, we could, but those opportunities were going to be in – mainly in the energy field, certainly, in natural resources, that that's where the opportunity lay. And so bringing all of that, then, to development of an Energy Plan, there was a – you know, a fair amount of consultation and so on that went on.

That work had been completed before I came to the department in 2006. The former minister had completed the bulk of that consultation. So then we got down to drafting the Energy Plan. And in the Energy Plan, again, was recognizing the opportunities, identifying where developments

could take place and how they might happen and the principles that were going to guide the development of our natural resources in the province.

And I guess the fundamental piece of all of that was to ensure that all of those natural resources were developed to the benefit of the people of the province. And so there were positions on it with regard to hydro development, positions with regard to oil and gas and so on, and expectations that companies who were coming to do work in Newfoundland and Labrador would be expected to meet.

The one thing that, you know – I was in Innovation, Trade and Rural Development before I went to Natural Resources, and so we dealt with businesses operating in the province or wanting to come to the province, or we were trying to attract to the province on a regular basis. And the one thing that consistently got said to us through that whole swath of the economy was give us clarity, tell us what your rules are and what you expect of us because that's all we need. And then we'll come and see if we can work with you.

And that's particularly what we tried to do in the Energy Plan, was to give clarity and say you're welcome here, we want your business, but know right up front that everything we're going to do – the first consideration we're going to have is that this is going to work to the benefit of the people of Newfoundland and Labrador and we're going to have our fair share.

MR. T. WILLIAMS: Okay.

With respect to – moving on now, with respect to the Muskrat Falls Project itself, we know that it was in January of 2005 that government had released an expression – a request for expressions of interests for groups to send in proposal submissions with respect to development of the Lower Churchill at that point; I don't think it was isolated to Muskrat Falls at that point in time.

MS. DUNDERDALE: No.

MR. T. WILLIAMS: And then the record will also show that in August of 2005 that that process was being done in phases. In August of

2005 there was a reduction – there was – had been – I think there was some 25 submissions originally on that. That had then been reduced to three submissions. And when I go back and look at some of the releases, I think, the entities that were down into the – the reduced one was Hydro-Québec, Ontario Energy, SNC-Lavalin were one group –

MS. DUNDERDALE: Yes.

MR. T. WILLIAMS: – that had made it to phase 2.

TransCanada Corp was another group –

MS. DUNDERDALE: Yes.

MR. T. WILLIAMS: – and then there was an Aboriginal partnership with Kiewit, I think, had been another group.

MS. DUNDERDALE: Yes.

MR. T. WILLIAMS: Can you tell me – that was in August 2005 – the decision to go – for the province to lead the project on its own was not for nearly a year later, 2006. So, you would have been minister of Natural Resources at that time.

Can you tell me the kind of process and evaluation that those proposals would have gone through, because there's a perception out there – and I've said it to other witnesses – that you know, this project, from the time your government came in in 2003, that Muskrat was going to be it – and that was it – regardless?

Can you tell me, you know, we have a process of a year and a half here before we get Isolated down to – the province looking at leading the project on their own – can you tell me some of the due diligence that would have been done in respect to these other options?

MS. DUNDERDALE: Well, Commissioner, I came to the department in July of 2006, and the RFP had been out, responses had been back, there had been a tremendous amount of vetting that – of these proposals that had gone on before I got there, and continued.

And they were being looked at within the department, looked at throughout government and, of course, Nalcor was doing their analysis, too.

What I can tell you, at the – you know – as all of that – (inaudible) and it was – just going through the whole process, again, was trying to identify where there was opportunity for us to do this, where we could minimize risk and where we could get the maximum benefit for the people of the province.

And, you know, the conclusion at the end of the day was: None of those proposals offered the kind of certainty that we would need to protect the interests of the people of the province. There're – you know – there just wasn't enough control left within the province to ensure that what was promised was gonna be delivered.

Well into my time in the department, as I said to the Commissioner either today or yesterday – it's all becoming a blur to me now, Commissioner, but – developing Gull and Muskrat – developing the Churchill for power supply for Island ratepayers was certainly in the mix of considerations, but it certainly wasn't at the top of the priority list at all.

Much of the focus during my first months and months at Natural Resources was developing Gull and Muskrat for export. So lots of time spent under the – over the access required, transmission – tariffs to try and find a pathway out. The biggest impediment to us in our energy development was that we were isolated. And there was this big block in front of us that we had to get through or get around to extract the value that we felt was in Churchill Falls. So a lot of time was spent seeing how that might be possible.

And it was only when Emera approached Nalcor – because, you know, there was all kinds of energy meetings going on. We spent a lot of time at energy meetings in New England, in Washington and so on talking about what we had in Newfoundland and Labrador. And Emera in Nova Scotia and so on were involved in those same areas, in those same conventions and meetings and so on, you know, doing much the same thing. Or looking for prospects and so on.

And I remember – and so Emera would have been aware of what we were doing and how we were trying to develop the Lower Churchill.

And I remember clearly being in the premier's boardroom and Ed Martin saying to Premier Williams: Emera has approached us on doing something together on the Lower Churchill. And given that we have, you know, we're – we've got – to make a plan with regard to our own energy needs here, on the Island, we might be able to find a synergy. Maybe there might be something that we can do to develop Muskrat that might satisfy them perhaps and might at the same time be able to do something in terms of our own energy needs on the province.

And that's when the exploration began. First of all, to see if meeting the energy supply for ratepayers on the Island part of the province could be met within the requirements of reliable and least-cost. And at the same time we might be able to do something else with Emera.

MR. T. WILLIAMS: So while these were the two principal factors under consideration, would it be fair to say that there would have been a number of obstacles that would have had to be overcome during the – you know, you came in in July of 2006 into the department. Until your government sanctioned in 2012, we had a six-year period there in-between that would it be fair to say that there were a number of very substantial obstacles that had to be overcome before this project could ever proceed?

MS. DUNDERDALE: Oh, no question. A –

MR. T. WILLIAMS: Can you tell me what you see as the what those obstacles – those big – I don't want to go through everything but I mean, the most substantial – obstacles that would have stood in the way of Muskrat Falls?

I mean, we can take that from a government, from an official standpoint, this project was a go as of December 2012 in the sense – a go in the sense that it was being sanctioned by government to proceed. Although we know there was –

MS. DUNDERDALE: There was no sanction of Muskrat until the study was done. Whether Muskrat was gonna be suitable to meet the needs

of ratepayers on the province required – of the province required a great deal of work, you know, to bring power from the Churchill River across Labrador and then across the Strait of Belle Isle and down so on, and particularly with regard to the Strait of Belle Isle. What were the challenges – and we didn't know what the challenges were at the time.

MR. T. WILLIAMS: Presumably the federal loan guarantee was one suggestion –

MS. DUNDERDALE: The federal loan guarantee – first of all, it was whether or not the business case could be made and whether or not this was going to be a least-cost option to people of the province because we're required to provide least-cost power.

MR. T. WILLIAMS: So to determine the least-cost option it would obviously have to pass through, successfully pass through, Gate 1, a Gate 2, Gate 3 (inaudible)?

MS. DUNDERDALE: Absolutely. And you know, we had to understand what the options were – on the premise – so we began with the 15, 15, 16 different projects. Because if you're going to look at this now – if you're going to look at Muskrat, you can't look at Muskrat just in terms of – we'll going to build this, we're going to export it out and to meet Emera's needs, and on the way, you know, we'll do whatever we need to do for ratepayers in the province. That couldn't be our motivation. That was not the way we could approach it.

So we had in terms – so the major question for us was going to be: Is this going to work for ratepayers on the Island in this province? And so we looked at 15 different options, narrowed it down to five. And then narrowed it down to two. And if – if Isolated was going to be the best-case scenario, then Isolated it was going to be. It was never going to stop us for looking for opportunities to develop the Churchill River. But it would be – it wouldn't be for ratepayers –

MR. T. WILLIAMS: It was not at all costs?

MS. DUNDERDALE: No. And it wouldn't be for ratepayers in the province if it wasn't the most economical way to do it.

MR. T. WILLIAMS: So in December of 2012, when your government sanctioned Muskrat Falls, you were satisfied 100 per cent at that point in time to the degree that you could be?

MS. DUNDERDALE: Yes.

MR. T. WILLIAMS: That this was energy that was needed –

MS. DUNDERDALE: Yes.

MR. T. WILLIAMS: – it was the lowest-cost option –

MS. DUNDERDALE: Yes.

MR. T. WILLIAMS: – and that it was in the best interests of the province to proceed with this project as opposed to any other options that had been considered in the six or eight years preceding.

MS. DUNDERDALE: No question.

I wasn't vested in Muskrat Falls. I just wasn't.

What my job was as minister was to work within government to fulfill its mandate on providing least-cost power. And it was even more so when I became – I felt that responsibility much more deeply when I was premier, that we had to fulfill the mandate that we were given under the Electrical Control Act, Commissioner, to provide least-cost service to the people of the province.

Now if that was Isolated, then that's what it was. And we might get connectivity – because that's always desirable – but we were gonna have to do it by a different means, and a different project.

MR. T. WILLIAMS: Okay.

With respect to – just moving on to another topic. With respect to the issue of some of the opponents to Muskrat – and I don't wanna get down into the comments and this back and forth – but there's been a kind of a general perception that, you know, opposition to Muskrat was frowned upon.

But, and we've had evidence from yourself, from Minister Kennedy, from Minister Marshall,

from Minister Skinner as well, that there were concrete efforts made to address issues that were raised by, whether you think they're opponents or detractors or others, to Muskrat.

Would that be a fair assessment?

MS. DUNDERDALE: Absolutely.

You know we encouraged discussion, debate, and we provided as much information as we could to inform that debate.

MR. T. WILLIAMS: When the –

MS. DUNDERDALE: And we went to a general election on it, three times.

MR. T. WILLIAMS: When the matter was referred to the Public Utilities Board in June of 2011, would that have been partially in response to the request, because at that time, I think, it was the group – the 2041 group who were calling for it to be referred to the Public Utilities Board at that point – not that that was necessarily the sole response to it – but would that have been a consideration when –?

MS. DUNDERDALE: Only in part.

MR. T. WILLIAMS: Okay.

MS. DUNDERDALE: Only in part, Mr. Williams, because we were required to do our due diligence and oversight as well.

So while that would've been an –

MR. T. WILLIAMS: Yeah.

MS. DUNDERDALE: – important component, for me, people were considering all kinds of reasons, Commissioner, as to why they didn't want it to go to the PUB or why they wanted to go to the PUB.

You know, one of the reasons I wanted it to go to the PUB because there was an arm's-length organization that was instituted by government, that was familiar with the issue at hand, that could examine the work done by Nalcor, and say: Yea or nay, you know, this is sound or it isn't sound. That's something that I would have taken a great deal of comfort in.

But at the same time, I was very aware that if I were going to take comfort in that that we had built this new energy company and this was a, you know, one of the first huge undertakings of this company, and we put it to the PUB for them to have an arm's-length, objective look and we had no control over what the answer was going to be. That if they approved of the work that had been done up to DG2 that that would be a great comfort to them. It certainly would have helped fulfil my mandate as oversight.

Now I can tell you, if the PUB, if MHI had come back and said: There are serious flaws in this project, that project would've had to stop right there and then and be drawn back. And if anywhere along the line, you know, MHI at DG3 – if the federal government had come back and said, you know: This is not going – if the banks had even given this a lesser rating, it would've been a cause for our government, you know.

There was a high degree of skepticism, you know, again – which I appreciated from people like Minister Kennedy. You know, when he came to me and said: You know, I've got a few reservations about Muskrat Falls, and I'd like to go and deconstruct it completely, because I'm telling you, I'm not going to support it if I'm not satisfied, so I want to deconstruct it. I'm going to take it right down to the base and put it back together again. And if I'm satisfied, I'll support. If I'm not satisfied, I'm telling you now, Premier, I'm not going to support it. And I said to him: Go do it.

MR. T. WILLIAMS: So is that the reason why – I mean, we had later the natural gas issue had been considered dismissed prior to that, but yet Ziff Energy, Wood Mackenzie were taken back on in 2012 to do further reviews. There was other –

MS. DUNDERDALE: Oh –

MR. T. WILLIAMS: – ancillary reports, I think, that came out from Natural Resources on other elements, you know, 2041 option, things of this nature. But these were all in response, I would suggest to you, to people who were raising concerns as to the viability of these options.

MS. DUNDERDALE: To raise our own level of confidence in terms of the work that had been done by Nalcor, and had been done in-house in terms of the Department of Natural Resources.

But I was sold to provide comfort to the people of the province. This was a huge undertaking, and given the amount of discussion and the amount of questions and opposition and so on being raised on a daily – it's what we talked about in the province for seven and eight hours every day on talk radio. And, you know, it was a major feature of debate in the House of Assembly.

You know, they're just ordinary people who don't – you know, going out their business, earning their living, building community, and so on. They don't have an expertise in this area. And, so, some of these questions that are being raised had to be unsettling for them, you know, and raising doubts.

So, to the degree that we could provide information – arm's-length, objective – to say: Here's what the experts who know this stuff are telling us. Now, you can have a read of that and you can do what you like with it. If that makes you feel better about it all, then (inaudible) or you want to enter the debate in another way because it doesn't give you comfort, or whatever. We all thought that that was a very good thing to do.

MR. T. WILLIAMS: So, what – I guess – and I'll end off on this, but what I'm getting to, and of this point, is that: You were responsive to whether it be an isolated letter of the paper; whether it be a letter written to the minister or the premier; whether it be an organized group that had taken a position for a period of time; that government was responsible to the concerns of the province – is what I'm getting at – up to the point of sanction.

MS. DUNDERDALE: We're politicians. We have to pay attention to what the people are saying. And, you know, one thing I always tried to remain true to myself, Commissioner, is that – for the length and breath of my political life, that I remember everyday, when I went to work, who hired me and why.

MR. T. WILLIAMS: One of the issues that has, I guess, been throughout the Inquiry since its commencement is the relationship as between government – when I say government, I guess I speak of the premier's office, as well as the Department of Natural Resources as well as the Department of Finance and Nalcor. And that it's been described at various terms – we don't need to go down that path – but say – suffice it to say that it's been described as an integrated relationship that, you know, that you worked in partnership. You worked as the Minister of Natural Resources and you also worked as premier.

Based upon the responsibilities that were involved in this project – I know we spoke about the Energy Plan to start with, but in terms of assessment of the expressions of interest in relation to the project; in terms of assessing and putting together a base cost estimate; in terms of putting boots on the ground at that site and doing it – how essential was it, from your perspective, that there be that type of relationship – an integrated relationship working between government and Nalcor?

MS. DUNDERDALE: It was critical that we have a good working relationship and that we understood each other clearly because that was going to ensure that the work got done with the primary focus always being what was in the best interest of the people of the province. And it was on that basis that we had our job.

But at the same time, you know, Nalcor belongs to the people of the province and, you know, the government is there as their representative; we're put there to protect their interest in this company. And with Nalcor, as with every other Crown or government department, my advice to my ministers at all times was do not be an advocate for the people you represent in your portfolio, you be a judge.

You can work well together, you work co-operatively together, you're respectful and professional with one another, but do not get married to the work of your department or projects within your department. You'll always have to have that degree of objectivity that when something is not right that you're able to name it, when something is going off the skids that you can address it and bring it back on again.

You have to, to be effective and to be a good government and to be worthy of the position that you hold.

MR. T. WILLIAMS: And rising out of that, in a comment I think you made towards the close of your testimony this morning, with respect to the level of expertise and respect that you had, there's been – you know, there's been some strong criticisms with respect to senior civil servants as well as executives within Nalcor. From your experience, in your tenure in government, both as minister and the premier over a decade, what was your experience with the civil servants – the senior bureaucrats, civil servants and the – those that you were involved, whether they be executives or other levels at Nalcor Energy.

MS. DUNDERDALE: I have the highest regard for the public service, I have to tell you. It takes, I think, a very particular kind of person to work in the public service because you'll have a government like us that will come in with a plan and this is what we are going to do and it's a high volume of work. We require people to bring their best to the table, to execute whatever we feel our mandate is.

You can lose an election. A whole different crew comes in within a couple of weeks and they could be going 180 in the other direction, but the public service is – it's been my experience, will slough off whatever they were doing over here and they will bring the same degree of professionalism and energy and passion to their work as they were doing for a government of a different political stripe with a different agenda.

And, you know, not everybody in the public service is perfect, not everybody that comes to government or who you have to deal with is perfect too, but I can guarantee you that we have a stellar public service in this province. But the decisions that get taken and the things that get done, in terms of this piece of work, lies with the government of the day who are responsible.

MR. T. WILLIAMS: Thank you.

That's all the questions I have.

Thank you.

THE COMMISSIONER: All right, it's about time for our break.

Next will be Mr. Bown and Ms. Mullaley. So we'll adjourn for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

MR. FITZGERALD: Okay, Commissioner.

THE COMMISSIONER: Go ahead.

MR. FITZGERALD: Ms. Dunderdale, my name is Andy Fitzgerald. I represent Charles Bown and Julia Mullaley.

Thank you for coming today.

You may or may not have seen some of the Inquiry, but there's been a fair amount of scrutiny over the conduct of civil servants, in my opinion. And we don't have an expert report here on what civil servants are supposed to do or public servants are supposed to do. We have expert reports for accountants, for risk advisors and whatnot, so there's really no standard by which to judge civil servants before the tribunal.

So when I have a witness such as you with your experience, it's generally my goal to try to elicit as much information as I can from someone like you, so you can inform the Commissioner of what the civil service and the public service actually does in practice. I did this, actually, with Mr. Penney and Mr. Vardy when they were called as well because they were senior civil servants. Some of my questions will be geared towards that.

I guess, before I get into that, during your testimony you indicated lots of elements of this were political debate; it was a political process, there was a mantle of the Upper Churchill and there was political decisions that were made throughout. I'm not naive enough to think that politics did not play some role in your decisions as the premier. Would that be correct?

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And that would be natural and normal for any premier.

MS. DUNDERDALE: Absolutely.

MR. FITZGERALD: Or any government.

MS. DUNDERDALE: Absolutely.

MR. FITZGERALD: We're not living in a non-political bubble when we talk about the Upper Churchill, are we?

MS. DUNDERDALE: No, and we're talking about ideology as well –

MR. FITZGERALD: Exactly.

MS. DUNDERDALE: – in how we approach management of our natural resources and how we develop them – and how we develop them, you know, what mechanisms are we going to use. Is private enterprise going to do that? Or are we going to do it in terms of a state-owned energy company, for example, or provincially owned energy company and so on? And they stem – and those – a lot of those ideas stem out of political ideologies, for the most part –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – as you know.

MR. FITZGERALD: And you were elected with a majority government.

MS. DUNDERDALE: Yes, we were.

MR. FITZGERALD: And you were elected for three terms, the Tories were.

MS. DUNDERDALE: Yes, we were.

MR. FITZGERALD: Yes. And this was very much an issue that was on the front burner the whole time you were in government, I would suggest.

MS. DUNDERDALE: It was part of our platform in 2003.

MR. FITZGERALD: Yes. And there was nothing hidden about that platform at the time, was there?

MS. DUNDERDALE: Just the opposite. We were putting the Blue Book into the hands of every person we could throughout the province and talking about – because it was on that basis, whether people concurred with the program that we were offering, as to whether or not we were going to form the government.

MR. FITZGERALD: Yeah.

And I'll give you some examples as we proceed on with my examination, but there will be circumstances – and I'm sure you've come across them – when you were going to get advice and you were going to get recommendations from the civil service, whether it be might client or Mr. Thompson, or Mr. Paddon and it's going to be very good advice.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: It's going to be great advice.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: However, sometimes there might be political factors that a government needs to also consider.

MS. DUNDERDALE: Absolutely.

MR. FITZGERALD: So you may say to yourself, that's great advice Mr. Bown, that's great advice Mr. Thompson; however, I don't quite see it going that way and we're going to go this way.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And that's your job to do and you're entitled to do it because you were elected.

MS. DUNDERDALE: Absolutely, I – that's the whole purpose of having government, otherwise, we'd only need the public service to run the province.

MR. FITZGERALD: That's right.

MS. DUNDERDALE: Some people might think that's a really good idea, but that's not the system we live under.

MR. FITZGERALD: No, and I guess that's the point I'm trying to make, because there's been criticism about the public service. Words have been used such as naive or passive. Would you characterize Mr. Bown or Mr. Thompson that way, in doing their jobs?

MS. DUNDERDALE: No, I wouldn't, Mr. Commissioner. These were two very professional public servants who were engaged in the work of government every day and brought their best game every day as far as I could see.

MR. FITZGERALD: And they provided advice and recommendations, and if there was a decision made by government, they would basically follow the direction of the government.

MS. DUNDERDALE: They would follow the direction of government. I expect if they had an ethical objection to anything that they were being asked to do, Commissioner, that they would have refused to do it, and one would expect that.

MR. FITZGERALD: Yes.

Mr. Ron Penney was called to give evidence and Dr. Vardy did as well. And I looked at their transcript; it's at page 69, Commissioner. I don't intend to take the witness there. But, ultimately, you know, these are former public servants, and they basically said that their job is to advise and to recommend but, ultimately, they don't have the power to make the decision. That's exactly what the story is, isn't it?

MS. DUNDERDALE: That's exactly right. We're charged with that responsibility. We're accountable, too, for the decisions that we make to the people of the province. We got to go stand before them every four years and say how we've done so far.

MR. FITZGERALD: Now, you just spoke very approvingly of Mr. Bown and Mr. Thompson earlier, and you also indicated that it's the finest public service in the country. And so you don't

have any issue with how the public service advised you or recommended things to you.

MS. DUNDERDALE: No, I don't.

MR. FITZGERALD: And, according to your mandate, I'll ask you a question: You said, you be the judge to your ministers. Don't adopt a position, don't adoption a view of your deputy ministers, you be the judge. Did that come from you directly or was that something that continued from Premier Williams?

MS. DUNDERDALE: That came from me –

MR. FITZGERALD: Okay.

MS. DUNDERDALE: – directly.

MR. FITZGERALD: How was his style? Was it similar, or ...?

MS. DUNDERDALE: Very similar.

MR. FITZGERALD: Okay.

MS. DUNDERDALE: Premier Williams had a high standard. He moved quickly, he was decisive, he was – Commissioner, he was a workaholic. It was not unusual to find him at his desk every night, 9, 10 o'clock at night.

MR. FITZGERALD: Mmm.

MS. DUNDERDALE: And he was driven to get things done and he expected a high standard of performance from all of us, particularly as ministers.

MR. FITZGERALD: So if the ministers are being judges, there's no room for the comfort level, I would suggest, or little room for a comfort level in civil service to just be passive or naive because they have to stand in front of a judge, just like I'm doing right now in front of the Commission here, don't they?

MS. DUNDERDALE: Absolutely, if you're –

MR. FITZGERALD: They're going to be challenged.

MS. DUNDERDALE: If you're pitching a new program or an increase in your budget or the establishment of a secretariat or whatever –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – then defend your position.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: Show us how that works for government and works for the people of the province.

MR. FITZGERALD: Now, I'm going to direct you – and I don't know if this is in your binder, Ms. Dunderdale – to Exhibit P-00223, page 10.

THE COMMISSIONER: It's not here.

MR. FITZGERALD: Okay, I didn't think it would be.

THE COMMISSIONER: So it'll come up on the screen.

MR. FITZGERALD: It'll come up on the screen – eventually, after the commercial break. On page 10, please. Okay, what we have here, I believe it's an MC. Would that be correct, Premier Dunderdale?

MS. DUNDERDALE: Yes. Yeah.

MR. FITZGERALD: And it's 2010/11/09 and it says: "A Presentation, Update on Negotiations with Emera, was received from the President and Chief Executive Officer of Nalcor Energy," – that would be Ed Martin, correct –

MS. DUNDERDALE: Yes.

MR. FITZGERALD: – "accompanied by the Deputy Minister and the Associate Deputy Minister, Energy with the Department of Natural Resources.

"The following direction was provided:

"... Approval was given for the policy that the next generation source for meeting provincial electricity needs is to be" the "Muskrat Falls and a transmission link with the island of

Newfoundland, consistent with the 2007 Energy Plan; and

"... Approval was given for the agreement parameters being pursued by Nalcor Energy in ... negotiations with Emera Inc., including entering into a non-binding term sheet with Emera Inc. regarding a Maritime Link, the export of surplus power from the province, and certain arrangements with Emera Inc. regarding investment and transfer of power."

Now, Mr. Bown, in his evidence, he did refer to this MC. And why I point it out to you is that at this point in time, the direction is given, the government has decided, in 2010 – I know, subject to sanction, subject to studies, we are going ahead with Muskrat Falls. And at that point in time, I would suggest to you that then it's the role of the civil servants to put into operational level, getting its – to getting the things in place to determine how you go about this policy decision.

MS. DUNDERDALE: Well, we're on the path.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And it's, you know, given the progress we've made so far –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – as we move through this Gated process, this becomes clearer and clearer that this is the pathway we're going to choose.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: So we need to continue the work, but the direction is getting set.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: So unless there is something –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – that we discover as we move forward in our planning, something substantive to take us off this course, this is where we're headed.

MR. FITZGERALD: And in that mode, I would suggest, or that phase for the public service, they're going to continue to provide advice and recommendations, but they're going to be doing it in the context of the policy directive they've been given.

MS. DUNDERDALE: Yes, and from direction from their ministers –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – as well.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And deputies work – you know, the executive team, Commissioner, in the department, work very closely with their minister –

MR. FITZGERALD: Mmm.

MS. DUNDERDALE: – and they have significant contact with the clerk as well.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: Because in terms of the public, you know, they're – the person they take direction from in the department is the minister –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – but they're also talking to the clerk to ensure that they're following all the processes and protocols and keeping within the parameters that have been laid down as to how government work gets done.

MR. FITZGERALD: Yes.

And you've answered my next question. In moving the matter forward, they would provide advice and recommendations after this.

P-00807, please – Ms. Dunderdale, I think this is in your binders. It's at tab 26, volume 1, I believe, if I'm right. And if we just scroll down a little bit, this is the – next page, please. Thank you. This is the Decision Note of May 2011, Direction Note that was authored by the

Departments of Finance and the Departments of Natural Resources.

If we can go to the last page, please? Okay, thank you. It was approved by Mr. Paddon and Mr. Bown, deputy minister of Finance and deputy minister of Natural Resources, and you've discussed this in your evidence with Mr. Learmonth.

I would like you to scroll up, please, to page 3. Okay. Thank you, right there. So at this point in time a decision has been made that you're going to be going ahead with – well, not going ahead with Muskrat Falls, but that's the policy directive that government has chosen. And the Departments of Finance and the Department of Natural Resources has provided, I would suggest, an opinion, advice, recommendations to you on an independent review.

You would agree with me there?

MS. DUNDERDALE: Yes.

MR. FITZGERALD: Now, I know afterwards you decided to go the MHI route – and I'll take you down there – but at this point in time, the civil servants, the public servants, were indicating: "While preliminary in nature, the risk assessments that might be included in the consultants' mandate could include the following: Design and engineering risk; Construction risk;" General "technical risk; Market risk; Financial risk;" and "Contractual risk."

So as of that point in time, I would suggest to you the public service was doing its job –

MS. DUNDERDALE: Yes.

MR. FITZGERALD: – in providing you with advice that – things you might want to consider.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: I recognize you were also balancing that advice with the advice you were also getting from Nalcor and Mr. Martin.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: I'm not taking issue with that. But at that point in time, even after 2010 when the MC was out – this was our policy direction – the civil service was still acting as a check and balance by saying: Premier, you might want to consider this. Would you agree with me?

MS. DUNDERDALE: Yes. And that's the role of the civil service.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: In terms of their role. They have a responsibility –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – to provide their best advice to government.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And truth to power. You don't withhold it –

MR. FITZGERALD: That's exactly what Mr. Bown said –

MS. DUNDERDALE: – because you think you're –

MR. FITZGERALD: – in his testimony.

MS. DUNDERDALE: – gonna upset somebody.

MR. FITZGERALD: That's right. Truth to power.

MS. DUNDERDALE: You have an obligation to speak what you believe needs to be known with regard to the issue.

MR. FITZGERALD: So, ultimately, if a government then were to make a decision and not follow the full array of risk here, that's really a political decision of the government and you cannot blame a civil servant if the government didn't follow that advice.

MS. DUNDERDALE: That's right. If the civil service has recommended something –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – and the government has decided to do something else, then the responsibility for taking that decision lies with the government.

MR. FITZGERALD: And as I said when I started, I am going to take you to some – and I'm not criticizing a political decision, I just think we need to be realistic here that politics plays a role in all this. And you chose MHI ultimately –

MS. DUNDERDALE: Yes.

MR. FITZGERALD: – to do an independent review.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And I'm going to suggest to you that one of the reasons you chose – sorry, before MHI, you chose to send it to the PUB.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And you could have gone down this route –

MS. DUNDERDALE: Yes.

MR. FITZGERALD: – and hired an Ernst & Young type or a KPMG type.

MS. DUNDERDALE: Yes, we could have.

MR. FITZGERALD: Yeah, but one of the factors that you may have considered, I would suggest, is that by going to the PUB and letting them choose whatever expert they want, you do not run the risk of being accused of controlling the process. You don't run the risk of being called biased or trying to influence the process. And I would suggest to you that that's a good political decision.

MS. DUNDERDALE: Absolutely. It is arm's length.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: Nobody can argue that we have any control over what – you know,

once the question was referred, the – we had no control over what happened next or what conclusion –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – they could've reported back in three months –

MR. FITZGERALD: Hmm.

MS. DUNDERDALE: – and said, you know, this is a no go. And once it went to the PUB and it was gonna have that degree of public oversight –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – which was fine with me because that, in terms of our government, was going to give us a degree of comfort knowing that an independent, arm's-length body had looked at all of this and it met the standard that it should meet at this stage in its development.

MR. FITZGERALD: Yes. And –

MS. DUNDERDALE: That would be very reassuring to us and it would be very reassuring to the people of the province –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – because the comfort is, is that we're really not playing politics with this now; that there's not some hidden agenda at work here or somebody is trying to put their finger on the scale –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – in favour of Muskrat Falls and try to keep it hidden from us, because we've got no control over this process –

MR. FITZGERALD: And what I'm –

MS. DUNDERDALE: – at all.

MR. FITZGERALD: – gonna suggest to you is that by not playing politics, it was good politics.

MS. DUNDERDALE: Yeah, absolutely. I think being honest and straightforward with people is always good politics.

MR. FITZGERALD: Yes.

And while there were recommendations here for other independent reviews, there was a political decision and a policy choice made by the government.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: Thank you.

Now, I know we talked about – when we talked about the scope of work with Mr. Learmonth and its removal. But I do want to try to refresh your memory and show you some documents, and I also want to let you know what Mr. Martin said. And I recognize you weren't in the room at that meeting of April 6, but I do want to provide some additional context.

MS. DUNDERDALE: (Inaudible.)

MR. FITZGERALD: And actually that context is also important for some other questions I have.

I won't bring up the Exhibit, but Exhibit 00741 was the initial scope of work that was sent to Mr. Bown from Paul Wilson, and this included the item number 11 that Mr. Learmonth referred to, and then it was gone afterwards.

However, I will bring you – and that was on April 3. On April 4, there's an Exhibit called 01178, and I would like to bring that to Ms. Dunderdale's attention.

THE COMMISSIONER: That's tab 69.

MR. FITZGERALD: Okay, I didn't realize that was in your binder.

MS. DUNDERDALE: In book 1, Commissioner?

THE COMMISSIONER: Sorry – 69 in book 2.

MR. FITZGERALD: Okay, this is an email from Mr. Harrington to Brian Crawley, Gilbert Bennett, Paul Humphries, cc'd to Jason Kean.

And if we just scroll up a little bit – this has to do with the scope of work for MHI, Premier Dunderdale – Ms. Dunderdale.

Mr. Harrington: “Please find my comments to the MHI proposal - In order for this to be performed in the time available it has to be focussed on what is needed, we do not want to have MHI tell us about reliability and NERC” – and – “return periods, the Basis of Design is fixed and we should not invite commentary on that - MHI should focus on the updated CPW analysis using updated numbers. This has to be an apples to apples comparison so the expansion ... used in this review has also to exclude the Maritime Link as per ... DG2 review. This will make this review more straightforward and achievable in the timeframe-

“The DG3 review will be later when the expansion plan is complete and all other DG3 inputs available.

“We must get MHI here in St John’s to do the work and not have IR’s” – I suggest independent reviewers – “flying back and forth - these will only go public.”

MR. SIMMONS: Information requests.

MR. FITZGERALD: Information requests. Thanks, Dan.

“... will only go public. MHI should work directly with us thereby avoiding a lot of paperwork and we should compress the schedule to a couple of weeks when we have the data. Unless this scope is controlled we will have a repeat performance with the same ‘experts’ with the same opinions.”

And if we just go to the last page. I believe it’s page 8 of that Exhibit.

There’s a comment on the side there by Mr. Harrington: “It is not possible for MHI to review the data in this timeframe – April to May” – 2015 – “we are still working on the estimate, risk analysis etc – this is setting us up to fail and we cannot do that.”

So I want you to bear that in mind as we go to Exhibit 01237. And that is – pardon me – it’s on

the screen there, I believe. It’s tab 61 of volume 2.

Do you need the –?

MS. DUNDERDALE: I’m gonna –

MR. FITZGERALD: Okay, sorry. Thank you.

MS. DUNDERDALE: – do it from the screen.

MR. FITZGERALD: This was the meeting that was held on April 6 – oh, I need page 10, please. Thanks.

This was the meeting that was held on April 6. “Meeting of Ed, Brian ...” – that’s Brian Taylor?

MS. DUNDERDALE: Yes.

MR. FITZGERALD: Yeah. And Robert, Glenda, Charles and Jerome Kennedy re Muskrat Falls sanction.

And if we just scroll down a little bit – thank you.

“Will Nalcor have DG3 #s in time for June debate in House?”

We have a June 7 cut-off.

“Risk analysis, contingency back up.”

Mr. Martin, in his testimony on this – and he was at the meeting – and he says this at page 88, Commissioner [sp page 73, December 11]. I just wanna make sure it’s clear. His evidence was:

“So I’m mixing up a few things here, Commissioner. You know, I’m not sure if it was then or now, but my understanding from what is – happened and – recently and what happened then is that there were discussions on that.” I.e., the risk analysis. “I did participate in them. I was bringing forward, I expect, the project team’s view about the timing issues and what could be accomplished within the time frame. And I would’ve, you know, suggested, you know, if you – if we don’t want the, you know, schedule to be totally adversely impacted, something had to give, and I would have been representing the project team’s viewpoint on that.

“And my understanding is that yielded the risk analysis not being part of the MHI review because it wasn’t ready to go. It was my – is what I recollect or have heard over the past testimony, and that’s what happened.”

So Mr. Martin was fairly clear on that. I know you weren’t at the meeting.

MS. DUNDERDALE: No.

MR. FITZGERALD: However, two of your officials were.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And, ultimately, the scope came out.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: Now, is it possible that a decision was made – and I ask you if this rings a bell: That given that Nalcor was talking about risks and risks being mitigated and risks being managed, that you didn’t realize or your officials didn’t realize the significance of removing the risk analysis at that time, because you were receiving reassurances from Mr. Martin.

MS. DUNDERDALE: I can’t swear to that, Commissioner, one way or the other. I can tell you that –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – that kind of conversation around risk and mitigation of risk was taking place on a regular basis. And as I’ve said to Mr. Learmonth, like, you know, he certainly attached a lot of significance to risk.

MR. FITZGERALD: But – oh, sorry. Go ahead.

MS. DUNDERDALE: In the number of things that were being considered as we did this, I am not sure that everybody in the room might’ve been doing exactly the same thing.

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: But I can’t speak to it anymore than that. I, you know, I had left this in

the hands of the department. I had every confidence in their ability to do this piece of work, and –

MR. FITZGERALD: Yeah. And you do –

MS. DUNDERDALE: – I didn’t have any concerns about it.

MR. FITZGERALD: And you do recognize Minister Kennedy was here and these are his notes?

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And, ultimately, truth speaks the power, and the government would’ve made that decision.

MS. DUNDERDALE: I don’t know who made that decision. We have conflicting testimony – I wasn’t in the room with who made the –

MR. FITZGERALD: No.

MS. DUNDERDALE: – decision. So I don’t know who made the decision. But, you know, we ought to have made the decision one way or the other –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – you know, to say it was in or it was out, you know –

MR. FITZGERALD: But it subsequently did come out.

MS. DUNDERDALE: It did come out, and –

MR. FITZGERALD: And Mr. Martin’s –

MS. DUNDERDALE: – if a decision was made to –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – take something out –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – then that was in the purview of governance, not in the purview of the public servant.

MR. FITZGERALD: Yes, that's what I'm getting at.

And Mr. Martin's memory seems fairly clear, and he was at the meeting?

MS. DUNDERDALE: Yeah, I don't know who took it out. We've had – I heard the conflicting testimony at the Inquiry.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: But it's our job to give direction, and it's public servants' responsibility to follow it.

MR. FITZGERALD: Exactly.

MS. DUNDERDALE: And I had every confidence that that was the process that was being followed.

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: And whether it was or not, I really can't speak to with any –

MR. FITZGERALD: And in your experience, though, with Mr. Thompson or Mr. Bown, they're not gonna go act without direction, are they?

MS. DUNDERDALE: They never did in my experience with them.

MR. FITZGERALD: No. Thank you.

Now, there's three exhibits in evidence, and it's P-01269, 01276 and 01277. I'll probably take you to 01269 first, Ms. Dunderdale, but they're very similar.

THE COMMISSIONER: 01269 is tab 98, book 3.

MR. FITZGERALD: Yeah. And what this involves, Ms. Dunderdale, is the whole issue of Wood Mackenzie –

MS. DUNDERDALE: Yes.

MR. FITZGERALD: – and the removal of the liquefied natural gas from the report.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: Yes.

Now, the exhibits I've mentioned, 01269, 01276 and 01277, are all somewhat similar. In a – in essence, it's a report going back from Minister Kennedy to yourself, Brian Taylor, Mr. Thompson, Ed Williams, Charles and Ms. Lynn Hammond; I believe she was your communications person at the time?

MS. DUNDERDALE: Yes, she was.

MR. FITZGERALD: And there's discussions going back and forth, and Minister Kennedy is reporting to you what's going on in the Wood Mackenzie situation, and you seem to be fully in the loop. This is what I'm gonna suggest to you.

Now, you did indicate during your evidence that, when Mr. Kennedy went about looking into natural gas and LNG, you were very confident in Mr. Kennedy, and I would suggest that you did delegate a fair amount of responsibility to him in relation to looking into these issues.

MS. DUNDERDALE: Absolutely, because –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – he was bringing a very particular perspective, again, of oversight –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – into checking and rechecking the information that had been provided by Nalcor, and I was fine with that. The more we could test this information, the better, before we made the decision and went forward to the people of the province –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – to say this is what we've decided to do.

MR. FITZGERALD: And in terms of the LNG piece coming out, Mr. Bown's transcript of December 5 – it's on page 75, Commissioner – Mr. Learmonth indicated in his questioning to Mr. Bown: "Okay, so I think Mr. Kennedy said this morning words to the effect that you

wouldn't have done it –" and Mr. Bown replies: "Correct."

And then Mr. Learmonth says: "– unless you were directed. That's the first part of the issue, but I want to know who gave that direction. It had to be someone above you and you were deputy minister."

"Yeah."

This is consistent with your testimony that you just gave me that Mr. Bown, in your experience, wouldn't act unless he was directed.

MS. DUNDERDALE: That's right.

MR. FITZGERALD: That's correct, isn't it?

MS. DUNDERDALE: Yes, it is.

MR. FITZGERALD: Yes, it is.

And he ultimately goes on to say that it's his recollection that Minister Kennedy told him to take that out.

Do you have any recollection of that?

MS. DUNDERDALE: No, I don't.

MR. FITZGERALD: Okay.

In terms of the reason, Mr. Bown's memory is that "the debate in the public was focused singularly around the pipeline and bringing gas ashore from the Jeanne d'Arc Basin and Husky in particular. And that we should focus this review singularly on that issue."

Does that ring a bell?

MS. DUNDERDALE: It doesn't ring a bell, but it makes sense to me –

MR. FITZGERALD: Okay.

MS. DUNDERDALE: – in terms of what – in terms of the due diligence that Minister Kennedy was doing to assure himself that everything was the way that it ought to be –

MR. FITZGERALD: Okay.

MS. DUNDERDALE: – in terms of this project and that he was satisfied with the work that Nalcor was presenting and testing it every way that he could.

MR. FITZGERALD: Okay.

MS. DUNDERDALE: But at the same time, he was also trying to provide information to inform the debate –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – that was taking place, and it was, you know –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – a ferocious debate.

MR. FITZGERALD: I know.

MS. DUNDERDALE: And, you know, I can see where he may have made the decision to take out LNG, if LNG wasn't something that was being, you know – that wasn't a significant issue –

MR. FITZGERALD: Uh-huh.

MS. DUNDERDALE: – or an issue at all.

MR. FITZGERALD: Didn't wanna create –

MS. DUNDERDALE: I –

MR. FITZGERALD: – a whip for you.

MS. DUNDERDALE: – don't know why he would have done it. I mean, people can make a decision for themselves whether or not it's important –

MR. FITZGERALD: Well, I guess, if it really wasn't an issue in his mind, I guess he didn't wanna create a whip for the government's back?

MS. DUNDERDALE: Well, it wasn't even a whip for the government's back. Whatever the options –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – are available, or should be considered, were being considered. And, if there was a reason to eliminate them, they were gonna be eliminated. And if the reason wasn't clear, then we were gonna be held to account on that to provide a rationale around it.

So regardless of what the LNG report said –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – I don't have any problem with it being released to the public.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And the only – and I don't think he would have had any reason, you know – and certainly not around concealing information 'cause that's not in his nature either.

MR. FITZGERALD: No, I – but it did get removed.

MS. DUNDERDALE: Yes, it did need to be approved, and some of the thinking around that might be, because it wasn't an issue –

MR. FITZGERALD: Okay.

MS. DUNDERDALE: – perhaps it wasn't important to put it out there.

MR. FITZGERALD: Okay.

MS. DUNDERDALE: I – but I – that's only a supposition on my part.

MR. FITZGERALD: Okay. Thank you.

Just a few more other areas. In terms of oversight, there's been some mention about this shareholder letter of engagement and whether or not there should have been a letter setting out here's what we expect Nalcor to do. Okay?

MS. DUNDERDALE: Yes.

MR. FITZGERALD: Would you agree with me, just because someone signs a piece of paper, it's not going to happen?

MS. DUNDERDALE: No.

MR. FITZGERALD: No. It's not, is it?

MS. DUNDERDALE: No. It isn't. You know –

MR. FITZGERALD: No.

MS. DUNDERDALE: – there's a lot of – and there –

MR. FITZGERALD: Would you also agree with me – we're dealing with professional people here. Mr. Martin was a CEO of, you know, of Nalcor. History of being an executive in an oil company. Mr. Ken Marshall on the board had a career at cable – I believe Cable Atlantic and then Rogers.

These weren't people that needed to have their hand held, were they?

MS. DUNDERDALE: No, and they were doing their own professional development pieces within the company, as well –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – as within the board. You know, I don't have any issue with such a document being prepared and put in place. The more clarity –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – that you can provide, the better.

You know, I don't have any explanation to offer why this wasn't progressed further.

MR. FITZGERALD: What I would suggest to you is this: that if it really was a significant issue for the government at the time, it would have progressed further.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And when oversight became a significant issue for the government – that was under Premier Marshall – and he set up the oversight committee –

MS. DUNDERDALE: Yes.

MR. FITZGERALD: – and he named Ms. Mullaley – she was clerk at the time.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: She became the first chair of that, and I recognize that's going to be in the second phase of the Inquiry. However, I want to point out that, the shareholder letter of expectation or not, ultimately, if the government had the will to do that at the time, it would have been done. Would you agree with me?

MS. DUNDERDALE: Yes. Government has the authority –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – to do those kinds of things.

MR. FITZGERALD: And for whatever reason the government – it wasn't considered important at the time, or it wasn't a priority.

MS. DUNDERDALE: I don't know what happened to it –

MR. FITZGERALD: No.

MS. DUNDERDALE: – in the mix of things, but it didn't get – happen, and the responsibility to make it happen –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – does – did lay with government, Commissioner.

MR. FITZGERALD: And then when government decides to go down to the oversight role, an oversight committee structure gets set up –

MS. DUNDERDALE: Yes.

MR. FITZGERALD: – and the public servants put it in place?

MS. DUNDERDALE: Yes.

MR. FITZGERALD: Mr. Budden referred you, briefly, to the issue of board compensation, and I would suggest that Nalcor was – is not the same

as many boards in Newfoundland and Labrador. It's very different. Were you aware that employees at Nalcor were making a lot more money than civil servants at – public servants in government?

MS. DUNDERDALE: They make a lot more money than –

MR. FITZGERALD: Making a lot more money?

MS. DUNDERDALE: premiers or ministers –

MR. FITZGERALD: Weren't they?

MS. DUNDERDALE: – as well.

MR. FITZGERALD: Yes, they were. And I guess my point is, Ms. Dunderdale, is, if we're going to pay the employees that much money over there – separate and apart that people might be upset they're not getting the same amount of money because they're on an affordable housing board – given the value of this project to the province, the government could have made the policy direction and said: We're going to pay those board members because that's the only way we're going to get qualified people there to do it.

MS. DUNDERDALE: And – but I do have to say to you that we call on people to do important work.

MR. FITZGERALD: Absolutely.

MS. DUNDERDALE: People who sit on health boards, for example, make life-and-death decisions –

MR. FITZGERALD: Oh, they do.

MS. DUNDERDALE: – with regard to that. And that's extremely important (inaudible).

MR. FITZGERALD: And maybe they should be paid too.

MS. DUNDERDALE: And – but that's precisely my point.

MR. FITZGERALD: But everyone doesn't need to be paid the same amount.

MS. DUNDERDALE: But we –

MR. FITZGERALD: That's my point.

MS. DUNDERDALE: But we need to have substantive, then, we get into value of work. So you talk about politics, there's a political overlay to –

MR. FITZGERALD: Oh, there is.

MS. DUNDERDALE: – all of that as well.

MR. FITZGERALD: Oh, there is.

MS. DUNDERDALE: But if you're going to compensate people, then we have to compensate people –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – across the board. And we have many, many people – and we take advantage of many people and we're grateful to many people. They've been – it's been unpaid and unlauded work in terms of what they do on behalf of the –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – people of the province to advance, you know, goals that are in our best interests.

MR. FITZGERALD: And volunteers are important as well and, really –

MS. DUNDERDALE: They're extremely important.

MR. FITZGERALD: – in many ways, these board officials at Nalcor were volunteers, weren't they?

MS. DUNDERDALE: Yes. And the volunteers right across the board for the most part are volunteer.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And they all put in extensive time and energy into the work that they do. And why you might not be paying them

all, Commissioner, a hundred-thousand dollars each –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – you know, when you cumulatively add up the number of boards we have and the amount of compensation that you would have to pay, it's not a small amount of money.

MR. FITZGERALD: In –

MS. DUNDERDALE: And that, more than anything else, was the significant challenge that we had before. How do we do this? And we have to do it, then, for everybody if we do. Might not have to do it to the same degree –

MR. FITZGERALD: No and I hear you on that. And you seem like a very fair person, Ms. Dunderdale, and – but my point was the government could have made a policy choice that we are going to pay that board more, those employees over there making more and, economically speaking, that policy choice, it could have been made.

MS. DUNDERDALE: We had the ability to do it.

MR. FITZGERALD: Yes, you did.

MS. DUNDERDALE: Of course we did.

MR. FITZGERALD: Yeah.

However, even if you do hire these super board members – I'm not saying there's anything wrong with the existing board members at all – would you agree with me that that board could only be effective if it's provided all the information from the CEO and from the people in the lower project team?

MS. DUNDERDALE: Absolutely.

MR. FITZGERALD: So you –

MS. DUNDERDALE: But that's part of their job –

MR. FITZGERALD: That's right.

MS. DUNDERDALE: – as oversight, to ensure that they’re getting the information they require so that they can make informed decisions. And they – Mr. Commissioner, they have a group that they can – or an (inaudible), you know, they have a way to get that corrected if it’s not happening.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: Because they can come to – they’re appointed by government, so they can come to the shareholder and say: We’re not satisfied in terms of how the work of Nalcor is being executed or the principles that are being applied in terms of providing information and so on and what we have access to. And then we would have had to deal with it.

MR. FITZGERALD: Yeah, but even in your great board of directors and in your oversight mechanism, I would suggest to you if people aren’t going to provide the information on a good-faith basis, the oversight mechanism may just fall down in any event.

MS. DUNDERDALE: Well, unless you’re provided with the information, it’s hard for you to make an –

MR. FITZGERALD: An informed decision.

MS. DUNDERDALE: – informed decision. You can’t do it –

MR. FITZGERALD: Exactly.

MS. DUNDERDALE: – unless you got the information.

MR. FITZGERALD: Okay, I just had a few more questions.

In your testimony you indicated that you knew Westney were engaged by Nalcor and you were briefed on pieces of work that Westney did. And Nalcor reported on Westney’s work on a number of occasions.

MS. DUNDERDALE: Yes. So if we were going through one of these slide decks –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – and we were talking about where we were, Commissioner, in the planning, or if we were talking about a particular element of the project and so on, you know, often accompanying that – the information, would be, you know, information that Westney had provided or commentary that Westney had provided or recommendations that Westney had been ... So it was part of the language and information that we heard regularly in our meetings where it was appropriate.

MR. FITZGERALD: And so – but despite those presentations by Westney, they did not – you – Nalcor didn’t tell you that this is a P1 schedule and the chance of first power in July 2017 is a 1 per cent chance, did they?

MS. DUNDERDALE: No.

MR. FITZGERALD: So –

MS. DUNDERDALE: I never understood. That was never said to me.

MR. FITZGERALD: Exactly and this is where I’m going. And I don’t know if you saw the evidence, but Mr. Bennett – Gilbert Bennett, who would be dealing with Mr. Bown regularly – he also had knowledge of that and he didn’t tell Mr. Bown.

You’re aware of that now, are you? That was his testimony.

MS. DUNDERDALE: Yes. I’m not sure that I heard that part of the testimony.

MR. FITZGERALD: Yeah, but he had knowledge and it was the Gatekeeper, Mr. Martin, that was going to provide all the information apparently.

MS. DUNDERDALE: That, to me – and I heard that a number of times –

MR. FITZGERALD: Yes.

MS. DUNDERDALE: – through Mr. Bennett’s testimony and I found it a little surprising, Commissioner, I have to say, because Mr. Bennett was present at a considerable number of our meetings as we discussed this project and as it developed and all of our conversations were

freewheeling. And often – I remember several times when Cabinet was being briefed –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – and these – when you're briefing Cabinet –

MR. FITZGERALD: Mmm.

MS. DUNDERDALE: – this is a high-level briefing.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: Several times, Mr. Bennett did that briefing, and there certainly wouldn't have been any – you know, the questions would be freewheeling.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: There'd be lots of skepticism.

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: As I testified yesterday, you know, the – other than myself and the minister, there was a regular exposure of other ministers to Nalcor.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: They didn't have any particular kind of relationship with Nalcor.

MR. FITZGERALD: No.

MS. DUNDERDALE: And although they were being briefed on a regular basis about what was happening with regards to this project, just because of the scope and importance of it, they would've come at it with a jaded eye as well.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: So whoever went to brief Cabinet had to have a deep knowledge and a willingness to provide answers.

MR. FITZGERALD: Well, the willingness is where it falls down, I would suggest. If Westney – if you were briefed on Westney information,

and Westney reports and briefings and you weren't told about the P1 chance of schedule, I would suggest to you that the people at Nalcor were cherry-picking the information they were providing to you.

MS. DUNDERDALE: Well, if somebody in a Cabinet briefing or – yeah, in my briefing –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – but even to a Cabinet briefing, ask somebody about schedule –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – and a reliability of what was being put forward –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – and somebody had the information and didn't answer the question, I certainly would've been made aware because that would've caused a stir, let me tell you. And –

MR. FITZGERALD: But –

MS. DUNDERDALE: – even if the question had been referred –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – back to Mr. Martin that would've been brought to my attention.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: It never was.

MR. FITZGERALD: And this is my point, too. In such an important project where we're going to be spending billions of dollars – and you're as proud a Newfoundlander as anybody – and Labradorian – you would expect if this is going to be a 1 per cent chance, that they will tell you the information. You shouldn't have to ask, should you?

MS. DUNDERDALE: No.

MR. FITZGERALD: Should you?

MS. DUNDERDALE: And, you know, Commissioner, this is not like it's going to be any big secret. This project is supposed to be commissioned and in service in 2017. Many of the people that are in my Cabinet and caucus, their intention is to be around in 2017.

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: And, so, what they're looking for is a success story –

MR. FITZGERALD: Exactly.

MS. DUNDERDALE: – in Muskrat Falls. It's not going to be any feather in their cap if we've got a project that's, you know, delayed and extremely over budget.

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: You know, they're as interested as I am to ensure that the planning on this is appropriate. I mean there was high tension around this project because it was such a large undertaking.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And a lot depended on – so not even – you know, besides our responsibility as good stewards –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – on behalf of the people of the province, well, I mean it got down to the personal level that –

MR. FITZGERALD: I know it did.

MS. DUNDERDALE: – their whole political future was at stake.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And they certainly didn't want a fiasco on their hands two or three years out.

So they would have demanded information and they would have been doing their level best to ensure that this work was done properly, tested properly and that everybody was moving

forward on the best information available to them.

MR. FITZGERALD: Yeah.

You've agreed with me that you don't believe Mr. Bown or Mr. Thompson – and I'm going to say Mr. Paddon – were naïve or passive. I also don't believe that you were naïve or passive. Do you believe that you were misled by Nalcor on those issues?

MS. DUNDERDALE: I don't believe that.

MR. FITZGERALD: Well, they didn't tell you about P1.

MS. DUNDERDALE: No, they didn't tell me about a P1 schedule.

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: And I – that is so. What I'm saying to you, in terms of the testing and the oversight in terms of MHI with the PUB, MHI independently hired by government, what happened with the banks, what happened with the federal government and so on, I believe that the information that they gave us was sound. I don't know –

MR. FITZGERALD: I'm not questioning that.

MS. DUNDERDALE: No. I don't know why today we find ourselves in the circumstances we're in. That's why we're here. And I have to tell you that I welcomed this Inquiry even though it has caused some stressful moments and, you know, has put a wrinkle in my plans for the summer and fall. But I'm glad to be here and to give my testimony and everyone else to do so, because I want to know what went wrong.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: What did we miss? Did we miss something or did something else happen? And right now where I am, I'm not – I don't believe that we missed something. But I won't know until the Commissioner reports on what the answer to my question is. But I'm really anxious – as many others are I'm sure – to find out what the answer is.

MR. FITZGERALD: And in fairness to you, Ms. Dunderdale, you can only act on the best information you were provided at the time.

MS. DUNDERDALE: And we did.

MR. FITZGERALD: Yes. Who is Brian Crawley?

MS. DUNDERDALE: Pardon?

MR. FITZGERALD: Brian Crawley.

MS. DUNDERDALE: Yes, Brian Crawley.

MR. FITZGERALD: Who is he?

MS. DUNDERDALE: Brian Crawley is the former chief of staff to Premier Williams.

MR. FITZGERALD: Okay.

MS. DUNDERDALE: And he left government when Premier Williams resigned.

MR. FITZGERALD: Yes.

MS. DUNDERDALE: And sometime later –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – he was taken on at – he was hired at Nalcor.

MR. FITZGERALD: Do you have any idea how long he was not working in government before he was hired at Nalcor?

MS. DUNDERDALE: It was a fair period of time, I think. It might – you know, I'm not really sure now, but I think it might have been close to a year, or it was well on –

MR. FITZGERALD: Do you know –

MS. DUNDERDALE: – I think.

MR. FITZGERALD: – do you know what his role was at Nalcor when he was hired?

MS. DUNDERDALE: No, I didn't pay much attention to it.

MR. FITZGERALD: So he was an individual who came from the political world into the Nalcor apolitical world –

MS. DUNDERDALE: Yes –

MR. FITZGERALD: – you agree with me there?

MS. DUNDERDALE: – and he had been in the commercial world before that –

MR. FITZGERALD: Yeah.

MS. DUNDERDALE: – I think he worked in on Hibernia and so on. That was his career before he came to – he came to the political field with Premier Williams.

MR. FITZGERALD: What was his management style when he was chief of staff?

I heard he ran a tight ship.

MS. DUNDERDALE: He ran a very tight ship. He was a very contained individual.

MR. FITZGERALD: Would information flow between – to him first, before it would go to the premier?

MS. DUNDERDALE: I don't know if that would happen in every instance. I know lots of times that I'd call up –

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: – Brian and have a conversation with him about something or other.

MR. FITZGERALD: Okay.

MS. DUNDERDALE: And Brian would certainly call me if he was communicating some information from the premier or whatever.

MR. FITZGERALD: Okay.

MS. DUNDERDALE: I had a lot of time and lot of respect for Brian Crawley. I found him to be a straight shooter. Very straightforward and honest was always my experience of him.

MR. FITZGERALD: Mm-hmm.

MS. DUNDERDALE: Hard worker, very thorough, good analysis, great people skills. But he could be very firm.

MR. FITZGERALD: I asked the question because if we go to – pardon me – where’s my chart – P-01178, please. And that is –

THE COMMISSIONER: Tab 69, volume 2.

MR. FITZGERALD: – tab 69, volume 2. This was the email I took you to earlier.

MS. DUNDERDALE: Okay.

MR. FITZGERALD: And up above here, Mr. Harrington sends this to Mr. Crawley and Mr. Bennett and Mr. Humphries and Mr. Kean.

MS. DUNDERDALE: Yes.

MR. FITZGERALD: And this is the email that refers to being set up to fail, because the risk is not done, and then ultimately the scope comes out eventually. So while he was in government and worked with Premier Williams and, I guess, yourself, that it seems to me that, at least on this issue, he was in the loop, wasn’t he?

MS. DUNDERDALE: He was certainly in the loop on this email.

MR. FITZGERALD: And on this risk issue.

MS. DUNDERDALE: Yeah.

MR. FITZGERALD: I only ask ’cause there seems to be some continuity between – from what I look at anyway – in terms of a high-level individual working at government, then working at Nalcor – he seems to be a key figure on both sides, would you agree with me?

MS. DUNDERDALE: I don’t know that he was a key figure at Nalcor.

MR. FITZGERALD: He was key enough to be on this email, wasn’t he?

MS. DUNDERDALE: Well, he was on that piece, but, again, I’m not sure –

MR. FITZGERALD: Okay.

MS. DUNDERDALE: – what his role was. I didn’t –

MR. FITZGERALD: And neither am I.

MS. DUNDERDALE: – I didn’t have any exposure to Brian Crawley once he went with Nalcor.

MR. FITZGERALD: Nalcor.

Yeah, and I only ask, Premier Dunderdale, because I was just trying to flush out how he ended up at Nalcor, and what his role was vis-à-vis Nalcor and the government, given his previous political affiliation and his job.

MS. DUNDERDALE: I can’t speak to that. You know, he – I have no idea. I guess he applied for a job –

MR. FITZGERALD: Okay.

MS. DUNDERDALE: – and got the job but, you know, we didn’t have – we had very, very little interaction once –

MR. FITZGERALD: Okay.

MS. DUNDERDALE: – he went to Nalcor.

MR. FITZGERALD: Thank you very much.

MS. DUNDERDALE: You’re very welcome.

MR. FITZGERALD: Have a good day.

MS. DUNDERDALE: You, too.

THE COMMISSIONER: Alright, Robert Thompson?

MR. COFFEY: Good afternoon, Ms. Dunderdale.

My name is Bernard Coffey. I represent Robert Thompson.

If we could bring up, please, Exhibit P-01096.

THE COMMISSIONER: Tab 31, book 1.

MR. COFFEY: Thank you, Commissioner.

This was – yes, Ms. – I’ll wait for you, Ms. Dunderdale.

The – this is an email that you were referred to earlier today. It’s dated May 20, 2011 from Mr. Thompson to Mr. Taylor and yourself, “Draft Question for PUB” and it was – you were asked a question about it in relation to – or it was suggested to you that Mr. Thompson had overseen the process of preparing the Terms of Reference for the PUB.

And I’m just going to refer you, Ms. Dunderdale, if you could, to the first part of the email, which is – it reads, “Here is the draft core question to be posed to PUB. It has been the subject of review by NR” – which would be Natural Resources – “Justice, Nalcor and general consultation with PUB. We can ...” call “... on Tuesday morning to finalize it.”

Ms. Dunderdale, certainly Mr. Thompson was involved in the process of, you know, actually getting the terms of reference finalized, but would you agree that the decision – political direction had been given that the reference to the PUB would be limited to a comparison of two options?

MS. DUNDERDALE: Yes.

MR. COFFEY: And he was, in effect, carrying that out.

MS. DUNDERDALE: Yes.

MR. COFFEY: Thank you.

If we could look, please – and you were asked about the presentation to Cabinet in relation to what’s referred to, in this context here, as sanction.

I’d ask, please, that you bring up Exhibit P-00941, which is exhibit – which is tab 130, Ms. Dunderdale, at volume 4.

I’ll just let you get that out.

MS. DUNDERDALE: Tab number again, please?

MR. COFFEY: It’s a tab – I believe it’s tab 130, which is probably (inaudible) –

THE COMMISSIONER: Tab 30.

MS. DUNDERDALE: Tab 30 –

MR. COFFEY: Tab 30 –

MS. DUNDERDALE: – Commissioner?

MR. COFFEY: – actually, in the book. That’s the code here.

MS. DUNDERDALE: Yea.

MR. COFFEY: And this is a slide presentation: “Presentation to Cabinet Muskrat Falls Project Sanction Natural Resources December 6, 2012.”

And if you could just, perhaps, slowly flip through that, Madam Clerk? Yes, the – “Why Muskrat Falls?” and there are a number of points: “Verifying Least Cost” – go ahead – “Other Alternatives” – go ahead – “Muskrat Falls Benefits” – “Project Cost” – “Project Financing” – “Next Steps – Post Sanction” and then the “Conclusion.” And the last slide, of course, is “Questions?”

Now, Ms. Dunderdale, then – at Cabinet, on December 6, 2012 – this presentation would have been given.

MS. DUNDERDALE: Yes.

MR. COFFEY: And it would have been given by somebody, presumably, from Natural Resources.

MS. DUNDERDALE: Yes, the minister would lead the –

MR. COFFEY: Minister.

MS. DUNDERDALE: – presentation.

MR. COFFEY: And in that – this context, that would have been Mr. Jerome Kennedy.

MS. DUNDERDALE: Yes, it would.

MR. COFFEY: If we could go, then, as well, in terms of – (inaudible) – what else was then before Cabinet that day in relation to this issue?

Okay, it was that slide deck.

Exhibit P-00067, please. And that is in volume 3. It's tab – well, it's tab 129, which would – volume 3.

THE COMMISSIONER: That's tab 29.

MR. COFFEY: Thank you, Commissioner.

Thank you, Ms. Dunderdale.

And this particular exhibit happens to be 43 pages long, but the first 22 pages are an unsigned version of a Natural Resources submission to the Cabinet. The title is: "Sanction Decision on the Muskrat Falls Project."

And if we could go, then, to page 23 – I'm sorry, page 22, I apologize – 22. Yes and –

MS. DUNDERDALE: Yes.

MR. COFFEY: And the Commissioner has seen this before. I think counsel – Commission counsel, in fact, brought a witness to this earlier.

And on the top right-hand side of the page there you'll see December 6, 2012.

MS. DUNDERDALE: Yes.

MR. COFFEY: And then there are, of course, a bunch of signatures. You would confirm that that is – these are all the signatures of the members of your Cabinet at the time.

MS. DUNDERDALE: Yes.

MR. COFFEY: Do you recall why it was that everyone signed this?

MS. DUNDERDALE: Because this was a significant day. History was being made in the province again and certainly a moment in the career of a minister. And just as a memento of the day that eventually you might have a copy of the sanction decision. And it would be a nice souvenir of the day, a reminder of the day. Tremendous amount of work had gone in to this moment. And we were proud of the piece of work that we had done.

MR. COFFEY: And that is – that was what I – in fact, you've said it without me prompting

you. That was the position of yourself and your fellow Cabinet ministers.

MS. DUNDERDALE: Absolutely.

MR. COFFEY: As of that time. And that's how confident you were at the time.

MS. DUNDERDALE: Yes.

MR. COFFEY: Okay.

Now, if we could look, please, at – I'm just going to ask you, please, Madam Clerk, if you could just kind of slowly scroll through this – sanction decision and then there's an issue – if I can stop there, please, just go up a bit – "Whether to sanction the Muskrat Falls Project at this time."

MS. DUNDERDALE: Yes.

MR. COFFEY: That's at page 22. That's the plain and simple issue, very starkly put.

MS. DUNDERDALE: Yeah.

MR. COFFEY: Then there's recommendations.

MS. DUNDERDALE: Yeah.

MR. COFFEY: "It is recommended that Cabinet:

" 1) Authorize Nalcor Energy to sanction and proceed with the development of the Muskrat Falls Projects, including the Muskrat Falls Plant, Labrador Transmission Assets, Labrador-Island Link and Maritime Link."

And number "2) Authorize the Department of Finance to make base equity contributions to the project in accordance with the" – financial – "structure (debt/equity) determined on financial close and to make contingent equity contributions as required to bring the project in service."

Okay, so that was the – they were the recommendations –

MS. DUNDERDALE: Yes.

MR. COFFEY: – from Mr. Kennedy.

MS. DUNDERDALE: Yeah.

MR. COFFEY: And then – and I’m not going to read through the rest of it in detail, but then there’s a background.

MS. DUNDERDALE: Yes.

MR. COFFEY: And that goes on into page 23 here. It continues on in detail.

MS. DUNDERDALE: Yes.

MR. COFFEY: And then there’s a subheading “*Muskrat Falls Assessments*” on page 24 – top of the page.

MS. DUNDERDALE: I’m lost now, Mr. Coffey.

MR. COFFEY: I’m sorry. If we could just go back to page 24, please? (Inaudible) should take you through this.

THE COMMISSIONER: Red page 24. If you look at the red pages?

MR. COFFEY: The red pages.

MS. DUNDERDALE: Oh.

MR. COFFEY: I’m sorry, Ms. Dunderdale, yes.

THE COMMISSIONER: The red page numbers on the top.

MS. DUNDERDALE: Thank you.

MR. COFFEY: Yes. Thank you.

MS. DUNDERDALE: Yes.

MR. COFFEY: Page 24, you’ll see the “*Muskrat Falls Assessments*,” and –

MS. DUNDERDALE: Yes.

MR. COFFEY: – they’re referred to there.

MS. DUNDERDALE: Yeah.

MR. COFFEY: And then Ziff Energy is mentioned in passing, and other reports. We can –

MS. DUNDERDALE: Yes.

MR. COFFEY: Again, I’m not going to take you through them in detail, but this would’ve been provided to yourself and your fellow members of Cabinet –

MS. DUNDERDALE: Yes.

MR. COFFEY: – beforehand.

MS. DUNDERDALE: Yeah.

MR. COFFEY: Top of page 27: “*Additional Muskrat Falls Milestones*.”

MS. DUNDERDALE: Yes.

MR. COFFEY: Continue on, please? Top of page 28: the “*Federal Loan Guarantee*.”

MS. DUNDERDALE: Yes.

MR. COFFEY: That’s referred to. The “*Timing*” – in the middle of the page there.

MS. DUNDERDALE: Yes.

MR. COFFEY: And then the alternatives. They’re at the bottom of page 28 – “Alternative 1” –

MS. DUNDERDALE: Yeah.

MR. COFFEY: – it set out there. And then go on – the “*Advantages*” at the top of page 29 are there, and “*Disadvantages*.”

MS. DUNDERDALE: Yes.

MR. COFFEY: “*Alternative 2*” –

MS. DUNDERDALE: Yeah.

MR. COFFEY: – is at – page 29.

MS. DUNDERDALE: Yes.

MR. COFFEY: It's spelled out, if I could just go back up, please? The "Alternative 2" put forward was: "Defer sanction decision on the Muskrat Falls Project until a later time."

MS. DUNDERDALE: Yes.

MR. COFFEY: And in caps – it's "(NOT RECOMMENDED)." And then there are advantages spelled out and disadvantages.

MS. DUNDERDALE: Yes.

MR. COFFEY: "Alternative 3

"Do not sanction the Muskrat Falls Project (NOT RECOMMENDED)" – in caps. And there are advantages – there were none identified, and there are also disadvantages, correct?

MS. DUNDERDALE: Yes.

MR. COFFEY: Now, also before Cabinet – and I'm asking this, Commissioner, because of the question put by, you know, Mr. Budden in relation to what was before Cabinet that day. There's a – "Legal/Legislative Considerations," and it's redacted here, but there was something there, okay?

MS. DUNDERDALE: Yes.

MR. COFFEY: And it goes on. If I could – top of page 31, there's a reference to: "Project advancement immediately after sanction will require legislative amendments to the Electrical Power Control Act, the Energy Corporation Act, and the Hydro Corporation Act to facilitate financing arrangements." And it goes on from there about other things.

So, the fact that there were legislative changes going to be necessary shortly –

MS. DUNDERDALE: Mmm.

MR. COFFEY: – was spelled out here.

MS. DUNDERDALE: Yes.

MR. COFFEY: "FINANCIAL CONSIDERATIONS."

MS. DUNDERDALE: Yes.

MR. COFFEY: This – are spelled out there on page 31 in detail. And continue on, please? Thank you.

And then on page 33: "*Nalcor Financing Summary*." There's a subsection for that.

MS. DUNDERDALE: Yes.

MR. COFFEY: The bottom of the page, "*NL Government Equity Contribution*" –

MS. DUNDERDALE: Yes.

MR. COFFEY: – is dealt with in some detail. In the middle of page 34, the Net debt –

MS. DUNDERDALE: Yes.

MR. COFFEY: – is referred to. And then the Interdepartmental Considerations, if we could just stop there. This reads: "NR" – which is Natural Resources – "has consulted extensively with other departments including" Justice, Finance, Environment, Service NL; "MA" would be Municipal Affairs, presumably.

MS. DUNDERDALE: Yes.

MR. COFFEY: "TW," Transportation and Works, and "IGAA" would be Intergovernmental Affairs –

MS. DUNDERDALE: Intergovernmental Affairs.

MR. COFFEY: – Intergovernmental Affairs "throughout various stages of project advancement," and it goes on to speak about it in that context.

If we could go on to the next page. Okay.

Labrador and Aboriginal Considerations at the top of page 35. Intergovernmental

Considerations are addressed in the – part way through the page and then Other Jurisdictions.

My point being this, Ms. Dunderdale, that we go through this – at the time, as premier, and you had been Natural Resources minister before that, were you satisfied that, on December 6, the Cabinet was properly briefed?

MS. DUNDERDALE: Yes, I was.

MR. COFFEY: And this was the material that they had immediately before them that particular day?

MS. DUNDERDALE: Absolutely. And they would have been familiar –

MR. COFFEY: And I'm going to ask you to explain that to the Commissioner. Familiar, why? Before that day.

MS. DUNDERDALE: Because, Commissioner, any number of presentations would have been given over the two mandates where we were on this project. But – and they would have to have been engaged, particularly, in – as we moved the project along, for example, with regard to land claim negotiations with the Innu, for example, environmental review – any number of considerations would have had to been given by particular departments to inform the work as it advanced.

But once we got down to decision-making time, then all of our papers go through a very rigorous Cabinet process. The paper is drafted with the department and with Cabinet Secretariat, then it's advanced out to all departments that have any kind of a particular interest in the subject at hand, and they provide feedback, considerations, pros, cons, advantages, questions they have, commentary they have and so on back for consideration, and that would be done with the department and Cabinet Secretariat and would be noted in the paper.

And then it would go through the appropriate Cabinet committees, the –

MR. COFFEY: Yes, and you've explained that already.

MS. DUNDERDALE: All of that.

MR. COFFEY: Okay.

MS. DUNDERDALE: And then a thorough presentation be given – then the completed paper that was ready to go to Cabinet would be sent to all Cabinet members, and they, with their staff in their departments, would go through that with a fine-tooth comb in preparation for discussion at Cabinet, and then it would come to the Cabinet table with a presentation with officials from departments and perhaps Nalcor, outside the Cabinet room and available if there were any questions.

And the paper would be brought to the table, and debate would begun – would begin before we went to the place where you develop a consensus on whether or not this was the right direction to move in.

MR. COFFEY: Now, on December 6, 2012 – and you – I took you to the fact that the NR paper that was before Cabinet referred to consultation already having occurred with Justice, Environment –

MS. DUNDERDALE: Yes.

MR. COFFEY: – Intergovernmental Affairs and so on.

On December 6, 2012, did anyone in your Cabinet express any reservations?

MS. DUNDERDALE: No.

MR. COFFEY: Okay.

And take any issue with what was in this paper?

MS. DUNDERDALE: No.

MR. COFFEY: So that – and what I'm getting at here is that, in relation to this particular matter, the ministers of the various departments, who, you know, would have been consulted over time, from time to time, concerning matters concerning the Muskrat Falls Project, they were sitting in the room?

MS. DUNDERDALE: Absolutely.

MR. COFFEY: So if they had a problem – or their officials had informed them of a problem, they could have brought it up?

MS. DUNDERDALE: In this arena – in this occupation, Commissioner, we work by a consensus in the Cabinet room.

You're elected independent of the leader of the party or whatever; you know, it's the people in the district who decide if you're going to get the job or not, and they're the first group of people that you have to answer to, that you're responsible to.

And – but you've signed on to a particular ideology and a particular mandate and so on, and so then you go to work within the structure that we have in this democracy to do the things that you have laid out to the best of your ability to do it and to provide good management to the people of the province.

Now, you know, we work by a consensus and we work hard to get consensus. Because the more that you can deal with people's objections and examine what the problem is and resolve it so they have a level of comfort, really, the better the work that you're doing. But if you come to, you know – and sometimes you might not be a hundred per cent with something, you might only be three-quarters of the way through, but you might decide that that's not a hill that you're going to die on.

But my philosophy always was that you should always have your resignation in your back pocket. You really should. Now, you need to be careful of it when you take it out, Commissioner, because you mightn't get the chance to put it back in. It shouldn't be used as a threat.

So if you ever get to a place in government when the government is making a decision that you can't live with and that you think have implications that are far-reaching or you're, on principle, averse to, then you always have the option without losing – you might lose your Cabinet position, but you certainly won't lose your job – to put your resignation on the table and move away. And that option lies with everybody who's elected to the House of Assembly. And make your objections known to

the people in your district, first of all, but then to the people of the province.

There's nobody who can put a muzzle on somebody who's prepared to speak the truth. And so consensus is important, but objection is important too, and to deal with that so that when you say, you know, this comes to you with the full support of Cabinet and caucus, that – you're speaking the truth – that they've all examined it, they've all looked at the information. It's a – this one is a big thing. This is a big decision that they're taking on but, you know, we've done this work well enough, I believe, that everybody has a high comfort level in terms of the decision we're taking here.

MR. COFFEY: If we can go to, please, Exhibit P-00395. And that is book 2, volume 2, tab 51.

THE COMMISSIONER: I'm just wondering, Mr. –

MR. COFFEY: I –

THE COMMISSIONER: I just noticed, Mr. Coffey –

MR. COFFEY: Yes.

THE COMMISSIONER: – that it's 4:30. Did you want to continue, or did you ...?

MR. COFFEY: I – Commissioner, here's the position I'm in. I have two, I think – well, I could deal with this and then I'm going to suggest I come back in the morning and resume. I won't be that much longer, but I don't want – you know, it's a long day and –

THE COMMISSIONER: Okay.

I think what I'm going to do is because this looks like a new area –

MR. COFFEY: Yeah.

THE COMMISSIONER: – let's stop here.

MR. COFFEY: Fine.

THE COMMISSIONER: And we'll come back tomorrow morning –

MR. COFFEY: And that works, Commissioner.

THE COMMISSIONER: – at 9:30 and start again.

MR. COFFEY: Thank you.

THE COMMISSIONER: All right, so we're back tomorrow morning, then, at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.