



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 62

Commissioner: Honourable Justice Richard LeBlanc

Thursday

20 December 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right.

Good Morning.

MS. DUNDERDALE: Good morning.

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

MS. DUNDERDALE: Yes, Sir.

THE COMMISSIONER: Mr. Coffey, just give
me one second.

MR. COFFEY: (Inaudible.)

THE COMMISSIONER: All right.

And when you're ready.

MR. COFFEY: Thank you, Commissioner.

MS. O'BRIEN: (Inaudible.)

MR. COFFEY: Certainly will, thank you, Ms.
O'Brien.

Commissioner, yesterday when we left off we
were – I was going to go to Exhibit P-00395.

THE COMMISSIONER: Okay.

MR. COFFEY: Which is –

THE COMMISSIONER: Tab 51, book 2.

MR. COFFEY: Thank you.

And, Ms. Dunderdale, this is the aspect of the
matter involving Mr. Clift, who's a member of
the Nalcor board in January 2012, having sent an
email to Robert Thompson, who was then your
clerk. And you were asked about this yesterday,
I believe, and – if not before about appointments
to the board and so on.

And I – my notes indicate that you had – when
you were being questioned about this, you
indicated that you had asked your clerk, Mr.
Thompson, to work with staff in your office to
potentially identify people who might be
suitable for appointment to Nalcor's board.

MS. DUNDERDALE: Yes.

MR. COFFEY: And would that request have
come around the time or at the time that Mr.
Thompson brought to your attention this email
from Mr. Clift?

MS. DUNDERDALE: Yes, it would. Anytime
that it was brought to my attention, because this
could be an issue across a number of –

MR. COFFEY: Yes.

MS. DUNDERDALE: – boards, finding
(inaudible).

MR. COFFEY: Okay.

MS. DUNDERDALE: There wasn't much
enticement –

MR. COFFEY: Yes.

MS. DUNDERDALE: – to come sit on
government boards. So when these issues were
raised then – would speak to the clerk because
there was a committee in the premier's office
that took on this piece of work and would – so I
would ask Robert to work with them –

MR. COFFEY: Okay.

MS. DUNDERDALE: – to see if we could
resolve some of these issues.

MR. COFFEY: And the staff in your office,
who are we – who in particular, who were those
individuals?

MS. DUNDERDALE: Well, it would be the
chief of staff and probably the deputy chief of
staff –

MR. COFFEY: Okay.

MS. DUNDERDALE: – and others as they
might bring together.

MR. COFFEY: Now, you also in commenting upon, you know, this aspect of the matter, you indicated after you referred to asking Mr. Thompson to work with your staff to identify suitable candidates, you went on to say that you had asked Mr. Martin to make available to the board for questioning any expert consultant reports or even experts. Okay?

MS. DUNDERDALE: Yes.

MR. COFFEY: Did you ask Mr. Martin that in the context of this issue involving board appointments and expertise? Is that what occasion you'd ask Mr. Martin to do that?

MS. DUNDERDALE: Yes, and I would've talked to Mr. Martin about the fact that the board was stressed –

MR. COFFEY: Yes.

MS. DUNDERDALE: – you know, I'm sure he was aware of it –

MR. COFFEY: Yeah.

MS. DUNDERDALE: – from direct conversation with the members of the board himself. And while we were trying to fill the gaps –

MR. COFFEY: It was at that time that you spoke to Mr. Martin about –

MS. DUNDERDALE: Yes.

MR. COFFEY: – making available this expertise that Nalcor was hiring anyway.

MS. DUNDERDALE: If you have consultants coming in and doing a piece of work for you or giving you a report, can you make those consultants available to the board so they can question them directly.

MR. COFFEY: Ms. Dunderdale, there's one final aspect of this matter I'm going to take you to.

Commissioner, you will note that there are Exhibits P-01660 through P-01668, and they are excerpts from *Hansard* dating back from – and, actually, they date from March 1, 1994 to

December 13, 1999. And the dates are spelled out in each of them.

And I'm taking the opportunity with you, Ms. Dunderdale, for the following reason, to deal with this, okay?

When you took over as minister of Natural Resources in 2006 –

MS. DUNDERDALE: Yes.

MR. COFFEY: – you remember, you've told the Commissioner about that.

MS. DUNDERDALE: Yes.

MR. COFFEY: You replaced whom? Mr. Ed Byrne?

MS. DUNDERDALE: Yes.

MR. COFFEY: And Mr. Byrne, I'm going to suggest to you, from 2003 to 2006, had been the minister of Natural Resources.

MS. DUNDERDALE: Yes, he had.

MR. COFFEY: And you've described how when you arrived in the ministry, initially –

MS. DUNDERDALE: Yes.

MR. COFFEY: – work on the Energy Plan was already – or had already been significantly underway.

MS. DUNDERDALE: Yes.

MR. COFFEY: And I'm going to suggest to you, then, that that work, in the ministry, that had occurred before you arrived, had been – occurred under the purview of Mr. Byrne as minister.

MS. DUNDERDALE: Yes.

MR. COFFEY: Now, Mr. Byrne – again, you were involved in political life. Mr. Byrne had been the leader of the Opposition before Mr. Williams was – wasn't he?

MS. DUNDERDALE: Yes, he was.

MR. COFFEY: And, in fact, he had been a Member of the House, he was leader of the PC Opposition, I believe, from 1998 to 2001, but official records would bear – you know, would indicate whether or not that's the case.

And – but even between 2003 and 2006, he was not only minister of Natural Resources, but he was also Government House leader.

MS. DUNDERDALE: Yes, he was.

MR. COFFEY: And I don't believe anyone has spoken to this. Could you just tell the Commissioner what the role of a Government Houser leader is? Just in a general way.

MS. DUNDERDALE: Well they – the House leader is somebody who speaks on behalf of the government side regarding rules and processes and procedures –

MR. COFFEY: Okay.

MS. DUNDERDALE: – points of order, points of privilege, all of those kinds of things in the House of Assembly. They would be very familiar with the rules that govern debate in the House of Assembly.

MR. COFFEY: Okay. So – and again, I'm not going to take you, Ms. Dunderdale, through all of this, but for the usage of the Commissioner and his counsel, if we could bring up P-01660.

And that, Commissioner, is volume 4 – Ms. Dunderdale – tab 49. Or 149.

And Commissioner, you know, I would point out or indicate to you that this relates to the aspect of your mandate dealing with how the exemptions in 2000 came about. In particular, the exemption for the, you know, the Lower Churchill Project. But this body – these comments in Hansard perhaps may be of some assistance to you in making – coming to a conclusion about that.

If we look, please, at page 3.

And this is – you look at the top of the page there, Ms. Dunderdale, this is Mr. Roberts, then, dealing with and – the Speaker then, "Motion No. 1 ... the Premier to introduce a bill, 'An Act

Respecting The Privatization ... Newfoundland and Labrador Hydro-Electric Corporation,' carried. (Bill No. 2)."

And if we just go down a bit, please.

Sorry.

Anyway, I'm not gonna dwell on this here today. But, Commissioner, you'll find in that as well – bill – the bill dealing with the Electrical Power Control Act was also introduced that day.

If we could go then, please, to Exhibit P-01661, which is, Ms. Dunderdale – it's the next – should be in the next tab.

MS. DUNDERDALE: Yes.

MR. COFFEY: Go to page 2, please, this document. This is Hansard from March 3, 1994. And scroll down a bit, please. Right there, thank you. There on the page, Ms. Dunderdale, you'll see: "Second reading of a bill, 'An Act To Regulate The Electrical Resources Of Newfoundland And Labrador.' (Bill No. 2)."

And then-Premier Williams [sp Wells], as he then was, begins: "Thank you, Mr. Speaker."

And, Ms. Dunderdale, if you were to take the time to read this you'll find that from pages 2 though 13 of this document that – it was my understanding that this – then-Premier Wells spoke for an hour and went through it effectively clause by clause.

Now, relevant to this particular matter, if we could go to page 3, please. And just scroll down a bit – okay, right there, thank you.

If we look there it says – and this was the act in 1994, Ms. Dunderdale, that replaced the earlier *Electrical Power Control Act*. And it says: "This section 3(a) is to be found in the existing Electrical Power Control Act, so substantially it pretty well tracks what is there. The approach is similar. It declares the power policy that the House determines to be the policy for the Province, and the Public Utilities Board and the electrical utilities involved must manage their affairs consistent with that policy. The first one provides for that way in which the rates are to be charged, and I think that is pretty well verbatim what is in the existing act, so we are not

suggesting any change in roman numerals i, ii and iii of paragraph (a).” And that, Mr. – or then-Premier Wells was indicating there’s no change there.

If we go to page 4, please. And here – give me just one moment, please, Commissioner. I’m just going to bring it up on my own screen.

On page 4, Ms. Dunderdale, there’s a paragraph – the second paragraph reads, “Now, paragraph (b), is entirely new. It takes the approach and fundamentally adopts the principle that all of the sources of power in the Province and all of the facilities for the production, transmission and distribution of power in the Province are to be used in the public interest. It puts the public interest first.” And he goes on to indicate that it doesn’t exempt any source of power at all, and so on.

And if you can scroll down a bit more, please? Right there.

He went on to explain: “Here is what we are proposing” – can – “be established as the basic power policy for the Province: that all sources and facilities for the production, transmission and distribution of power in the Province should be managed and operated in a manner: One, ‘that would result in the most efficient production, transmission and distribution of power’. They have to operate efficiently. We can’t continue to maintain inefficiencies, because that finds its way back to the ultimate consumer in the rate. So where there are inefficiencies we have to try to weed them out, and that will be a task the PU Board will have to deal with.”

Could we go please then to pages 8 – page 8, please?

In the second paragraph, Premier Wells indicated: “The next couple of clauses are pretty standard. I think they are in the act now.” And then he says, “The next significant thing that I want to comment on is Part 11. Part 11 provides for the planning, allocation, and re-allocation of power and facilities. Section 6 is entirely new and it spells out that the Public Utilities Board will have the authority and the responsibility to ensure that adequate planning is done for future power supply. Each utility, it is contemplated,

would do its planning and would be required to produce to the Public Utilities Board information on its planning and receive directions on planning from the Public Utilities Board. The whole of Section 6 deals with that.”

And, go on then, he went on to say, “Section 7 is entirely new and what it provides is that where any producer or retailer is concerned that it may not be able to generate enough power to meet the anticipated power needs of its customers, and its perspective customers, in the manner required by this act, that is the lowest possible cost power, it may request the Public Utilities Board to conduct an inquiry into that matter. The government could request the PU Board to do it, or the PU Board could do it of its own accord under subsection (3).”

And he goes on to explain about the requirement then to hold a public hearing and so on. So that was the situation as then-Premier Wells explained it in 1994.

If we could go on please to – and I commend, Commissioner, to you, the reading of this in any other parts of *Hansard*, relating to the intent of the government of the day. I express (inaudible) of the government of the day in enacting of legislation.

If we could go please to Exhibit P-01662, which is *Hansard* from March 11, 1994. It’s the next tab, Ms. Dunderdale.

If you go to page 2, and scroll down a bit, please. Right there, thank you.

Now, Ms. Dunderdale, you have in your testimony indicated to the Commissioner that – I think as you phrased it – the House of Assembly, in terms of the debate at times, is not for the faint of heart, I think is the way you put it.

MS. DUNDERDALE: That is true.

MR. COFFEY: Yeah, that is true – yes.

Well, here – and I refer Ms. Dunderdale to this, Commissioner, simply because I’ve brought it up before in dealing with an earlier witness. There, in response to a comment by Ms. Verge, Premier Wells responded: “I can only guess that

this is more of Mr. Abery's asininity. He was at Hydro at the time. If she has solid evidence, put it on the table and let's examine it, otherwise, what we have is solid bunk."

So Ms. Dunderdale, I – this is sort of exchange – at that time, Mr. Abery in fact was a private citizen and a former – had been a former CEO of Hydro. But – I – you know, one – what I was gonna suggest to you is what happened in the House in 2011 and '12 was – whatever exchanges occurred, similar sorts of exchanges have occurred, apparently, back in the '90s involving the privatization of Hydro.

MS. DUNDERDALE: Yes.

MR. COFFEY: Mr. Commissioner, Exhibit P-01663, which is *Hansard* for March 24, 1994.

If you look to pages 2 through 6 of that exhibit – and I'm going to take Ms. Dunderdale through it – you'll see a record of then Premier Wells, talking about an apology to the province concerning what had gone on in relation to the *Electrical Power Control Act, 1994* and its introduction, so – again, that has been referred to in the past in a question I had posed, and that's the actual record of it.

Now, if we could go then, please, to Exhibit P-01664, which would be the next tab, tab 153 –

MS. DUNDERDALE: I have it.

MR. COFFEY: – Ms. Dunderdale.

Go to page 3, please. And scroll down a bit, please. Yes.

There you'll see, Ms. Dunderdale, – and I would just point out, I don't expect you to know this, Ms. Dunderdale, but at that – this point in time, December 11, 1995, the *Electrical Power Control Act, 1994* had been passed and received Royal Assent but had not been proclaimed.

MS. DUNDERDALE: Okay.

MR. COFFEY: Okay. It still wasn't actually in force.

And here Mr. Roberts says: "Mr. Speaker, in accordance with the order of business we

outlined earlier would you be good enough to call Order 31, Bill No. 35, please?

"Motion, second reading of a bill, 'An Act To Amend The Hydro Corporation Act, The Electrical Power Control Act, 1994 and other Acts.'"

And if we could go to page 4, please.

And you'll see there – before you go, you'll see Dr. Gibbons – go back please, one page.

You'll see Dr. Gibbons there, who was the minister responsible –

MS. DUNDERDALE: Yes.

MR. COFFEY: – starts to speak on it: "Thank you, Mr. Speaker." He was the minister of Natural Resources.

And, go down then, please, the next page. Thank you, Madam Clerk. Keep going.

Yes, right there, thank you. Could we stop right there, please.

Ms. Dunderdale, you'll see there, there's an amendment: "The amendment contained in Clause 16 of this bill, regarding the Electrical Power Control Act, would provide that the Lieutenant-Governor in Council may give direction to the Public Utilities Board with respect to the policies and procedures to be implemented by the board with respect to the determination of rates of public utilities."

So this was giving Cabinet the power to direct the PUB, which was not in the legislation as passed initially, okay?

And then, skip ahead, then, please, to Exhibit P-01666.

MS. E. BEST: Commissioner? I wonder – I hate to interrupt Mr. Coffey. I just wonder, if there's going to be a question, if maybe we could give some indication as to the question –

MR. COFFEY: Yeah.

MS. E. BEST: – because there's be quite a lot of lead up, and I'm concerned that we're getting lost in the lead up –

MR. COFFEY: Okay.

MS. E. BEST: – in terms of asking –

MR. COFFEY: I –

MS. E. BEST: – the question.

MR. COFFEY: – appreciate that, and I – if I could take Ms. Dunderdale to this in page 3 –

MS. DUNDERDALE: 01666?

MR. COFFEY: Yes, please. 01666, which is –

THE COMMISSIONER: Tab –

MR. COFFEY: – tab 55.

THE COMMISSIONER: – 55.

MR. COFFEY: One-fifty-five.

And here, at the top of the page, Ms. Dunderdale, you'll see Mr. Grimes, who was then the minister – one of your predecessors. The government is introducing, in the legislature that day – that amends the Electrical Power Control Act and the *Public Utilities Act*.

And this is the – if one looks, one will find that this is the one that provides the exemption power.

Now, were you aware – and I'm not gonna take you all the way through all this because you can look through Exhibits P-01666, P-01667 and P-01668. Were you aware that that exemption in, I believe, it's 5.2 of the act – were you aware that the minister of the day, Mr. Grimes, characterized that as, in effect, legislatively reverting to what had existed back before in 1994? Were you aware that this was viewed as a complete reversal of the 1994 amendment?

MS. DUNDERDALE: I can't say that I –

MR. COFFEY: You weren't –

MS. DUNDERDALE: – was aware of that.

MR. COFFEY: – aware – okay. So just in terms of this, what was your understanding, then, about what – well, you've already described, I believe – you told the Commissioner that your understanding was that Hydro's role was what in relation to electricity in the province?

MS. DUNDERDALE: That they would regulate rates. My understanding –

MR. COFFEY: Yeah.

MS. DUNDERDALE: – was, in terms of generational planning –

MR. COFFEY: Yeah.

MS. DUNDERDALE: – that that responsibility lay with Newfoundland and Labrador Hydro –

MR. COFFEY: Mm-hmm.

MS. DUNDERDALE: – and then Nalcor.

MR. COFFEY: Yes.

And your understanding about that was that dated back to what time?

MS. DUNDERDALE: It was my understanding from the time I went to the ministry.

MR. COFFEY: And how about before that? How about the – in the, like, years and decades before?

MS. DUNDERDALE: Well, I was certainly aware of the attempts to develop the Churchill River by both Premiers Tobin and Premiers – and Premier Grime – Grimes. And that initiative was coming from government in concert with Newfoundland and Labrador Hydro.

MR. COFFEY: Yes.

MS. DUNDERDALE: That it wasn't being driven by the PUB.

MR. COFFEY: Exactly. And it wasn't being driven at all by the PUB.

MS. DUNDERDALE: No. Not to my understanding.

MR. COFFEY: And that was so, despite the fact that – as I’ve taken you to earlier – Premier Wells in 1994 had described how the PUB was its responsibility –

MS. DUNDERDALE: Yes.

MR. COFFEY: – under the legislation to look forward to look to planning for generation needs.

MS. DUNDERDALE: Yes.

MR. COFFEY: Okay? So, despite the fact that it was described in a certain way by Premier Wells, by the time you arrived –

MS. DUNDERDALE: The practice was certainly something different than that.

MR. COFFEY: Different. And the practice matched what you understood Premier Tobin had been doing.

MS. DUNDERDALE: Yes.

MR. COFFEY: Then Premier Grimes.

MS. DUNDERDALE: Yes.

MR. COFFEY: And how about even back before either of them, back in the ’80s?

MS. DUNDERDALE: My understanding of it was that it was always driven by government.

MR. COFFEY: Thank you.

They’re my questions, Commissioner.

Thank you very much.

THE COMMISSIONER: All right, Terry Paddon, Todd Stanley.

MS. VAN DRIEL: No questions, Commissioner.

THE COMMISSIONER: John Hogan – or, sorry, Consumer Advocate, Mr. Hogan.

MR. HOGAN: Good Morning, Ms. Dunderdale.

MS. DUNDERDALE: Good Morning, Mr. Hogan.

MR. HOGAN: John Hogan for the Consumer Advocate, who represents the ratepayers involved at this Inquiry. I’m not going to let you off the hook with the PUB questions we’re at, so we’ll start there.

MS. DUNDERDALE: Sure.

MR. HOGAN: Mr. Coffey was asking you about it.

You did say over the – some point over the course of the last few days that you had done polling about how the public felt about Muskrat Falls.

MS. DUNDERDALE: I – Nalcor had done polling –

MR. HOGAN: Okay.

MS. DUNDERDALE: – with regard to public feeling around what we were doing in terms of Muskrat Falls. We may have done some polling, given the fact that there were a number of elections around that. I can’t speak to that specifically.

MR. HOGAN: Do you – okay, maybe you don’t know the answer to this then. Do you recall if there was any specific polling done regarding whether the public wanted a PUB review or not?

MS. DUNDERDALE: I’m not – I don’t think so. I’m not familiar with it.

MR. HOGAN: Okay.

Do you recall, generally, the feeling that the public had regarding that issue?

MS. DUNDERDALE: I can tell you that my general election – our general election where I was premier –

MR. HOGAN: Mmm.

MS. DUNDERDALE: – was in the fall of 2011 and it wasn’t an issue in the campaign.

MR. HOGAN: Okay, well, I just want to – I actually looked at a copy of your Blue Book. It might not have been an issue people were asking about, but – and this is not an exhibit, but you might recall your 2011 Blue Book, which I think was – the slogan was –

MS. DUNDERDALE: New Energy.

MR. HOGAN: New Energy. Okay.

The section on the Lower Churchill Phase One – Muskrat Falls – I’m just going to read a section into the record. And it says: “To determine that the Muskrat Falls project truly is the least-cost option for providing electricity to Newfoundlanders and Labradorians, two independent reviews of the project were commissioned: one by the Public Utilities Board and the other by Navigant, an internationally respected leader in the energy sector.”

So I just put to you that it was a promise in your book. Do you agree with that? Do you recall that?

MS. DUNDERDALE: Yes –

MR. HOGAN: Okay.

MS. DUNDERDALE: – to put it to a review.

MR. HOGAN: Okay.

And if we just go back, you know, before the election, it was around May of 2011 when that Decision Note from Ministers Marshall and Skinner, about an independent review which then turned into the PUB review – this was only several months before the election and then it was an election promise, okay? And then – then we know what happened after the election. The PUB didn’t happen – the PUB review didn’t happen. Well –

MS. DUNDERDALE: The PUB review happened. It was a limited review on the two critical questions.

MR. HOGAN: Okay.

So my question is that, you know, in your Blue Book you promised that a PUB review would be done. Now, I know it was put to the PUB, but I

would say it’s not a satisfactory decision regarding what was the least-cost option. So having made a campaign promise and, I would suggest, not really delivered on it, what is your comment on that?

MS. DUNDERDALE: I don’t disagree with – I don’t agree with your analysis, Mr. Hogan.

MR. HOGAN: I didn’t think you would. So what part don’t you agree with?

MS. DUNDERDALE: We – there were two critical questions that were fundamental to every piece of work we did on the development of new generation here in the province, or renewed generation: And was it the least cost – did we need the power, first of all, and was it the least cost? They were the two critical questions for people in the province.

And they were – and that’s where the debate was, whether or not – in the early days was whether or not we needed the power at all. And once we passed that again, the debate was around which was the least cost.

And they were the two questions that I put to the PUB – that we put to the PUB as a government – so that that could have an independent review, that this wasn’t about, you know, kingdom building or any of those kinds of things, that these were real questions to which we could get another answer, arm’s length from government.

MR. HOGAN: Which was promised to the voters.

MS. DUNDERDALE: Yes.

MR. HOGAN: But I guess my issue is that that answer never came from the PUB for those two questions.

MS. DUNDERDALE: Well, it came from the expert that the PUB hired to do that work.

MR. HOGAN: Okay, but not from the PUB itself?

MS. DUNDERDALE: No, but –

MR. HOGAN: Do you see that as a failed election promise?

MS. DUNDERDALE: No, I don't.

MR. HOGAN: You don't.

MS. DUNDERDALE: No.

MR. HOGAN: Okay, despite the fact that the PUB actually never said we – this – whether or not it is – power is needed or whether or not option A or option B is the best one.

MS. DUNDERDALE: The expert they hired to determine the significant part of those two questions concurred that it was – we did need the power and it was the least-cost option.

MR. HOGAN: But the expert wasn't what you promised the voters. I'm just – and, you know, I don't want to be too cynical about politics, but there was a change in the decision, a change in approach regarding the PUB leading up to the election, a promise. And then after the election – and you were elected with a healthy majority – that issue and that promise to voters, I would suggest, wasn't fulfilled.

MS. DUNDERDALE: And I can just say to you again that I don't agree.

MR. HOGAN: Okay.

Well, we'll let, obviously, the Commissioner decide on that.

MS. DUNDERDALE: Sure.

MR. HOGAN: Just to follow up on Mr. Coffey's questions to you, I mean I guess he was putting to you whether these hydro issues were exempt or not. But regardless of what the legislation said or what government policy was the decision that your government made was to put it to the PUB.

MS. DUNDERDALE: Yes.

MR. HOGAN: And that was an election promise, correct?

MS. DUNDERDALE: Yes, in 2011.

MR. HOGAN: Yes.

MS. DUNDERDALE: There was never any intention before then to put it to the PUB.

MR. HOGAN: No, there was a specific decision made to put it to the PUB.

MS. DUNDERDALE: That's right.

MR. HOGAN: So sanction was December 2012. There was no financial close on the federal loan guarantee at that point, correct?

MS. DUNDERDALE: That's correct.

MR. HOGAN: The UARB decision had not been filed at that point – sorry, the UARB application had not been filed at that point, correct?

MS. DUNDERDALE: Well, there was – the UARB issue was still being dealt with in Nova Scotia.

MR. HOGAN: Yes, okay.

So my question is what did sanction mean in December 2012?

MS. DUNDERDALE: Well, what sanction meant, as I understood it, was that we were far enough along in our negotiations and –

MR. HOGAN: Negotiations with who? With Canada and –

MS. DUNDERDALE: With Canada and with Nova Scotia and Emera –

MR. HOGAN: Mm-hmm.

MS. DUNDERDALE: – in terms of requirements being met so that we could take full advantage of the loan guarantee. And the requirement from the loan guarantee, as I understood it at the time, required both Nova Scotia and Emera and Newfoundland and Labrador and Nalcor to sanction, and that there'd be an agreement in place if the UARB [sp UARB] didn't conclude. But – and everyone to understand the conditions precedent and understand clearly, between all parties, that they could be met.

And so we – both parties sanctioned and both parties understood it to be a full sanction. And it was only later – I thought it was a little earlier, Mr. Learmonth clarified that it was March – that the federal government came back and said: No, we don't think that Nova Scotia – what Nova Scotia did was a clear, unconditional sanction and it's a conditional sanction. That was certainly news to us. And to the best of my understanding, it was news to Emera and Nova Scotia.

MR. HOGAN: So at – in December 2012, did you think there was no turning back, it was a done deal, sanction meant sanction, this thing is gonna be built?

MS. DUNDERDALE: No, no. I knew that we had to go to financial close –

MR. HOGAN: Right.

MS. DUNDERDALE: – and so something might happen.

MR. HOGAN: Yeah.

MS. DUNDERDALE: But enough work had been done around conditions precedent and enough conversation –

MR. HOGAN: That you were –

MS. DUNDERDALE: – all of those (inaudible) –

MR. HOGAN: – you were comfortable with the risks.

MS. DUNDERDALE: – there was a very high comfort level that we were gonna be able to do this; that there, you know, there wouldn't be anything.

MR. HOGAN: So I guess that means that while there was sanction, it was still – and it might be low risk – but it was still sort of a conditional sanction at that point. Is that fair to say?

MS. DUNDERDALE: Yeah, we never looked at it as –

MR. HOGAN: No, I know that.

MS. DUNDERDALE: – a conditional sanction. And nor did the federal government at the time. It was only after the fact that that raised its head.

MR. HOGAN: And I ask because – I mean, you had said it to Mr. Budden specifically – if the federal loan guarantee hadn't have happened, you would've went back to the drawing board. But that would've –

MS. DUNDERDALE: Personally, that was my personal view.

MR. HOGAN: Mm-hmm.

MS. DUNDERDALE: That wasn't something I tested with Cabinet. And Cabinet may have decided to say goodbye to me and –

MR. HOGAN: Well, that's what I wanna ask. Because you've passed over project control to Nalcor in December 2012 to build the project –

MS. DUNDERDALE: Yes.

MR. HOGAN: – (inaudible) sanction; with risks, minimal or not, still outstanding that something could happen with the UARB and the federal loan guarantee. So money would've been spent for a year until financial close.

So I guess my question is: Would you really have not proceeded with the project, given that you had sanctioned it a year before and spent a year's worth of money and passed control to Nalcor to build it? To me, I find it hard to believe that after a year that that would've happened.

MS. DUNDERDALE: Yes, and my conversation – and that – you know, I can't tell you if something had gone south there because it was – you know, my understanding was the possibility of that happening was so low that that wasn't anything I spent a great deal of time talking – thinking about what would happen if some catastrophic thing arose. That's why when we – when the federal government came back and said, no, you know, the – it's only a conditional sanction, that there was such high stress and tension.

It was a bad week in Confederation Building, let me tell you, when we got that news. But prior to

that and prior to sanction, I wouldn't personally have had a high comfort level with going to sanction if we didn't have the loan guarantee. I would've shared that concern with my Cabinet. My Cabinet might've had a different view and say: Perhaps it's time for you to move on premier because we're gonna do something else. Because we do operate by consensus and I don't have the hammer, one way or the other.

MR. HOGAN: Do you recall Cabinet – that being an issue on the December 6 Cabinet meeting regarding whether the loan guarantee was conditional or whether it was unconditional and there was risks?

MS. DUNDERDALE: Our understanding was that we had full sanction from Newfoundland and Labrador, full sanction from Nova Scotia and Emera and that the federal government was perfectly happy with that; that there was not an issue that we were aware of.

MR. HOGAN: So we're speculating, but if it all falls apart a year down the road, your position was you didn't want to proceed without the federal loan guarantee; your Cabinet may have felt differently.

MS. DUNDERDALE: Yeah, I mean, I would've had to see where we were and so that was a, you know, a different kettle of fish once we got –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – that far down the road. You know, the question that was put to me – if the federal government had said to you we're not gonna provide a federal loan guarantee for this project – you know, we told you we would, we've taken it up, we've had a look at it, and we've decided against it. I mean, that would've been an extremely serious situation for me –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – I have to tell you. And I'm sure that it would've been for the Cabinet as well.

MR. HOGAN: Okay. Thank you.

We can turn to P-01530. I don't know if you're gonna have this or not.

THE COMMISSIONER: What's your number again, I'm sorry?

MR. HOGAN: P-01530. Yeah, it's there at tab 46, volume 2.

Now, I don't – this is a report that the Consumer Advocate, Tom Johnson, had done by Knight Piésold for the PUB hearing.

MS. DUNDERDALE: Yes.

MR. HOGAN: So you recall this?

MS. DUNDERDALE: Yes.

MR. HOGAN: Did you see this?

MS. DUNDERDALE: I don't think I did see it.

MR. HOGAN: You've heard about it though, you –

MS. DUNDERDALE: I was certainly aware of it and I was certainly briefed on it.

MR. HOGAN: Okay. Well, that's what I'll ask you about.

If we could turn to – this is *Hansard*. It's at P-00601, page 8, please.

So, Ms. Dunderdale, this is you speaking here. I'll just read out a sentence at the end.

It says: "A recommendation that had already been endorsed by Navigant, by Manitoba Hydro, by the Consumer Advocate Mr. Johnson and his expert Knight Piésold, and Dr. Wade Locke."

So the question is, which I think you started answering, is: Had you seen it, and had you read the report?

MS. DUNDERDALE: I would certainly have been briefed on the report.

MR. HOGAN: Okay. And who would've –

MS. DUNDERDALE: But –

MR. HOGAN: – briefed you on that report?

MS. DUNDERDALE: The clerk and the minister, likely.

MR. HOGAN: Minister Kennedy?

MS. DUNDERDALE: Yes.

MR. HOGAN: Okay.

Because that report was never filed with the PUB – do you – are you aware of that?

MS. DUNDERDALE: Yes, I know that.

MR. HOGAN: Okay. And are you aware why it wasn't filed with the PUB?

MS. DUNDERDALE: I may have known at the time. I don't know. I do – in preparation for the Inquiry, I did read some pieces about it: that there was – the Consumer Advocate was advised that the report could inform him and he would make his –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – presentation –

MR. HOGAN: There was a letter –

MS. DUNDERDALE: – to the PUB.

MR. HOGAN: – from Minister Kennedy –

MS. DUNDERDALE: Yes.

MR. HOGAN: – with guidelines.

MS. DUNDERDALE: Yes.

MR. HOGAN: And I asked Mr. Kennedy about it, and it says – he could use a report to – yeah – to inform him. I asked Mr. Kennedy: Could that be interpreted to mean to not file it? And he agreed that that could be an interpretation.

So do you recall any discussions specifically about let's not let the PUB expert – or not let the Consumer Advocate file his report?

MS. DUNDERDALE: None.

MR. HOGAN: You don't recall that?

MS. DUNDERDALE: No.

MR. HOGAN: Okay.

Because there's information in there that I went through with Mr. Martin that I think is relevant, and so I'm wondering, you know, who read it and why it wasn't filed.

MS. DUNDERDALE: I can't speak to it, Mr. Hogan. I don't know.

MR. HOGAN: Okay.

MS. DUNDERDALE: And, you know, and I have to say again, Commissioner, from my own perspective, whatever the viewpoint was, it needed to be examined. So if there were things in there that weren't supportive or should've had examination by the PUB, I wouldn't have tried to shut down information being made available to anybody –

MR. HOGAN: But –

MS. DUNDERDALE: – who was doing a review or to the public.

MR. HOGAN: Okay.

Well, it wasn't filed and the public has never seen it until this Inquiry. And I will say that I don't think Mr. Johnson actually says: I adopt the opinion of Knight Piésold. So I don't think your statement, necessarily, here is accurate.

There are issues, just to point out a few, that are raised by Knight Piésold regarding the – whether the Isolated Option was studied enough, whether other hydro options around this province could've been studied in more detail to find capacity, whether enough conservation demand management was applied enough. So those are all issues that were in that report and not disclosed to the public.

MS. DUNDERDALE: Yes, but the Consumer Advocate would've been very familiar with them, would've put his own analysis to it, certainly, and still to – felt comfortable in endorsing the decision.

MR. HOGAN: Okay. So you're – I mean you were – I guess you're aware of Mr. Johnson's position regarding the endorsement of the Interconnected Option. You relied on Mr. Johnson's report in making this statement in *Hansard*.

MS. DUNDERDALE: No, you know, I would've been briefed on – you know, but the Consumer Advocate's office, is what I'm saying –

MR. HOGAN: Mm-hmm.

MS. DUNDERDALE: – supported the decision to develop Muskrat Falls.

MR. HOGAN: Okay.

MS. DUNDERDALE: So, you know, there's not much I can do with that, Mr. Hogan.

MR. HOGAN: No.

MS. DUNDERDALE: You know, it is what it is, and that to me, again, was reassuring.

You know, here's somebody arm's length from Nalcor, arm's length from government, getting an independent report, even though I understood that it was high level, but whatever else was going on with it, or the interaction between Minister Kennedy and Mr. Johnson and so on, Mr. Johnson felt comfortable enough in his independent position to make a statement with regard to it.

MR. HOGAN: Okay. So just to finalize, though, I mean you never read that report and you don't recall any specific briefings on that report.

MS. DUNDERDALE: Yes, I do. I –

MR. HOGAN: Okay. And do you recall any issues regarding other items that should've been examined further that came –

MS. DUNDERDALE: Well –

MR. HOGAN: – from that report?

MS. DUNDERDALE: – I can't give you verbatim or what happened. I can tell you that I

was aware that Knight Piésold had done a high level report, that everything – but none of the reports we got were without recommendation or calling for further study of elements of it.

MR. HOGAN: Okay.

MS. DUNDERDALE: But overall supported the project and so did the Consumer Advocate's office.

MR. HOGAN: And you would've been briefed by either Mr. Kennedy and/or Mr. Thompson?

MS. DUNDERDALE: Certainly, they – they're the two people that would come to my mind who would deal with this kind of – you know, because I wouldn't have access to it if my officials didn't bring it to me.

MR. HOGAN: No, okay.

Yesterday, you were asked why you didn't approach Newfoundland Power, you recall that? And you said, well, in lots of meetings where they could've approached you?

MS. DUNDERDALE: Yes, they, you know, I –

MR. HOGAN: I can't remember the gentleman's name, you said you had a good relationship with him?

MS. DUNDERDALE: Mr. Ludlow –

MR. HOGAN: Yes.

MS. DUNDERDALE: – was the CEO of Newfoundland Power at the time.

MR. HOGAN: And you said –

MS. DUNDERDALE: And I can tell you quite frankly, I wouldn't have known at the time whether or not Mr. Martin or Mr. Ludlow were having conversation; the two companies were talking to one another and so on.

I'm just saying that if – all I said yesterday was that if Newfoundland and Labrador power had issues around what the government was doing in this power generation issue around Muskrat Falls, we would've welcomed their view.

MR. HOGAN: But my question is why, you know, why didn't you solicit their opinion? Why did you put it on them to come to you?

MS. DUNDERDALE: I wasn't sure that their – I – it never crossed my mind –

MR. HOGAN: It never crossed your mind.

MS. DUNDERDALE: – that they wouldn't be talking to Nalcor.

MR. HOGAN: Okay. So you –

MS. DUNDERDALE: They have a good working relationship, were close to one another. You know, I have – I see – Mr. Ludlow and I have a great deal of respect for each other. We see each other. We talk about the work of the utilities and so on.

These things are all happening on a fairly regular basis. It's not every day or every month, but we're seeing – and he certainly would've felt very comfortable saying to me: I need to have a talk with you about this or can we come in and make a presentation to government or our opinion is not being sought or Nalcor is shutting us out.

MR. HOGAN: But you would have assumed there was talks going on between Nalcor –

MS. DUNDERDALE: Yes, absolutely. Because I knew they had a very good working relationship and there was mutual respect between the two CEOs.

MR. HOGAN: But that's an assumption. There's no confirmation of that? You don't –

MS. DUNDERDALE: No.

MR. HOGAN: Yeah, okay.

So, again, you know, one of the two questions that was being asked was: Do we need the power? The question I have is: How much power did we need? Do you know the answer to that?

MS. DUNDERDALE: Well, I can't recall it now.

MR. HOGAN: Okay. Certainly, we didn't need –

MS. DUNDERDALE: But 40 per cent –

MR. HOGAN: – 40 per cent, right?

MS. DUNDERDALE: – of 824 megawatts.

MR. HOGAN: Exactly. Okay. So, I mean, basically, I'm wondering – and my question is: Did we overbuild? I mean, why did we build 824 megawatts when we only need 40 per cent of that?

MS. DUNDERDALE: Because we could build 824 megawatts cheaper than we could build exactly what was required.

MR. HOGAN: Okay. I've talked to this about – talked about this with Mr. Martin. Normal utility practice, from what I understand, is to build as needed. And it gives us flexibility then to see where demand is going, to see where oil prices are going, et cetera, et cetera. Once we build Muskrat Falls, we're locked into that. For better or for worse.

Was that issue ever explored by you with Nalcor? Did you ever talk to Nalcor about that possibility or those risks?

MS. DUNDERDALE: Well, we couldn't build half of Muskrat Falls.

MR. HOGAN: No, you – that's the issue, right?

MS. DUNDERDALE: But if we could build all of Muskrat Falls and we could do it \$2.4 billion cheaper than we could build the next least-cost generation then that makes sense to do it.

MR. HOGAN: But why do the – if you had just done Gull Island for export purposes, the ratepayers wouldn't pay for that, would they?

MS. DUNDERDALE: No. If we had exported, no. And – no. And it was going to be a policy decision at the end of the day. Once the project was built and in-service, there were significant benefits to the shareholder in the business plan. We were briefed that there were \$22 billion worth of benefits to come back to the shareholder.

MR. HOGAN: For Muskrat?

MS. DUNDERDALE: For Muskrat, plus the 40 per cent of power which hadn't been monetized.

MR. HOGAN: Again, my – the issue that I have is or the question I have is, you know, if you build an export project it's the taxpayers' decision to do that?

MS. DUNDERDALE: Yes.

MR. HOGAN: Taxpayer will fund it and if you make money great; 60 per cent of this project is not for the ratepayer. So why does the ratepayer – why is everybody now on the hook for 60 per cent of the project that it doesn't need?

MS. DUNDERDALE: Well, we could've built the Isolated Option, charge them \$2.4 billion more, put \$2.4 billion more burden on the ratepayers. That doesn't make any kind of sense to me when you can do it more cheaply in another way and that you're not – and you're not trying to make your case using water rentals, return on equity or any of these kinds of things. You're making your case on the straight delivery of power and the cost of that to ratepayers in the province.

The plus of having the 40 per cent of the power and the other benefits is that you can now monetize that power and the benefit will go to the people of the province, one way or the other, but one of the ways it might go to the people of the province is to reduce rates.

MR. HOGAN: But why not just have the ratepayers pay the 40 per cent?

MS. DUNDERDALE: Well, they did pay the 40 per cent.

MR. HOGAN: Well, they pay 100 per cent?

MS. DUNDERDALE: Yes, but again you can't – we couldn't build half the project and to keep the CPW analysis somewhat conservative and balanced, so that you could get a full examination of the Island Option, if we had monetized that power. I mean it would have skewed the CPW to such a large degree that, you know, there wouldn't have been much point doing much other consideration.

MR. HOGAN: And that's an if. I mean, we've been through this for several witness, the if hasn't been fulfilled, has it? There is no export contracts in place to monetize that 60 per cent.

MS. DUNDERDALE: No, and that's why we didn't include it in the (inaudible). There's a contract in place on the non-firm power and there's an opportunity to enable development in Labrador and bring a benefit to the people of Labrador, which is significant and then a general benefit to the people of the whole province in terms of what's available in return.

MR. HOGAN: So those are all great benefits, but you've been asked a lot about public policy, and the policy that needs to be followed is in the Electrical Power Control Act. The policy is to provide the lowest possible cost to the ratepayers. There's no policy dealing with mines in Labrador, no policy dealing with jobs in the province, no policy to deal with the economics or the economy that's –

MS. DUNDERDALE: That's right.

MR. HOGAN: The focus is supposed to be on the lowest possible cost.

MS. DUNDERDALE: And that's why we didn't include it in the CPW analysis.

MR. HOGAN: But – like, you're doing a 50-year project –

MS. DUNDERDALE: Yes.

MR. HOGAN: – to determine the lowest possible cost.

MS. DUNDERDALE: Yes.

MR. HOGAN: I'm just going to take you to NRCan's report at P-00054, please?

THE COMMISSIONER: That's at tab 56, book 2.

MR. HOGAN: Sorry. Page 25. Scroll down to the fourth paragraph, please?

MS. DUNDERDALE: Can I have the tab again, please, Mr. –?

THE COMMISSIONER: Tab 56.

MS. DUNDERDALE: Thank you.

MR. HOGAN: Keep scrolling a little bit, please?

So, I mean, I understand the argument that it was cheaper to do this over a 50-year analysis. The issue that has been put forward is that it's not the way utilities are done, there's no 50-year number in the Electrical Power Control Act. The point is to deliver the lowest possible cost. One way to make sure that's done is to only build as needed – not to overbuild. And we've lost all our flexibility now; if demand either stays flat or goes down, we've overbuilt by even more.

So I'm just going to read this out because I think it's relevant to the point I'm trying to make, and it's a report you said you've relied on. "NRCan examined the impact on the two options under the scenario that demand growth remains flat after the coming on-stream of the Vale smelter. Under this no growth scenario, the CPW of the Isolated Island option is ... \$800 million less than the Interconnected Island alternative."

So even that one input change were \$800-million cheaper – "two reasons for this result. The first is that lower demand means that less capacity is needed. In the Isolated Island case, it means that a 170 MW combined-cycle combustion turbine is not built – thereby saving its capital and associated operating costs. The second reason is that operating costs for the system as a whole are less in the Isolated Island because generation is directly tied to burning fossil fuels – less generation means less fuel which means lower operating costs."

And then just one more paragraph on the next page. "For the Interconnected Island, operating costs are virtually insignificant and the major capital cost is incurred up front with the building of the hydroelectric station and the transmission facilities. There is no way to reduce costs in the face of unexpected lack of demand growth under this option – they are sunk costs at that stage." So you follow that logic – do you agree with that logic, or do you disagree with that logic?

MS. DUNDERDALE: If you're gonna assume that nothing is going to happen in the province –

MR. HOGAN: Well, something is gonna happen in the province. The population is either going to go up or go down, right? So, regardless of what happens now, we've sunk our costs. It's a sunk cost.

MS. DUNDERDALE: And there were good reasons for doing that, you know, and we have to take into account the whole province when – and the major demand was here on the Island at the time, but we had, for example, demand for more power in the existing mines in Labrador; we had about 12 – eight to 12 different mines in various stages of development in Labrador, all needing power and not being able to move ahead if they didn't have power.

Plus, because of investments that we had made in seismic in the offshore, prospectivity had risen significantly, and the potential of four new fields was there for us for development.

So we're trying to build a future for the people of the province that is gonna be reliant on natural resources –

MR. HOGAN: Mm-hmm.

MS. DUNDERDALE: – to drive the economy.

And given all of that expectation, we needed to include in our planning the ability to advance all of that. And that was a hidden benefit, almost, to the Muskrat Falls piece –

MR. HOGAN: I understand all that –

MS. DUNDERDALE: – once the decision was made, because once – you know, we were able to meet the needs of citizens and ratepayers on the Island with least cost, but in doing that we were also able to make room for further demand if it was required. And it looked like it was gonna be required here on the Island and in Labrador.

MR. HOGAN: So I'll leave it after this, but I mean, I understand – I mean, it's a projection, right? You didn't know demand was gonna go up; you projected it to go up. Correct?

MS. DUNDERDALE: Yes.

MR. HOGAN: But we have – do you agree that we did lose the flexibility for issues like CDM now, because we – if demand doesn't go up, we have overbuilt.

MS. DUNDERDALE: I don't agree with that.

MR. HOGAN: Why not?

MS. DUNDERDALE: Because I –

MR. HOGAN: So do you disagree NRCan in that – those couple paragraphs?

MS. DUNDERDALE: Because I think the future for Newfoundland and Labrador – I believe the future for – the opportunity for us here to grow the economy is so much greater than anything that's acknowledged in this report.

And – but, you know, the bottom line, though, Mr. Hogan, is this: Regardless of all of that, if the Isolated Island case had been the least cost, regardless of what opportunity might be in Labrador, or what opportunity may have lay offshore, that would have been the decision that would have been taken.

MR. HOGAN: I guess the final point is that it was – it's the least cost, with your analysis, compared to a 50-year project? I mean, there's no analysis done on a 20-year project or any – I mean, it had to be compared to a 50-year project because this dam is permanent, right?

MS. DUNDERDALE: Yes, but any infrastructure we would have built – you certainly wouldn't have built a Holyrood for 20 years or, you know, other hydro projects even on the Island for 20 years.

MR. HOGAN: No, but you were building incrementally –

MS. DUNDERDALE: You had to have a longer view.

MR. HOGAN: – as needed? So there's never a risk of over spending on the Isolated Option. Do you agree with that?

MS. DUNDERDALE: I'm not sure if that's true.

MR. HOGAN: Why not?

MS. DUNDERDALE: Well, because projects have overruns. And so –

MR. HOGAN: In terms of demand, I mean, not price.

MS. DUNDERDALE: Maybe not because of demand, but I'm not even sure that's true. You know, in terms of what was happening here at the time, in terms of the growth our economy and the demand that was growing here in the province in terms of people converting from oil to electricity in their homes to all the technology.

I remember being mocked in the House of Assembly when I was asked, you know, what was driving this demand for electricity in the – you know, one of the things I said was big-screen TVs, for example. And they do. They consume enormous amounts of electricity, and people have several in their homes, and so technology and everything was changing how we use power and our demand on power.

And based on the best information we had at the time and what was the least-cost alternative, for me, it was never an issue of Muskrat Falls has to be the choice. Because my view was that Muskrat Falls, Commissioner, if it were sensible and practical and could bring a return to the people of the province, was going to be developed when the opportunity arose somewhere down the road. You didn't need to do it for this – and we couldn't do it for this case, unless it was the least-cost option.

So if Isolated was the least-cost option, I certainly didn't have any problem whatsoever with that.

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

Now, you did know – I'm just going to go back to the P-factors – that P50 meant 50 per cent chance of over, 50 per cent chance of under budget. Did you ever ask, well, what is the cost for a P60 or P70 or P80 – just to sort of give you some more security – say, listen, let's make sure we don't go over, what would a P70 be or a 75 be.

MS. DUNDERDALE: I really can't remember those conversations. I mean, we talked about cost all the time. We talked about the final number and what did we have to do to be as precise as we could possibly be –

MR. HOGAN: And let's assume that that –

MS. DUNDERDALE: – about that base –

MR. HOGAN: I mean, you were –

MS. DUNDERDALE: No.

MR. HOGAN: You were obviously very comfortable that, at P50, that number was precise?

MS. DUNDERDALE: I was –

MR. HOGAN: But you did –

MS. DUNDERDALE: I was told –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – that that was a solid number, that risk had been mitigated, that engineering had been done, that, you know, all the pieces of work we did around productivity, around labour supply, schedule risk, you know, I understood that about half-billion dollars' worth of risk had been taken off the table before we went to sanction –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – with all of those early works. And, you know, as you've heard from the people who, you know, who I work with around this piece, that getting that firm, strong number – whatever it was – that's what we had to deal with. And then the industry standard was what I was told –

MR. HOGAN: Okay.

MS. DUNDERDALE: – at that point in time was to apply a P50.

MR. HOGAN: So you never asked about what the other number would be for P75?

MS. DUNDERDALE: Well, I –

MR. HOGAN: And you were told it was P50, that's –

MS. DUNDERDALE: That was it and I accepted that. You know, I wouldn't have been able to argue with it in the first place, Mr. Hogan. I wouldn't –

MR. HOGAN: So you wouldn't know what the difference is in the CPW for the P75 numbers, if P75 was used for both options?

MS. DUNDERDALE: Well, yes, I – you know, now I know to call it –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – P75.

MR. HOGAN: Yeah.

MS. DUNDERDALE: Commissioner, at the time I would have – we would've talked about what if we monetize the power? What if we use the expected price of oil rather than the reference number? What happens if we include the cost of carbon because –?

MR. HOGAN: That's not going to affect the P-factor number, right?

MS. DUNDERDALE: No, but in the CPW it affects the cost, the overall cost, because you're trying to determine what's the least cost of these two projects.

MR. HOGAN: I just – if I can just bring up P-00135, please.

THE COMMISSIONER: Okay, that one's not in your book.

MR. HOGAN: Page 43. This is Grant Thornton's presentation that they made after they did their report.

MS. DUNDERDALE: Yes.

MR. HOGAN: And Mr. Martin said you had to do P50 for – if you're doing it for one, you do it for the other. So if you want to use P75, you do it for Isolated, you do it for Interconnected.

Page 43, please. So I don't know what the different P50s and P75s are for the Isolated option, but I do know that if Nalcor selected a P75 for the Interconnected, it would have been \$1.3 billion higher. So you weren't aware of that number at the time, I assume, back in 2012?

MS. DUNDERDALE: Had Nalcor selected P75 for –

MR. HOGAN: The Interconnected option as opposed to the P50.

MS. DUNDERDALE: Yes, the cost estimate would have been 1.3 billion higher.

MR. HOGAN: Yes. So not 6.2, Nalcor would have said to you it's 7.5.

MS. DUNDERDALE: Yes, but what would Isolated have been?

MR. HOGAN: I don't know.

MS. DUNDERDALE: Well, that – but that's the critical question –

MR. HOGAN: Well there's two questions.

MS. DUNDERDALE: – when you're doing CPW.

MR. HOGAN: There's two questions. You wouldn't have been aware of this number back in 2012, would you?

MS. DUNDERDALE: I certainly would have been because we would've been asking the question as to why you weren't monetizing the extra power –

MR. HOGAN: But just –

MS. DUNDERDALE: – the 40 per cent of the power.

MR. HOGAN: – would you – were you aware in 2012 that a P75 would've been \$7.5 billion?

MS. DUNDERDALE: I might've been. I can't say to it now because those kinds of questions were being asked.

MR. HOGAN: Mm-hmm.

And you certainly don't know what the P75 for the Isolated Option would be, do you?

MS. DUNDERDALE: No, but I knew that we would – I knew then we had to go with the expected.

So those numbers would've been thrown out, Commissioner, and would've been talked about, but I – you know, that's too far down the road and too weak a memory for me now to be able to recall exactly what they were. But they were certainly discussed and some value was assigned to them.

MR. HOGAN: Well, Mr. Martin said to you that there'd be – overrun risks would be about \$500 million.

MS. DUNDERDALE: Well, it was a casual conversation in a meeting after – you know, I don't where – I can't tell you if we were all at the table when I asked the question, or it was an aside when we were getting a cup of coffee or whatever, but I wanted to know –

MR. HOGAN: Worst-case scenario.

MS. DUNDERDALE: – worst-case scenario, you know, are we –

MR. HOGAN: Who was involved in the casual conversation, besides you and Mr. Martin?

MS. DUNDERDALE: I don't know. I – it may have been just the two of us because I would've want to know – I would've wanted to know.

MR. HOGAN: So it was never provided in writing. There's nothing to document that.

MS. DUNDERDALE: No.

MR. HOGAN: Okay.

MS. DUNDERDALE: No, but I can tell you I asked the question and that was the answer.

MR. HOGAN: Well –

MS. DUNDERDALE: Somewhere around – it could've been three or four. And there was, you know, three, four, not greater than five.

MR. HOGAN: So the number 6.2 was what was disclosed to the public, the number 7.4 is interest during construction. Do you remember that number?

MS. DUNDERDALE: Yes.

MR. HOGAN: Just – what was your tendency to tell the public: 6.2 or 7.4?

MS. DUNDERDALE: We used both numbers. And if you check *Hansard* you'll find them.

MR. HOGAN: Okay.

Why wasn't the extra \$500 million communicated to the public? I know it was a casual conversation, but you were aware that the risk –

MS. DUNDERDALE: We –

MR. HOGAN: – of overruns was about half a billion.

MS. DUNDERDALE: Yeah, because we had a solid number. And I'm having a casual conversation with him, that's because I want something in my own head.

You know, this is a huge responsibility, Commissioner. Like, you know, you've stepped up to plate – up to the plate, to take on the responsibility to make these kinds of decisions, but this is big.

MR. HOGAN: And I understand that.

MS. DUNDERDALE: And if somebody wanted to take this cup from you, that would be great.

MR. HOGAN: If it's – I mean, being such a big responsibility, you know, I would –

MS. DUNDERDALE: So –

MR. HOGAN: – think you would want to say, Mr. Martin: How much? Worst-case scenario, write it down, tell me how you got there –

MS. DUNDERDALE: But –

MR. HOGAN: – and I'm going to take that number and go to the public.

MS. DUNDERDALE: And that's exactly what I did on – and in this side conversation, because I'm saying now, you know, let's be sensible here. You know, this may – you know, this is going to be a perfect world if this turns out in terms of the two options that are being laid out so, you know, are we in good territory here?

But, you know, when we go out and announce a hospital for \$700 million and we don't say and we might have an overrun of \$100 million, there's no project ever in the history of this province ever been announced in that way. And there have been lots of projects that have had overruns, but that's not how you do an announcement. You go in, you give your best estimate, you put your contingent risk or strategic risk, we would call it now, whatever type of risk that you got – you put it in the number and you put it out to the people; here it is.

MR. HOGAN: So what was Mr. Martin's understanding when – in terms of funding: Because, you know, we got 6.2, we have 7.4, we have an extra 500 million, you know, what was the mandate to Nalcor to say: This is what you can spend or this is what the budget is going to be?

MS. DUNDERDALE: For me –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – the budget is going to be 6.2 and we're going to hold you to 6.2.

MR. HOGAN: How were you going to hold them to 6.2?

MS. DUNDERDALE: Well, in terms of oversight and so on. The pressure is going to be on you to bring this project in at 6.2. What I need to know in the back of my head, though, is if it goes to 6.4 or 6.5 or 6.7, is there enough return in the business plan for Muskrat Falls that we can cover that off –

MR. HOGAN: Return coming from where?

MS. DUNDERDALE: From the extra per cent of the power, return on equity, water rentals, the \$22 million that I talked to you about. You know, is there somewhere in there that I can draw on funds or government can draw on funds to pay that overrun without bringing it to bear on ratepayers? Because what I've said to ratepayers is: Here's the project, this is what it's going to cost. And we've shared information with people in the province about what they can expect in terms of their rates.

So, you know, if it's not going to be what we've told the people of the province for something that we – you know, that we can't predict or it hasn't been considered, or despite all the oversight there's a flaw here –

MR. HOGAN: Well, I mean, something happened.

MS. DUNDERDALE: Something happened. Something definitely happened.

MR. HOGAN: So you were going to hold Mr. Martin to 6.2 which, obviously, he wasn't held to because we're at 12.7, you know. And there was a plan – you're saying there was a plan to make sure the public was protected, but really all the – what the public got was an order-in-council saying that the ratepayers are going to pay for all this and it didn't say they were going to pay for 6.2. It says they're going to pay for all of it. So, I guess, I'm missing something in those steps. What am I missing?

MS. DUNDERDALE: What we – what you're missing is the 22 billion and the 40 per cent non-monetized power.

MR. HOGAN: Which is still non-monetized. There's no export contracts.

MS. DUNDERDALE: No, but the 22 billion will be there and without a doubt a significant portion of that – if the government of the day decides –

MR. HOGAN: Right.

MS. DUNDERDALE: – can be applied so that ratepayers –

MR. HOGAN: Where's – the 22 billion though, I – why did you leave it to the government of the day to decide if you knew that that was at risk of overruns?

MS. DUNDERDALE: I –

MR. HOGAN: I know you talked about this the yesterday.

MS. DUNDERDALE: Yeah. And it wasn't very political of me according to my Cabinet because there was significant pressure to say that any monies that were realized would be applied to rates. And my position, right or wrong, and it might not have been very politically astute 'cause I certainly knew that I wasn't going to be around –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – when this came in to service. That, you know, if power rates were fairly equal, for example, across Atlantic Canada, we were down in the lower numbers, you know, playing – paying equivalent rates to Nova Scotia and New Brunswick and so on and wasn't heavily burdensome to the people of the province. Maybe the government of the day would want to do a new hospital or new schools; depends on what the need was.

It was all for the people of the province and my position was that, you know, I couldn't hold a new government to that. They could make up their own minds about it. And so it would have been somewhat dishonest in some ways to say this is where this is going. And so –

MR. HOGAN: Government has the, I mean –

MS. DUNDERDALE: And perhaps I should have said –

MR. HOGAN: Well, I know you don't know, we don't know what happened but the government has the opposite problem now. Rather than decide how to mitigate the rates with the 22 million, I mean, it's a huge financial mess that has to be dealt with now by this government. Right?

MS. DUNDERDALE: Well, I still believe they have the means to do that within the business

plan. We're at \$10.1 billion now is my understanding but I understand that the \$22 billion is still available and the 40 per cent of the power is still available, and how the government decides to apply that, you know, could go a long ways in mitigating rates.

MR. HOGAN: So, the final question on this is that I don't know how the government legally can mitigate the rates 'cause the order-in-council says that all the money has – for the project, which I assume is the 12.7 – has to come from ratepayers.

MS. DUNDERDALE: Yes.

MR. HOGAN: So, ratepayers are locked in. How do – and, you know, the Government of Canada has a guarantee, and this is part of the guarantee. We wouldn't have the guarantee without locking the ratepayers in so how do we get around that circle if the ratepayers have to pay for everything, which means they have to pay for rates? We need that to get the guarantee. So how do we get out of that circle? How does the government do that now? That order-in-council –

MS. DUNDERDALE: But –

MR. HOGAN: – is needed to make sure the guarantee is in place.

MS. DUNDERDALE: Well, one example I could offer is that maybe the government won't take the return on equity.

MR. HOGAN: Okay.

MS. DUNDERDALE: So that doesn't come out of ratepayers' pockets. That's one thing they could do.

MR. HOGAN: But that order-in-council can't be changed, can it?

MS. DUNDERDALE: I can't speak to the legality of that, Mr. Hogan. I'm not familiar enough with it. Governments can do a lot.

MR. HOGAN: Just – there – I think there's a little bit of a difference in what you say about the federal loan guarantee and maybe what others have said. The questions were always: Do

we need the power? What's the least-cost option? That's the business case. Mr. Kennedy – I don't know, he probably said it 100 times when he was here.

And Mr. Martin had always said: It was okay to spill the water, which would mean there's no Maritime Link, which would mean there's no federal loan guarantee.

Now, your position is you wanted the federal loan guarantee. But that – those were not – I mean, the issues were not put to the – the questions were not put to the public: Do we need the power? What's the least-cost option? Will we get the federal loan guarantee?

MS. DUNDERDALE: All of those – all of that – there has never been a development in this province that has had the scrutiny and discussion, public debate that this project has had.

MR. HOGAN: Just want to get your answer why there's a difference of position on the need for the federal loan guarantee. Whereas I would suggest Mr. Martin and Mr. Kennedy said it wasn't necessary.

MS. DUNDERDALE: And the board said it wasn't.

MR. HOGAN: Yeah. He – I asked the question, actually. He sat right there and told me he would've proceeded without the federal loan guarantee.

MS. DUNDERDALE: But he would've had to get to sanction from government.

I'm telling you what my position was. I'm not saying that everybody else held the same position. Perhaps my Cabinet would have even had a different position. But it's where I was. Especially, you know, when the amount of scrutiny was going on.

We had our officials going back and forth to Ottawa for months negotiating the loan guarantee and going through the numbers and so on.

So it would have even been a bigger issue than not having the billion dollars. A billion dollars is

significant, you know. And I paid a big price for that billion dollars, for standing on that stage for five minutes with the prime minister. You know, politically. You know, I had to wear that right to the day that I left.

But, you know, if the federal government, after reviewing the business plan and so on, came back and said, no, we're not gonna give you the loan guarantee, that would have caused me a lot of consternation.

MR. HOGAN: Okay. It's just different than what others have said.

MS. DUNDERDALE: No question, and I'm –

MR. HOGAN: Okay.

MS. DUNDERDALE: – not saying that they should feel any differently or would do any –

MR. HOGAN: No.

MS. DUNDERDALE: – or they were required to do. They definitely did have a different view.

MR. HOGAN: So, if we could just look at P-01244. It's at tab –

THE COMMISSIONER: At tab 78?

MR. HOGAN: Tab 78, book 2.

THE COMMISSIONER: Same book.

MR. HOGAN: I'll just take a second. I just want to correct the record. I think you said, too, after you stood on the stage, Harper did win a seat here after that in the next election, right? He won a seat in Labrador?

MS. DUNDERDALE: I don't think he won that one.

MR. HOGAN: He –

MS. DUNDERDALE: 2011?

MR. HOGAN: Didn't Mr. –

MS. DUNDERDALE: Did he?

MR. HOGAN: – Penashue won a seat in Labrador? Became a Cabinet minister?

MS. DUNDERDALE: Oh, he may have. I'm not sure if he had the seat and lost it in that election.

MR. HOGAN: Okay.

MS. DUNDERDALE: I'm not sure. I can't debate it with you now. He may have lost the seat that time, I'm not sure.

MR. HOGAN: Okay. Easy to look up.

MS. DUNDERDALE: Yes.

MR. HOGAN: If we could look at page 2, please?

Sorry, just go back to page 1, just – I don't know, did you see that Ms. Dunderdale? Just to give you some context. It's an email with Robert Thompson and Mr. Kennedy.

MS. DUNDERDALE: Yes.

MR. HOGAN: If we can do down to page 2, please? I think – just go back up again. I think you're addressed on this.

MS. DUNDERDALE: Yes, I am.

MR. HOGAN: Okay, so we'll –

MS. DUNDERDALE: KMD.

MR. HOGAN: – go back down?

MS. DUNDERDALE: Yeah.

MR. HOGAN: Sorry.

I just want to look at number – the second number 2: “that we are satisfied with the probability that the ... loan guarantee will proceed as promised (this is an issue because the guarantee is becoming fundamentally necessary to maintain the \$2B CPW difference).”

So, Mr. Budden suggested to you yesterday is that regardless of the federal loan guarantee, there would still be over a billion dollar difference between the two options. So,

financially – or sorry – analytically, it didn't really matter in making a decision between the two choices.

MS. DUNDERDALE: That's true.

MR. HOGAN: But now I'm wondering is why is the CPW gap closing at this stage? What's causing the gap to narrow?

MS. DUNDERDALE: I don't remember.

MR. HOGAN: Okay. Do you recall this email? No.

Was –

MS. DUNDERDALE: It's too –

MR. HOGAN: – there any talk about – I mean, I'm wondering, if the gap is narrowing before sanction, I mean, is this the first sign that possibly there might be overruns in sight?

MS. DUNDERDALE: Not that I was aware.

MR. HOGAN: I mean, the only way the gap would be closing would have to be either further engineering, money being spent.

MS. DUNDERDALE: Or –

MR. HOGAN: Nothing changing (inaudible).

MS. DUNDERDALE: – change in price of oil or something. I have no idea.

MR. HOGAN: Yeah, but there's no follow-up on this to say: Hold on now, if the gap is closing, is –

MS. DUNDERDALE: Yeah, but this is not the only way we communicate.

MR. HOGAN: No. Do you recall any of those conversations?

MS. DUNDERDALE: Robert is two doors down from me and Brian is next door. So, you know, we would have a conversation. But, if – you know, it's a long time ago.

MR. HOGAN: Do you recall anything about the gap closing?

MS. DUNDERDALE: No, not right now as you ask me the question. No, I don't.

MR. HOGAN: Okay.

Was the federal loan guarantee more of an issue for you in 2012 as opposed to 2010 because of the fiscal situation of the province?

MS. DUNDERDALE: When I took over in 2010, we didn't know if we were going to get a loan guarantee. The possibility of the loan guarantee was slim, and so that was a piece of work that I had to take on with the prime minister. So it was a whole new approach and conversation and so on. And I wasn't sure at all that that would happen, and I'm not sure that it would have happened if it hadn't been because of the politics in the country in 2011.

MR. HOGAN: But in 2012, I mean, was it – it's the first we're hearing that this was sort of you needed this, right, to sanction it.

MS. DUNDERDALE: Yeah.

MR. HOGAN: I'm wondering is – you know, it's a big capital expenditure upfront, the Interconnected Option.

MS. DUNDERDALE: Yeah.

MR. HOGAN: I mean, would – did the fiscal situation of the province change dramatically over the course of those two years that the federal loan guarantee became more necessary because you needed that billion dollars?

MS. DUNDERDALE: Yeah.

MR. HOGAN: It did?

MS. DUNDERDALE: It may have. I can't speak to it because I don't recall this.

MR. HOGAN: Well, you think –

MS. DUNDERDALE: But I was responding –

MR. HOGAN: – about where you were as a premier in 2012 –

MS. DUNDERDALE: – yes to the fact that the fiscal situation in the province was changing.

Not only was – you know, as we were working up to – oil was starting to drop, but there were issues in terms of the amount of oil that was being now recovered offshore. And what we had estimated, those numbers were dropping and so on, and the forecasts weren't showing that that was going improve any time soon.

So while we're having all of this go on with sanction and all of this work – you know, here you don't get the flavour of what happens and what – all the things that are going –

MR. HOGAN: That's why I'm asking.

MS. DUNDERDALE: – on at the same time.

MR. HOGAN: I mean, we all remember when times were great, you know.

MS. DUNDERDALE: Yeah.

MR. HOGAN: It was different place –

MS. DUNDERDALE: And –

MR. HOGAN: – than it had been in the past.

MS. DUNDERDALE: But it was becoming a different place because it was my responsibility, now, to be aware of all of that and to start to tighten our belts, to start to pull back that spending. We had spent \$8 billion on infrastructure; we had improved circumstances; we had extended benefits in many, many areas to people of the province.

Now we needed to – you know, we got ourselves back on an even keel here after many, many years without investment. But now this can't continue. You know, we have to become fiscally responsible, and our revenues are starting to tighten up so our spending has to tighten up.

So nobody will forget the budget – I will never forget the budget of 2013. It was rough, and Minister Kennedy at that time, too, was very heavily involved internally in government in seeing where we could find economies and so on. We were facing layoffs, all of those kinds of things.

MR. HOGAN: Was there any concern that this capital project couldn't be financially feasible, as opposed to the Isolated, which was about 2 billion, as opposed to the 6 billion?

MS. DUNDERDALE: No.

MR. HOGAN: Was that maybe why the federal loan guarantee was needed, though?

MS. DUNDERDALE: No, I can't speak to what was closing up that gap. I knew that we had to reel in government spending, that we couldn't keep spending on programming, for example, in the same way that we had been, you know, while oil was at \$125 a barrel.

MR. HOGAN: So the fiscal – there was more fiscal restraint, generally speaking, by you and by the Department of Finance –

MS. DUNDERDALE: Started –

MR. HOGAN: – at that time.

MS. DUNDERDALE: – and wasn't well received. You know –

MR. HOGAN: No, I understand that.

MS. DUNDERDALE: – the people of the province weren't prepared to have the belt tightened.

MR. HOGAN: So the fiscal ability for the province to spend was decreasing, but the decision was still to proceed with the – with Muskrat Falls with the higher capital cost, as opposed to the Isolated Option. I mean, that's fair to say?

MS. DUNDERDALE: Yeah, we had lots – we had sufficient funds within the province to do a really good job of providing service to the people of the province.

But, you know, we had spent a lot of money in the previous 10 years, because the province had – you know, had suffered for a number of years from a lack of investment.

You know, if people go back to 2003, 2004, there was a school closing almost every month because of health issues for children. People

were clamouring because they were having to leave regions of their province, if they required dialysis, to come to St. John's. People needed hospitals. People wouldn't – couldn't move their tourism industry forward on the Northern Peninsula, for example, 'cause if you brought a vehicle up there, you might never get it down again. Abitibi was under stress in Stephenville. The same thing was happening in Grand Falls-Windsor. Fish plant closed down at Harbour Breton.

I mean, there were lots of things going on, and when we got the windfall from oil, we invested all of that back in the province to the tune that I've talked about a number of times here.

MR. HOGAN: Okay.

MS. DUNDERDALE: But, you know, now we're at a place where oil was starting to drop again, and our production is going down as well, so we're getting hit with a double whammy here now. And there's a lot of fat in the system. So if we're going to have a high standard of living, and – but also live within our means, we got to start to trim out some of this fat.

And so, you know, we've – we're moving on from the Muskrat Falls piece. The – you know, the work has been done. It's now been handed over to Nalcor; they're gonna go build the project and so on. And we need to turn our attention significantly to these pieces here.

MR. HOGAN: Okay.

MS. DUNDERDALE: But why that gap particularly was closing and why the loan guarantee –

MR. HOGAN: Can't recall.

MS. DUNDERDALE: – was getting more important in terms of the business case, I can't recall.

MR. HOGAN: Okay.

Commissioner, it's just about 11. Do you want to take a 10 minute break now?

THE COMMISSIONER: Yeah, okay, if that's good for you. So we'll take our 10 minutes here now.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: All right, Mr. Hogan?

MR. HOGAN: Thank you.

Ms. Dunderdale, I just want to talk about the debates around sanction time now, back in December of 2012 in the House of Assembly. So if we could please turn to P-01523, which you don't have.

THE COMMISSIONER: No, it's not in your book.

MR. HOGAN: These are *Hansard* documents.

So page 25, please. So this is the House of Assembly from December 5, 2012. As you can see there it says: Orders of the Day, Private Members' Day. I just want to reference where Mr. Kirby says, "it is not quite 3:00 o'clock yet" just to give us some context of the day – time of day.

If we could then turn to page 26, please. And then, Ms. Dunderdale, you're speaking:

"PREMIER DUNDERDALE: Thank you, Mr. Speaker.

"Mr. Speaker, I move the following private member's motion, seconded by the Member for Mount Pearl South.

"THEREFORE BE IT RESOLVED that this House now supports the development of the Muskrat Falls Hydro Project."

So I'm going to assume you remember this day.

MS. DUNDERDALE: Yes, I do.

MR. HOGAN: Okay.

So my first question is: Can you explain to the Commissioner what a private member's motion is?

MS. DUNDERDALE: It's an opportunity, usually for the backbench, to bring forward motions onto the floor of the House of Assembly about – in areas that they have an interest or something that's particular to their district or to the caucus, whatever.

MR. HOGAN: Okay and you said usually backbencher.

MS. DUNDERDALE: Yes.

MR. HOGAN: You're not a backbencher, you're the premier.

MS. DUNDERDALE: This was an exception.

MR. HOGAN: This was an exception, was it?

MS. DUNDERDALE: Yes, it was.

MR. HOGAN: Okay. I assume I'm just going to say, because it was obviously very important to you, right? Is a debate for a private member's motion different then a debate for something else, though?

MS. DUNDERDALE: It is different in terms it doesn't follow the same format or have the same steps so, you know, going into Committee of the Whole and all of those kinds of things. It's a straightforward motion to a – a private member's motion is a straightforward motion to the floor of the House of Assembly, debated upon.

MR. HOGAN: Mm-hmm.

MS. DUNDERDALE: Certain rules apply and – you know, 15 minutes, alternate speakers up and so on, who speaks first and who speaks longest, who speaks last and then a vote.

MR. HOGAN: Is it –

MS. DUNDERDALE: So it's pretty straightforward.

MR. HOGAN: So we'll just turn to page 56, please.

Pretty straightforward, you say, hey?

MS. DUNDERDALE: Yes, private member's, as compared to a bill, per se.

MR. HOGAN: So it says: This being Wednesday, 5 o'clock, the House is adjourned. So it was a two-hour debate, right?

MS. DUNDERDALE: Yes, that particular day.

MR. HOGAN: Okay, but this was the day that the House adopted the motion to move forward with the Muskrat Falls Project.

MS. DUNDERDALE: Yes.

MR. HOGAN: So my question is, there was a lot of talk about, we got to get it – you know, the timing, you got to get it into the House, the debate was very important, the public needs to – I mean it was a two-hour debate.

MS. DUNDERDALE: No –

MR. HOGAN: You know where –

MS. DUNDERDALE: No.

MR. HOGAN: – I'm going with this.

MS. DUNDERDALE: No, no, it wasn't a two-hour debate, Mr. Hogan.

MR. HOGAN: Okay.

MS. DUNDERDALE: We had laid down the template that the former Liberal government had used to debate Voisey's Bay. And we took a week I think it was, to debate this project. And it was during that debate that all the work that Minister Kennedy had done in his deconstruct of the deal, and papers that he had researched and prepared and the independent reports that he had done were all laid out in the House of Assembly.

And he spoke for hours, laying all of that out. And I remember at the end – because we sat day and night – and I – and he laid out the case. And – because I remember him saying to me: One thing that I know that I can do well is lay out a case and that's what I'm going to do; I'm going to lay out the case for Muskrat Falls.

And I can remember Dwight Ball, who was leader of the Opposition at the time, standing in his place in the evening at the end of the debate, congratulating – commending Minister Kennedy on his performance in his debate and the case that he had put forward, and spoke about how they had been talking about in their caucus room – the Liberal caucus room – about what a great job he had done and his deep knowledge of the project.

So there was intense, long debate. It was only a week or so, but it was more than two hours.

MR. HOGAN: So why do the subsequent two-hour (inaudible)?

MS. DUNDERDALE: Because then you had a formal motion on the books supporting Muskrat Falls.

MR. HOGAN: Okay, well, we can go back and look at the other ones that you're talking about; I don't have them here.

But I'll just point you to page 10 of this *Hansard*. Mr. Ball says: Thank you, Speaker – and I think you said he was leader of the Opposition at the time.

MS. DUNDERDALE: Yes, he was.

MR. HOGAN: “In a few minutes, we will begin a two-hour discussion on the Premier's private member's resolution on Muskrat Falls – two hours of discussion on an \$8.7 billion project.

“I ask the Premier: Why did you deny all MHAs access to witnesses and reduce this project to a two-hour, mere discussion?”

And I'll just scroll down a little bit farther before I get to my question, where it says Mr. Ball again: “Thank you, Mr. Speaker.

“The Premier mentioned having the gall to ask for a debate, I will always ask for a debate that means something, that is not a charade. We asked for witnesses, you were afraid to give us access to the witnesses. That is exactly what happened.”

“I say shame on you, Premier.” – this is a little bit further down – “Limiting the debate on Muskrat Falls to a two-hour PMR is an insult to democracy.”

So I guess Mr. Ball disagrees with you in that he did see this as a limit, the two-hour debate on this (inaudible) issue.

MS. DUNDERDALE: It – you can go back and check the *Hansard* and check the record, and there was a Voisey's Bay-style debate. Mr. Kennedy spoke for hours in that debate –

MR. HOGAN: So –

MS. DUNDERDALE: – in terms of Muskrat Falls.

MR. HOGAN: This thing about witnesses, so it's my understanding that they – the Opposition asked for witnesses to come to the floor of the House, specifically Mr. Martin from Nalcor. Why was that denied?

MS. DUNDERDALE: Because we were using the template that the Liberals had set down –

MR. HOGAN: Okay.

MS. DUNDERDALE: – for –

MR. HOGAN: So that template for Voisey's Bay, though – Voisey's Bay is not a Crown corporation. This is public money being put to debate here. So the template is not necessarily an appropriate one. I mean, people have come to the House of Assembly before, specifically if you think about, you know, Meech Lake, I think people came and spoke to that. So there is precedent for people coming to the House to explain things and answer questions.

And in this specific case, this would've been a Crown corporation, owned by the people, coming to the people's House to answer questions about a project that's being built for the people. Why couldn't witnesses come to be – to answer questions about this project?

MS. DUNDERDALE: And the people have access to this corporation because this corporation is structured in a way to give the

people of the province access so that they can directly question the principals of the company. The –

MR. HOGAN: But the Members of the House of Assembly are there to represent those people and this is the most important capital expenditure in the province's history; it was a request put to your government to just have the people who were responsible for the project to come to the floor and answer questions.

MS. DUNDERDALE: They came to their caucus rooms. They came to their meeting – any time that the Opposition requested that the principals of Nalcor come before them and speak to them about the project and answer questions about the project – that happened.

MR. HOGAN: So –

MS. DUNDERDALE: There was no denial of access.

MR. HOGAN: But there was a – I mean, you're giving answers, political answers I would suggest, that say –

MS. DUNDERDALE: No, no –

MR. HOGAN: – there was, you know ...

MS. DUNDERDALE: I would tell you this is very political –

MR. HOGAN: It – yeah –

MS. DUNDERDALE: – and this is what you would expect –

MR. HOGAN: I would actually expect that –

MS. DUNDERDALE: – on the floor of the House of Assembly.

MR. HOGAN: You know, House of Assembly is a political place –

MS. DUNDERDALE: Absolutely.

MR. HOGAN: – but it's really not supposed to be that way. It's there to debate issues that people are concerned about.

MS. DUNDERDALE: But –

MR. HOGAN: So caucus rooms with Mr. Martin is not the same as him being on the floor of the House of Assembly – you would agree?

MS. DUNDERDALE: No. But the minister is there to answer questions. And there is a forum, a public forum, a formal place that they can also take advantage of to go ask questions of Nalcor, particularly around Muskrat Falls and what we're doing there. And people who are represented here today took full advantage of that opportunity to do that.

That we'd still been there, yet, debating Muskrat Falls if the Opposition had had its way. You know, that's the thrust of politics. And my concern, you know, is always the House of Assembly and ensuring that there is a debate. I can take my lead from past practice in terms of important issues to people of the province, and how did the Opposition handle it at the time when they formed the government? What was their approach? And to be guided by that.

MR. HOGAN: I just want to point out another couple of quotes from Mr. Ball at page 31 – starting at page 31. So this goes back to the UARB and the loan guarantee issue. I just want to read into the record that this was – issue was pointed out on December 5. If we can scroll down a little bit.

“When I look at where we are today with the loan guarantee, we need the region, we need Emera, and we need Nova Scotia in place with certainty for this to happen. As I stand here today, Mr. Speaker, I am not left with any degree of comfort that this loan guarantee is in place because of our partner in Emera. There are a number of things, regardless of what we say, and words sometimes say a lot more than our actions could.”

So Mr. Ball is pointing out to you, despite your comfort level at the time that really everything was not tied up in a bow with regards to Emera and the loan guarantee at this time, correct?

MS. DUNDERDALE: Our understanding at the time and all the documentation we had was that Nova Scotia and Emera did a full sanction at the same time that we did a full sanction. And that

we had met all the terms set out by the federal government.

MR. HOGAN: So you disagree with Mr. Ball?

MS. DUNDERDALE: Yes. Not the first time –

MR. HOGAN: Probably not the first time.

MS. DUNDERDALE: – and not the last.

MR. HOGAN: No.

If we could just – I just want to read, again, just the top of page 32, please. Just sort of read it – read out what he says.

“We are about to sanction and begin a project where we could have a few billion dollars spent on this project before Emera even has to make up their mind, if they indeed want to be our partners.”

And just one more thing that strikes me about this is that one of the reasons that – one of the advantages to Muskrat Falls was to get around the – Quebec and we could go it alone. Do you agree with that?

MS. DUNDERDALE: Muskrat Falls wouldn't have had the capacity to do – are you –

MR. HOGAN: Just –

MS. DUNDERDALE: – sorry, are you referring to the Upper Churchill?

MR. HOGAN: I'm just saying in general it was sort of touted that we would've gone around Quebec with the Maritime Link.

MS. DUNDERDALE: We have found – but we knew we had the technology to do that –

MR. HOGAN: No, I'm not –

MS. DUNDERDALE: – now.

MR. HOGAN: Yeah, I'm not questioning that. I'm just saying that was an advantage, right, that was touted.

MS. DUNDERDALE: It was something that we were pleased about that we had found a pathway outside of Quebec.

MR. HOGAN: I guess my point is that even at sanction, we still had to rely on two or three other entities: Nova Scotia, Emera and the Government of Canada. I mean, we weren't fully going it alone, were we?

MS. DUNDERDALE: No, and nor would you if you could find a partner to bear the costs and responsibility and risk with you. We could have an arrangement with anybody in the Eastern Seaboard and perhaps – Emera now, I understand, is planning its own subsea line down the Eastern Seaboard. So, you know, we could possibly do the same thing if an opportunity arose to do something with Gull around that and bring it down into the United States. You would look for a partner to do that.

But, you know, going it alone means, to some degree, that you have control over this. You're not completely –

MR. HOGAN: Well, that's my point though. I think –

MS. DUNDERDALE: Yeah.

MR. HOGAN: – you gave away some control once it was sanctioned. It's been talked about a lot, so I'm not gonna drill down any further. But I – you know, there was some control that was given away on December 5 because the federal loan guarantee wasn't in place and the Emera, UARB decision hadn't – nothing had been filed at that point.

MS. DUNDERDALE: No, nothing had been filed but arrangements had been made between Nalcor and Emera – what would happen in – time had been spent doing an analysis of what might happen – A, B, C, D – and remedies were put in place if those things did occur. So, for example, if the UARB didn't include all the costs in the rate base then Emera would pay the difference.

MR. HOGAN: We're – I won't go back there. But you talked about that, I think.

MS. DUNDERDALE: Yeah.

MR. HOGAN: Yeah.

MS. DUNDERDALE: But there you go –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – that secures the loan guarantee.

MR. HOGAN: I just want to ask one more, I guess, political question.

You were concerned with the fact that Premier Dexter had sent a broad question to the UARB, right? We looked at that draft letter that sums that up.

MS. DUNDERDALE: I was more concerned –

MR. HOGAN: Mm-hmm.

MS. DUNDERDALE: – about the fact that Premier Dexter had come to us with his officials and we both talked about what it was we needed to do to not lose a year's construction. If we were going to get this project started, that there were pieces of work that we had – both had to do independent of one another, but there had to be some coordination between us and some timelines put down, you know, so that we were moving along a similar path. We couldn't start something over here and then wait for a year, a year and a half for them to finish.

And so in that meeting, you know, we discussed it all and then we made an agreement about what they were going to do and when they were going to do it.

MR. HOGAN: But you weren't happy with their broad scope at the UARB, right?

MS. DUNDERDALE: Well when they went back –

MR. HOGAN: That wasn't what was agreed to.

MS. DUNDERDALE: When they went back, they did something different than they –

MR. HOGAN: Right.

MS. DUNDERDALE: – had committed to do.

MR. HOGAN: So my question is –

MS. DUNDERDALE: So I took exception to it.

MR. HOGAN: Yeah, and that's fine.

My question is: Did he do that – do you know that he did that – I mean, he was in some political trouble himself in 2013, let's put it that way. He lost an election.

MS. DUNDERDALE: Yes.

MR. HOGAN: You know that.

MS. DUNDERDALE: Yes.

MR. HOGAN: Right?

MS. DUNDERDALE: Yes.

MR. HOGAN: I think your draft letter actually refers to –

MS. DUNDERDALE: Yes.

MR. HOGAN: – the politics of it.

MS. DUNDERDALE: Yes.

MR. HOGAN: Right?

MS. DUNDERDALE: Yeah.

MR. HOGAN: So, I mean is that why he did it? Because people were concerned that the Emera deal was an issue in Nova Scotia. Nova Scotia ratepayers were saying: Is this the best thing for us? And maybe we're going to get rid of Premier Dexter.

So he said: Well, I'm gonna do a broad scope to the UARB, make sure I get – not make sure – to help me get re-elected.

Was that why he did that?

MS. DUNDERDALE: I don't know. Yeah, I – you know, you might have to ask Premier Dexter. He'll tell you.

But what I know, Commissioner, was I was saying to Premier Dexter: You came here and you made certain commitments. And you signed

onto certain timelines. And now you're doing something different. You're taking a completely different direction altogether and you're now creating a risk for ratepayers here, in Newfoundland and Labrador.

And that's my responsibility.

MR. HOGAN: So were you worried that Premier Dexter was going to lose because –

MS. DUNDERDALE: Oh, no.

MR. HOGAN: That wasn't a concern to you?

MS. DUNDERDALE: No. I mean, it was to get the arrangements in place. I mean, this was – the arrangement was between Nalcor and Emera.

MR. HOGAN: Emera.

MS. DUNDERDALE: Emera's a privately-held utility. If the UARB accepted it then they had a plan. And Nalcor had a plan that was acceptable for us on how you cover off all the costs. That was fine.

MR. HOGAN: Yeah.

MS. DUNDERDALE: You know, but if you decide – you're going into regulatory processes that you're responsible for and you're, you know, you're going to stay with the course and you're not going to do PPAs elsewhere to undermine the process. And then, you walk away from us after you make those commitments and start to do all the things you said you weren't going to do – then I'm going to hold you to account if ratepayers in Newfoundland and Labrador have got to pick up the tab.

MR. HOGAN: Right.

This is the last question I have. And I don't want you to take it the wrong way, but you said an important issue on the Hebron project was a gender equality clause or something along those lines?

MS. DUNDERDALE: Yeah.

MR. HOGAN: I'm – you know we've – a lot of witnesses have been through here. Not very many females have sat where you're sitting.

So I'm just – it struck me, you know, to ask you – not that you could have necessarily done anything about it, but there's no women have been involved in this project really other than yourself.

Was that ever an issue to you? And maybe things would be different if there were more women involved. I mean, I don't know if anyone from Nalcor –

MS. DUNDERDALE: (Inaudible.)

MR. HOGAN: – females have been here. Very – I don't know if any other female politicians have been here.

So I just wanted to give you the opportunities – I've noted it, I think your counsel, Ms. Best, noted it at one point, too.

MS. DUNDERDALE: Just let me say this to you, Mr. Hogan: Susan Sullivan –

MR. HOGAN: Mm-hmm.

MS. DUNDERDALE: – Joan Shea, Charlene Johnson would take great exception to the remarks that you just made.

MR. HOGAN: No, I didn't mean it as an insult. I meant it – and you're right, there were a lot of politicians involved – I see them in the picture –

MS. DUNDERDALE: Yup, and part of the –

MR. HOGAN: That's why –

MS. DUNDERDALE: – plan with –

MR. HOGAN: – I said: I don't want you to take it the wrong way.

MS. DUNDERDALE: – and that part of the planning –

MR. HOGAN: Yeah.

MS. DUNDERDALE: – you know, I'm a lifelong feminist. You know, part of the – I'm

proud of the work that we did on gender and diversity, not only in terms of the Hebron agreement to make sure that we practised full inclusion here in the province, and I'm proud that it was probably the first one that was ever included in the world. We can't find another one. But I'm glad that it's there and other people are looking at it. And that practice is brought beyond this place.

In terms of the public service, you know, under our watch, we finally managed to get a pretty good gender balance, almost 50/50 in the public service.

So inclusion is extremely important to me. And you've got that whole – depth of knowledge and skills that are too often sidelined, now that we can bring to bear on building a better province. And it's just sensible. And nobody loses when you're inclusive.

You know, people – everything – a rising tide lifts all boats – and that's what inclusion does.

MR. HOGAN: My point was for inclusion, and I'm –

MS. DUNDERDALE: Thank you.

MR. HOGAN: – glad you had the opportunity to mention those other female politicians –

MS. DUNDERDALE: They're very –

MR. HOGAN: – because –

MS. DUNDERDALE: – important.

MR. HOGAN: – they haven't really been mentioned.

MS. DUNDERDALE: No, I know.

MR. HOGAN: And the point really was there are not very many female witnesses that have (inaudible).

MS. DUNDERDALE: And I know, and it's hard to be a pioneer, and it's time for it to stop. So, you know, it's important to put that gender lens on as we go about everything we do, because life will get better for all of us when we're more inclusive.

MR. HOGAN: Okay.

That's all the questions I have.

MS. DUNDERDALE: Thank you.

THE COMMISSIONER: Mr. Hogan.

Innu Nation?

UNIDENTIFIED FEMALE SPEAKER: We have no questions.

THE COMMISSIONER: Thank you.

NunatuKavut Community Council?

MR. RYAN: Good morning, Ms. Dunderdale.

MS. DUNDERDALE: Good morning.

MR. RYAN: My name is Victor Ryan, I'm counsel for the NunatuKavut Community Council, which for a portion of your time in government was also known as the Labrador Metis Nation.

MS. DUNDERDALE: Yes.

MR. RYAN: I wanna first direct your attention to the issue of consultation with Indigenous groups with the Lower Churchill Project.

In your capacity as Natural Resources minister, what was the extent of your role in facilitating consultation between Indigenous groups in Labrador and the provincial government regarding the Lower Churchill Project?

MS. DUNDERDALE: Well, it's something that we always encouraged. I just finished speaking about inclusion. And hearing all views is always very important. And I remember directing ministers to become engaged with Indigenous groups; particularly in Labrador.

I met with Mr. Russell shortly after I came to the Department of Natural Resources. We didn't – we weren't speaking about Muskrat Falls or those – you know, at the time, we were talking about an energy development in Labrador that he was a proponent of, but absolute engagement with people of the province, including Indigenous people.

MR. RYAN: Was – did you consider your ministry to be playing a lead role in consultation with Indigenous groups? Because my view of the evidence that's been given so far is that the ministry of Natural Resources played less of a role than the Department of Labrador and Aboriginal Affairs and Nalcor, itself, as the proponent.

MS. DUNDERDALE: Yes, well, Labrador and Aboriginal Affairs would've been the lead.

MR. RYAN: Okay.

MS. DUNDERDALE: No question about it. That would've been in their mandate.

But I had lots of opportunity to become engaged in the initial stages of consultation around the Land Claims Agreement with the Innu. I was part of that negotiating team. And – I spent – a fair amount – in time engaged with Nunatsiavut over a number of different issues, particularly, Voisey's Bay, energy development, devolution ...

A big issue on their land use plan, and a lot of interaction between the two because my responsibilities included Mines, Forestry and Agrifoods. And these were important issues as their land use plan was being developed also in terms of oil and gas off Labrador, and entry points should that be brought ashore, and so on, or – and what were their rights in terms of being part of benefits agreements, and so on.

So we had – I had a fair amount of involvement with Nunatsiavut and with the Innu – not so much with NunatuKavut.

MR. RYAN: And while important – all of the issues that you just raised – they don't relate to the Lower Churchill Project directly.

MS. DUNDERDALE: I'm just talking about my engagement. So, I would have had a relationship –

MR. RYAN: Yes.

MS. DUNDERDALE: – with Nunatsiavut. My engagement, particularly with the Innu, was primarily based around the Lower Churchill –

their land claim and particularly the area of their land claim around the Churchill River.

MR. RYAN: Okay. And also you would have been – in your role as Cabinet minister – you would have been at the table when the issue of Indigenous consultation for the Lower Churchill Project was raised with Cabinet. Correct?

MS. DUNDERDALE: Yes.

MR. RYAN: Was that specific issue something that was raised at Cabinet often? We have a few exhibits that are briefing notes to Cabinet, seeking Cabinet directions on who to consult with and to what degree, but I'm wondering if you can let the Commission know if that was a common topic of conversation at the Cabinet table.

MS. DUNDERDALE: Commissioner, in 2003 to 2007 we didn't have Indigenous people at the Cabinet table. In 2007 Patty Pottle who – an Inuk – was elected and she was appointed to Aboriginal Affairs, I think. I can tell you there was a distinct difference between the discussions prior to 2007 in terms of issues affecting Indigenous people – particularly in Labrador. So, Patty brought that perspective to the table and it was a regular part of conversations from the time that she arrived.

MR. RYAN: So just to be clear – when you say that something changed – what you mean is that after 2007 when Minister Pottle was at the Cabinet table, in your view, the quantity of discussions about Indigenous issues –?

MS. DUNDERDALE: And the quality of discussions – because we had, Commissioner, first-hand knowledge; somebody who understood the issues being dealt with by Indigenous people, and could bring that perspective to the table in a way that nobody else there, up to that point, had been able to.

MR. RYAN: There are documents that are before the Commission that were created by the provincial government that reference – I suppose, to be fair, it's the provincial government's view – that Innu Nation's view was that they were wary of, or sensitive to, the inclusion of other Indigenous groups in the Lower Churchill Project, and so – to be fair, I

don't think we have any documents that are specifically created by Innu Nation that say this, but we have documents created by the provincial government that reflect the provincial government's understanding of this tension.

I'm wondering if you can let the Commission know if you recall that tension being discussed, either at the Cabinet table or in your negotiations with the New Dawn Agreement.

MS. DUNDERDALE: Uh –

MS. LEDOUX: I'm sorry, Mr. Commissioner, I hate to interrupt my friend here, but I have to object, based on the fact that this question was never presented to Innu Nation, and it's a matter of procedural fairness that this question should have been asked directly to Innu Nation instead of Ms. Dunderdale.

THE COMMISSIONER: All right.

MS. LEDOUX: Thank you.

THE COMMISSIONER: Your response to that, Mr. Ryan?

MR. RYAN: I think that the question is fair.

There are documents that point to a consistent view of the provincial government that there was an issue between Indigenous groups that needed to be attended to or mitigated in some way. I haven't seen any documents that describe where that belief comes from, and Ms. Dunderdale was both at Cabinet table and at the negotiation table for the New Dawn Agreement.

If she is aware of the source of that government belief, I believe it would be helpful to the Commission to know.

THE COMMISSIONER: So, I'm not getting into the politics between the Innu Nation and other Indigenous groups. That's not for me to concern myself with.

However, having said that, I do recognize the fact that there are documents, as you've said, and this is – whether or not the question was put to the Innu Nation is really irrelevant, because the question is, the question you've asked, relates specifically to what the provincial

government's view was in documents that they prepared, and I think it is a fair question to ask Ms. Dunderdale because it goes to the level of consultation, obviously, that each of the individual groups got.

So, yes, go ahead and ask your question.

MS. E. BEST: Commissioner, sorry to interrupt –

THE COMMISSIONER: Can you turn off your mic, Mr. Ryan, for a moment?

MR. RYAN: Yes.

MS. E. BEST: I just wonder, if Mr. Ryan happened to have those documents at his fingertips, if we could call them up, because I don't think they were part of what we reviewed – what I reviewed with my client –

THE COMMISSIONER: Oh, okay.

MS. E. BEST: – prior to her testimony. Thank you.

MR. RYAN: Commissioner, I believe that Exhibit P-00291 is one of the documents that has such a reference.

THE COMMISSIONER: Okay, so that will be on the screen.

MR. RYAN: And I think, if I'm right, it would be page 5.

And so here I have – so, here at the bottom of page 4, one of the recommendations, which is not the recommendation – the main recommendation of this briefing note is to develop MOUs with both Innu Nation and the Labrador Metis Nation. And one of the disadvantages would be “May raise expectations by the LMN for an IBA; Aboriginal groups may be suspicious of what the others are negotiating.”

So this not one that specifically references Innu Nation. So I don't know that I'd be able to point them –

THE COMMISSIONER: Right.

I think it's fair to say I've seen documents that basically refer to discussions and – I don't want to use the word policy – but certainly discussions with regards to concerns about the level of consultation based upon whether it's an Innu Nation claim or a Nunatsiavut claim.

So while he can't bring them up, there are documents that are there so as best as you can recall. If you don't recall – if you can't answer the question, fair enough. But I think to allow him to ask the question and to avoid wasting more time or spending more time trying to find it – I think – I do recall those documents, so go ahead.

MR. RYAN: And so the question, Ms. Dunderdale, would be that I would put to you that the provincial government, in their documents came to the opinion that in order to proceed with the Lower Churchill Project, the provincial government would have to be careful with the Innu Nation and the other Indigenous groups, because the Innu Nation were sensitive to the participation of other Indigenous groups in the Lower Churchill Project and that they were wary of any steps that the provincial government would take to engage with other Indigenous groups.

And the question for you is just, in your negotiations with the Innu Nation or in your Cabinet meetings, did you have occasion to hear the source of that opinion or hear any discussions about that opinion?

MS. DUNDERDALE: Well, Commissioner, I can tell you what I understood.

The Innu land claim – well, first of all, when we came to government, the former Liberal government had negotiated a land claim with Nunatsiavut, and they didn't have an opportunity to bring that before the house before the government changed. So even though that we didn't have anything to do with the negotiations, we were the ones that ratified that land claim that established their land claim and their rights and so on in Labrador.

And that was our role in it, because status is awarded from the federal government. We don't have any role in that. We – the provincial government only becomes involved when it's

time to negotiate a land claim. The federal government has to acknowledge that a certain Indigenous group, for example, has status, and there are rights that go with that, including a land claim.

And so we ratified the work that had been done between Nunatsiavut and the former Liberal government. And the one thing that we clearly understood before we were going to do anything in – on the Churchill River was that we were going to – the Innu had been recognized by the federal government, but many, many attempts over many years – somebody said 30 years to me at one point – the Innu had been trying to negotiate a land claim. And the view in our government was that the Churchill River fell squarely within their land claim.

And so the negotiations began to see if we could bring this to a satisfactory conclusion and have a land claims benefits agreement that acknowledged major issues for the Innu in terms of the Upper Churchill benefits on the construction project if it went ahead and benefits downstream. The – and we were successful in doing that.

And we became very aware during that process, Commissioner, that there was a large degree of sensitivity around this whole issue, and there was no doubt that, in terms of the Innu, which – and I can only speak to the group that I was involved with – had been badly treated and that generations had tried to resolve this issue on behalf of Innu Nation and unsuccessfully. And you could see, in the negotiating team, the responsibility they felt around this issue and their obligation to – particularly to the elders to get this right and not leave anything on the table.

So, you know, it was more than just a negotiation. It was a relationship-building exercise as well, and to become sensitized, ourselves, into what the issues were for the Innu and what needed to be addressed in terms of this lands claim and as we move forward in Labrador on –

THE COMMISSIONER: If we could get to the question that was asked.

MS. DUNDERDALE: Yeah.

THE COMMISSIONER: I understand all that took place, but the question was asked was whether or not during that process, or at Cabinet, were you aware of, or was there discussion about, sensitivity by the Innu Nation about other Indigenous groups' claims with regards to the Churchill River?

MS. DUNDERDALE: I can't –

THE COMMISSIONER: I think that's your question, is it?

MS. DUNDERDALE: Yes, and –

MR. RYAN: Yes.

MS. DUNDERDALE: – I can't remember – the issue for us was that NunatuKavut didn't have an established claim, so there wasn't much we could do until that happened 'cause we didn't have a role until that happened.

I don't remember any discussion around it, Commissioner, because I remember the – more around the Quebec Innu coming in and making a claim –

MR. RYAN: Mmm.

MS. DUNDERDALE: – and somebody, at one point, saying to them, well, you have to assert your rights or what you believe your rights to be, you know, if you want this resolved, just don't look to us to do it or – you know, because there wasn't an engagement. So any more than that, Commissioner, I really can't say.

MR. RYAN: And that's fine. I think, you know, just to clarify for the purposes of the Commission. It's – the question is not intended to bring up any, sort of, politics between groups. But it just clear from the documents that, somehow, the provincial government came to the conclusion that to engage with other Indigenous groups that weren't the Innu Nation may risk the Innu Nation's participation in the Lower Churchill Project, and – so I'm taking your evidence to be that, however that opinion was formed, you don't remember it being discussed at the New Dawn negotiations or –

MS. DUNDERDALE: But you'd be sensitive to that issue where you had one group that had

an established land claim and another group who were working hard to get an established land claim and there might be some rub between them. So that – you know, that may be happening, and there's a real possibility that that might be happening, so you need to be sensitive to that when you're going into community doing this work. It might have been as simple as that.

MR. RYAN: Okay. That, as you described –

MS. LEDOUX: I'm sorry. Sorry, Mr. Ryan. Sorry, Mr. Commissioner to interrupt again.

I just want to mention that, although we are stating that we're not talking about land claims, this is the core of the topic right now. We are talking about land claims, and this has been deemed irrelevant by this panel before. Thank you.

THE COMMISSIONER: All right.

Go ahead, Mr. Ryan.

MR. RYAN: The answer that you just gave leads me to think that possibly the way that the provincial government formed this opinion was just on its own. You say that it's something the provincial government knew that it ought to be sensitive to.

So are you saying that there's a possibility that the way that the provincial government came to this conclusion is just the provincial government would have come to that conclusion on its own?

MS. DUNDERDALE: Well, we certainly knew that NunatuKavut was trying to establish their claim and that, you know, other groups in Labrador had an established claim, and we needed to be sensitive to that.

MR. RYAN: Okay.

I'd just like to switch topics to the idea of early works.

MS. DUNDERDALE: Yes.

MR. RYAN: You – in your testimony earlier in the week, you mentioned that some early works had been done prior to, I believe, the sanction decision – and please feel free to correct me if

I'm wrong – but also prior to the release of the project from environmental assessment. Is that an accurate reflection of the timeline?

MS. DUNDERDALE: I can't say.

MR. RYAN: Okay. I haven't found a document to say one way or the other, so we'll just leave that.

But I do want to just dig into that a little bit more, because my understanding is some of the early works that were done included physical preparation work at the Muskrat Falls site. Is that correct?

MS. DUNDERDALE: Yes, I believe that's correct.

MR. RYAN: And are you in a position to detail what kind of work would have been done? Is that something that you can remember?

MS. DUNDERDALE: Not in detail. I know the tote road, for example, was built, and I know work was done on the camp and so on. So there was physical work done before sanction.

MR. RYAN: I would put it to you that the presence of those types of early works being performed prior to sanction and either shortly before or after release from the environmental assessment, could be perceived by residents of Labrador as the provincial government sort of moving ahead with the project before it was actually sanctioned, and that that perception might engender ill will towards the project.

Is that – would you agree with me that that perception could be fomented by the concept of early works?

MS. DUNDERDALE: It's – anything could happen.

MR. RYAN: Was there any thought given to this issue by the provincial government that you can remember, to mitigate against the possibility of early works creating a negative perception of the project?

MS. DUNDERDALE: I can't recall specific discussions around that.

Certainly, the Labrador Affairs office would've been engaged, and MHAs, you know, that were involved or had responsibility in those areas would've been engaged as well.

MR. RYAN: My understanding of your evidence was that the real deciding factor in whether or not to pursue early works was to keep the project on cost and on schedule.

MS. DUNDERDALE: Yes.

MR. RYAN: I'm wondering if you can recall a conversation about early works that incorporated discussion about the physical environment that would be altered by early works, or the impacts that physical early works on the project site might have to the people of Labrador.

MS. DUNDERDALE: I can't recall (inaudible).

MR. RYAN: Okay.

I just wanna turn to my last set of questions, which is just about the Joint Review Panel.

MS. DUNDERDALE: Yes.

MR. RYAN: And so, my understanding is the Joint Review Panel report was released while you were premier –

MS. DUNDERDALE: Yes.

MR. RYAN: – but, you know, the process went on for many – several years, and so it would've started while you were minister of Natural Resources and finished while you were premier.

Is that correct?

MS. DUNDERDALE: Yes.

MR. RYAN: As the minister of Natural Resources, what did you consider your role to be in the JRP process?

MS. DUNDERDALE: The lead on that file would've been the Department of Environment –

MR. RYAN: Right.

MS. DUNDERDALE: – and they would’ve pulled in around them whatever departments they felt needed to be engaged.

I don’t remember, personally, being drawn very deeply into that work.

MR. RYAN: And that’s consistent with Mr. Bown’s evidence, also, that it was mostly the ministry of Environment and Conservation.

Nonetheless, did you consider the JRP process to be an example of government oversight over the Lower Churchill Project?

MS. DUNDERDALE: Yes. I did.

MR. RYAN: Did you consider it to be a crucial step in achieving completion of the Lower Churchill Project?

MS. DUNDERDALE: It was an important step – very important.

MR. RYAN: I’d like to turn to Exhibit P-01673, Madam Clerk? And I don’t –

THE COMMISSIONER: What was the number again? Was it –?

MR. RYAN: 01673.

THE COMMISSIONER: 01673.

MR. RYAN: So you don’t think is in the –

THE COMMISSIONER: Yeah. I don’t think it’s in our books.

MR. RYAN: So it’ll come up on the screen, and so my understanding is this is an email with draft speaking notes for you –

MS. DUNDERDALE: Mm-hmm.

MR. RYAN: – for a news conference that you did while you were in Labrador.

MS. DUNDERDALE: Yes.

MR. RYAN: And it’s a long document but, essentially, my understanding is it’s sort of duplicated, so it’s in the body of this email and

then there’s an attachment, which is an identical document.

And so you’re talking, specifically, about the benefits of the Lower Churchill Project for the people of Labrador and, I don’t know if these paragraphs are supposed to be numbered but they’re all question marks. I – what I’m interested in is on the lower half of this page. And it’s a paragraph that starts – as part of this process ...

Yes. Okay.

And actually – sorry – this is just a point of clarification. It says here, “As part of this process, I have attended energy plan consultations in Port Hope Simpson and Marystown since I became minister.”

But in the context of this document where you are discussing specifically benefits to Labrador, I wonder if this is meant to say Mary’s Harbour. Obviously, Marystown is a town in Newfoundland. Mary’s Harbour is a town in Labrador.

MS. DUNDERDALE: Yes. I’ve been to Mary’s Harbour –

MR. RYAN: Okay.

MS. DUNDERDALE: – a number of times. But, you know, most of the consultation on the energy plan was done when I came to the department. I came late in that process.

MR. RYAN: Okay.

MS. DUNDERDALE: So I very well may have attended one, you know – two consultations might have been what I did in terms of what was left to do, and it could have been Port Hope Simpson and Marystown.

MR. RYAN: Okay.

MS. DUNDERDALE: Or I–

MR. RYAN: Nothing really turns on that –

MS. DUNDERDALE: (Inaudible.)

MR. RYAN: – I just want to sort of – wanted to see if this document was really Labrador-focused. But if we can just scroll up a little bit, Madam Clerk, and – sorry – like towards the top of this document. A little bit more. Yes. Okay.

So, at the bottom of the screen here, Ms. Dunderdale –

MS. DUNDERDALE: Mm-hmm.

MR. RYAN: There's a paragraph that says: "We welcome the input and the views of all the people of Labrador as we proceed with this development. I want to encourage people and the various business, community and aboriginal groups to participate in the environmental assessment consultations Newfoundland and Labrador Hydro will be undertaking as part of this process."

And so I would put to you that the Government of Newfoundland and Labrador and the Government of Canada and Nalcor combined, really considered the JRP process to constitute the bulk of, if not the totality of, Indigenous consultation and also Labrador stakeholder consultation on the Lower Churchill Project. Would you agree with that?

MS. DUNDERDALE: It was meant to be a comprehensive process.

MR. RYAN: Right.

And so, I believe your evidence from earlier in this week is that you didn't read the JRP report is that correct?

MS. DUNDERDALE: No, I read the report, the recommendations, that came back from the Joint Review Panel.

MR. RYAN: Okay, I understood your evidence –

MS. DUNDERDALE: I was taken through – I was briefed on the JR – I wouldn't read every report; what would happen is the minister and the Clerk would come and brief me on the contents of the report. Because you realize, there's hundreds and hundreds of reports. So I might read the executive summary, then be

taken through the report. But I did read the recommendations.

MR. RYAN: Well – and I appreciate you saying that, because when you said it in your evidence earlier in this week, immediately I thought well of course, you know, it's a long report, it's hundreds of pages, you've a lot to do. But then I remember that this is pretty important project, you were premier at the time –

MS. DUNDERDALE: Yes.

MR. RYAN: – you were the Minister of Natural Resources beforehand.

MS. DUNDERDALE: Yup.

MR. RYAN: At one point I believe in your evidence this week, you said there's no one in government that have more of an experience and a familiarity with the project than you, certainly not in the political realm – and yet your evidence is you didn't read the full JRP report.

I understand your point that it was long, and that you were busy as premier and you had staff to brief you; but I would just ask if you can further clarify: why didn't you read the full JRP report?

MS. DUNDERDALE: It's just a matter of timing; and so my minister would have gone through it. Officials would have gone through it; and then they would have come to my office and they – you know, I would have read the overview or the executive summary and then they would take me through the highlights of – page after page and tell me what the elements were so I didn't have to spend a half hour reading a page, that somebody could tell me in four or five minutes what this chapter spoke to and what I needed to know from it. And I did take the time to read the recommendations.

MR. RYAN: I suppose I would just put to you that, you know, many people from Labrador spent considerable efforts, their own time, their own energy, to participate in this years-long process, which the government and Nalcor funnelled, essentially, everyone into and said if you want to participate in the Lower Churchill Project, if you wanna voice your concerns, we've set up a process for you to do so.

It took years, people came with maps, people came with family genealogies, people came with pictures of traplines, and I would put to you that people in Labrador were very invested in this process, notwithstanding concerns about the ultimate efficacy of the process, and your evidence this week is that you didn't read the full report. I would put to you that that maybe very insulting to the people who participated in the JRP process, and I wanna give you an opportunity to respond to that.

MS. DUNDERDALE: Well, government read the report.

Government spent – you know, there's a minister charged with the responsibility on this file and to understand it and to read it and to do – the premier cannot do – there's just not hours enough in the day to do what you need to do in just in terms of the functionary pieces.

It was incumbent on me to understand what the JRP said and what the recommendations were, and that the people who were gonna support me in responding to the JRP report, understood it, had read it from cover to cover and knew it.

So government's response to the people of Labrador was a respectful one. They had participated in the processes we had asked them to do and we were going to respectfully respond to the concerns that they had identified.

MR. RYAN: I'd like to turn to the government's response to the JRP report, which is Exhibit P-00051.

So, the JRP report, hundreds of pages long, has 83 recommendations, but also has a number – oh, sorry, there – it just might be in here (inaudible) documents.

THE COMMISSIONER: Tab 57, book 2. It's the same book in front of you now.

MS. DUNDERDALE: Fifty-seven –

THE COMMISSIONER: Yes.

MS. DUNDERDALE: – Commissioner?

THE COMMISSIONER: Mm-hmm.

MR. RYAN: And so this is the provincial government's response to the Joint Review Panel.

My understanding is that this is not sort of normally made publicly available, but one of the recommendations of the Joint Review Panel was that in the interest of transparency, the federal and provincial government publicly release a response to the document, and that both governments accepted that recommendation and so did a public response.

This response is a – I would put to you a pretty bare-bones response in that it lists the recommendations and then lists the government's response to those recommendations. Would you agree with that? There's no executive summary.

MS. DUNDERDALE: Yes.

MR. RYAN: There's no body to –

MS. DUNDERDALE: That's right.

MR. RYAN: – response except for the recommendations.

MS. DUNDERDALE: That's right.

MR. RYAN: If we look at Exhibit P-00050, which is the Government of Canada's response to the JRP report, which I don't think is –

THE COMMISSIONER: It's not in our books.

MR. RYAN: So you won't have a physical document. But it'll be up on the screen, Exhibit P-00050. And it's, you know, a fairly large document so I don't intend to have you go through it. But if we can just scroll through the first page or two we can see that whatever the federal government did, it was a little bit more comprehensive than what the province did. Would you agree with that?

They've got, you know, some body to their response instead of just responses to recommendations.

Sorry, you nodded, but – yes.

MS. DUNDERDALE: Yes.

MR. RYAN: Yes.

I would put to you that there's a large number of – I won't call them recommendations, but I could call them findings or just bits of information in the JRP report that don't form the basis of an explicit recommendation that were not responded to by the province because the province limited its response solely to the listed recommendations.

MS. DUNDERDALE: And, you know, in terms of the two established land claims, and in terms particularly of the Innu land claim, it was a very comprehensive look at the river and the impacts of the river and what the rights of the Innu and so on were with regard to the Churchill River.

The surprising thing for me, I guess, in the whole piece as I reviewed all of that given, at the time, that Nunatsiavut was negotiating its land claim – it was either started or started soon after the 2000 attempt to develop Gull Island and Muskrat Falls and the attempt before that, so it was very much, I would have thought, in the public awareness that there were attempts being made to develop the Lower Churchill – that the Nunatsiavut land claim doesn't speak to it. And that to me was surprising.

So – because in the other process, you know, there was a real awareness of establishing every right that people were aware of. And I don't know if that influenced the narrow view that you've just described. Thinking that, you know, if there were extraordinary issues around the Nunatsiavut rights that they would have been addressed in the land claim. And then there wouldn't have been any question whatsoever on what the government's responsibility was.

MR. RYAN: I mean that may be, my question is more so focused on – so for instance, the JRP report identifies a number of uncertainties with a number of things. There are uncertainties about Nalcor's fish-habitat compensation strategy, fish-population demographics in the reservoir, the extent and location of current land and resource use by members of NunatuKavut and by numbers the Quebec Innu, uncertainties regarding transmission access for export markets, long-term financial benefits to the province, greenhouse gas-emission displacement benefits, it goes on and on and on.

And the JRP process is set up to identify uncertainties and then it's ultimately for the provincial and federal governments to decide, notwithstanding those uncertainties, is there a net benefit to the project?

The Government of Newfoundland and Labrador's response, I would put to you by focusing just solely on the recommendations and whether or not the government accepts or does not accept those recommendations, missed a key aspect of the JRP and that is that, throughout the 300-page report, consistently, on multiple pages with respect to the science, with respect to land use, with respect to, you know, aquatic life, with respect to terrestrial and biological life, there's so many uncertainties in the project and the Government of Newfoundland and Labrador's response, it's written public response in the interests of transparency and fairness, ignores that because it was too narrowly focussed. Would you agree with that?

MS. DUNDERDALE: No. You know, my answer to you is that the level of importance of the consultation was recognized within government. There were resources and attention applied to it, and full consideration given to the points that were made.

There's a difference of opinion, without a doubt, in terms of some of the positions put forward and what the government decided to act on or not act on. But I still look on it as a thorough process and not one that we achieved full consensus on.

MR. RYAN: Do you think that maybe the Government of Newfoundland and Labrador might have had a different view of the project if people such as yourself, the premier, took the time to read the full report?

MS. DUNDERDALE: No, the premier was well informed by extremely competent people with regard to this process. I think the minister at the time was Charlene Johnson who has a master's in environmental engineering. And it was, you know, to us a great advantage to have that level of expertise at work in the consultation process.

MR. RYAN: Mr. Bown's evidence around this is that because he was not involved in the

ministry of Environment and Conservation, but that the ministry of Natural Resources assisted broadly in the creation of the government's response, that he didn't feel the ministry of Natural Resources had a particularly large role in leading the response. Essentially, what he testified to is that the Department of Environment would send relevant departments recommendations that concerned them, they would respond and then the Department of Environment essentially cobbled them together and then, I would assume, passed it to you and you would have approved it.

MS. DUNDERDALE: I wouldn't have described it as cobbled it together. This was a very serious piece of work. There were very well-educated people on the subject matter reviewing the material as it came in. Of course, it's broad areas that are addressed in the report and they have to go out to various departments where the expertise is.

MR. RYAN: Yes, well, maybe cobbled is a word that has a pejorative; I don't mean to say that it was thrown together. What I mean to say is the document is written by several different departments and someone at the end of the day had to take, you know, a paragraph from the ministry of Natural Resources and a paragraph from Labrador and Aboriginal Affairs and a paragraph from Environment and essentially slot them into a response because there is no overarching narrative; it is recommendation, response, recommendation response, so –

MS. DUNDERDALE: In terms of what was released.

MR. RYAN: Yes.

MS. DUNDERDALE: You know, I can't speak to the full document at this point in time –

MR. RYAN: Well and that's fair, this is the public response.

MS. DUNDERDALE: Yeah.

MR. RYAN: But what I'm saying is the public response is intended to promote transparency on a project that had a fair amount of suspicion attached to it. Would you agree with that? There was –

MS. DUNDERDALE: In some quarters –

MR. RYAN: Yes.

MS. DUNDERDALE: – it had an enormous amount of support as well.

MR. RYAN: Sure, but the project had significant opposition and there was significant, I would say, suspicion about the project.

And so the JRP recommended to the Government of Newfoundland and Labrador, in order to help quell some of this, you should publicly release your response to this document. And I'll just put it to you one more time: This document fails to adequately respond to the JRP report and does nothing to help allay the opposition and the suspicion that people felt around the project. Would you agree with that?

MS. DUNDERDALE: No, and I feel bad if that's the case.

You know, it was important to consult, particularly with the people who were adjacent to the project. We did consult. You know, I believe that we thoroughly consulted. I believe that we took into account what people had to say and we made a response to the recommendations, taking into consideration all the points that had been made.

And if it was received in the manner that you describe, I feel badly about that.

MR. RYAN: Okay.

Those are all my questions, Commissioner.

Thank you, Ms. Dunderdale.

THE COMMISSIONER: Thank you, Mr. Ryan.

Grand Riverkeeper/Labrador Land Protectors?

Ms. Urquhart, bearing in mind the time, I'll leave it to you to decide when you want to break if you're not finished.

MS. URQUHART: Thank you, Commissioner.

Good afternoon, Mr. – Ms. Dunderdale. Sorry, I'm used to saying mister here in this room.

So, as you all have heard, I am Caitlin Urquhart and I'm representing the Grand Riverkeeper Labrador and the Labrador Land Protectors. And they are citizens' organizations with the aim of protecting the ecological integrity of the Grand River, which is the traditional name of the Churchill River.

I want to start, actually, by acknowledging that you are our first and only female premier of the Province of Newfoundland and Labrador, and while we may differ in our views, I want to sincerely appreciate your courage and willingness to step forward into that role. And I think you alluded to this, we know that female politicians are subjected to a particular type of gendered criticism and I want to acknowledge that as well.

So it's my role in this process to hold each and every witness to account, and as a feminist I will not treat you any differently than any other witness, but I did want to –

MS. DUNDERDALE: I'm glad to hear it.

MS. URQUHART: I did want to acknowledge that.

So you spoke a bit about the Energy Plan and I wanted to start with that. In terms of some of the principles that are enunciated in that document, one of them is, essentially, conservation efficiencies, so what we've been referring to throughout the Commission as conservation and demand management.

So that's one of the principles and what – the evidence that we've heard is that while there were programs put in place to increase this conservation and demand management, those programs were significantly underfunded; some 50 per cent of what was recommended was actually allocated to those programs. And, essentially, due to the underfunding, there perhaps wasn't the same uptake as had been intended.

We know that that was – that conservation and demand management was not incorporated in the load forecasts and I'm wondering, you know,

your government had a policy that this was going to be – conservation and demand management was going to be important. Were you aware that it was underfunded?

MS. DUNDERDALE: I don't know that I would describe it as underfunded, I know that monies were being identified through the Office of Climate Change and through the Department of Natural Resources and through the Department of Finance that, you know, there was across government a number of programs on energy efficiency.

MS. URQUHART: And so the evidence that we have indicates – so, Madam Clerk, if you can please pull-up 00367 – P-00367.

THE COMMISSIONER: So that's not – you'll have to see that on your screen.

MS. DUNDERDALE: Okay. Thank you.

MS. URQUHART: At page 21.

So as you can see this is a letter from Nalcor in 2011 and this was to the PUB – or sorry, to the Joint Review Panel, apologies.

So this is describing here program expenditures. And so for 2011, the 0.75 per cent of utility revenues were being used towards CDM. And that was anticipated – so it says: Referring to two separate CDM expenditures, 1.5 was outlined – “1.5% of electricity revenue was outlined as an appropriate level for a jurisdiction in the early stages of CDM” And then it goes on to say, this – that, essentially, experts have suggested that we should ramp up to 3 per cent.

So this indicates that the provincial budget is allocating half of what was recommended for CDM. To my mind, allocating only half of the money is underfunding a project. If you want it to be successful, I think you're – you know, would you agree with me?

MS. DUNDERDALE: I don't recall this particularly – this particular budget item, and I don't recall discussion around it. Lots of demands being made to government, and the challenge is to meet them. I – you know, but then that relates back to capacity. And if you take one thing –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – in isolation, you can always make an argument that there was money somewhere to fund that one thing.

MS. URQUHART: Well, I think the question for me is understanding that you have to make – you know, there's finite resources and you have to make decisions.

But in this case, we're looking down – you know, you're staring down the barrel of this capacity deficit or energy deficit, and I'm sorry, like, despite it all, I'm still not – but in any event, you're looking at, you know, people going to bed in sweaters, whatever the saying may be, and utility practices around the country, around the globe, are saying we consider conservation and demand management as a supply.

MS. DUNDERDALE: Yeah.

MS. URQUHART: It is a way to supply electricity because we've reduced that and take that right out of the capacity, of the needs. So it – you know, in the case where you are facing this very serious potential shortage, is this not – you know, and it's part of your platform, your own energy policy that you were part of developing –

MS. DUNDERDALE: Absolutely. Well, there are a number of things happening within Nalcor –

MS. URQUHART: Okay.

MS. DUNDERDALE: – whether they're funded to the extent they ought to be.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: But there's also a number of things happening within government in terms of funding that might not fall in that specific category, for example. In the Office of Climate Change – I mean, which speaks to the whole issue of how important it was to us in terms of our energy needs, what were we doing with the environment and how could we improve where we were, given the state that we

were finding ourselves in, and it's only gotten worse since.

But we talk – like, there were funds put in that – or administered through that office for housing improvements, for insulation improvements and so on.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: In the Forestry Branch, there was a program that supported the development of pellet plants here in the province –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – so that people could have access to supply for pellet stoves, which we subsidized – gave a subsidy for people to buy pellet stoves. Under INTRD, we have a number of innovators – young innovators –

MS. URQUHART: I'm sorry, you're gonna have to – IN –?

MS. DUNDERDALE: I'm sorry – Innovation, Trade and Rural Development. For example, the smart metre –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – was developed up back of the Avalon Mall by a group of young scientists out of Memorial University, and we were funding those kinds of programming.

MS. URQUHART: So is it your evidence that that would not be included in what was –?

MS. DUNDERDALE: Not included in this.

MS. URQUHART: In the provincial budget for CDM?

MS. DUNDERDALE: I don't – I can't speak to that, because I don't have that level of recall and detail. But I can tell you these are the kinds of things that we're doing that would not perhaps necessarily fall under that heading, would fall under Innovation, would fall under Forestry activities and so on. And I can't tell you at this point in time. I probably – I would have been

able to tell you in the day whether or not that that was included in that CDM package.

MS. URQUHART: And so were you aware that conservation and demand management was not included in the load forecasting?

MS. DUNDERDALE: I can't tell you that.

MS. URQUHART: Okay.

Another significant principle of the Energy Plan was a consultative approach. And I – you know, reading that, I see it as this kind of this holistic type of approach to determining our energy needs and what we see – or what was very in vogue and continues to be widely used nationally and internationally is – what – IRP or integrated resource planning.

MS. DUNDERDALE: Yeah.

MS. URQUHART: So this is a process whereby you get all the stakeholders together, get a really holistic view of the issue and make decisions in that way.

And Madam Clerk, if we can go to P-01164. And you may be familiar with this –

THE COMMISSIONER: On your screen.

MS. URQUHART: Sorry – with this letter. It's a letter from Newfoundland and Labrador Hydro, dated November 12, 2008, and it will come up there shortly.

If you can scroll down please, Madam Clerk.

So you'll see this is to the Public Utilities Board. And I can direct you to the specific passages, but – actually if you scroll down Madam Clerk, we'll just review this – sorry, that paragraph there. So I'll read it, and you can read along.

“Hydro has no objection to participating in appropriate processes to assist the Board in carrying out its responsibility to ensure that adequate planning takes place. To that end, Hydro has filed with the Board and upon interested parties information on planning matters ...”

Anyhow, it goes on to say “in Hydro's view, the Board and the parties are constrained from undertaking a full ranging IRP because, (1) under the Province's Energy Plan, the Province's preferred view is to meet the longer term electrical generation needs through the development of the Lower Churchill Project, and (2) the Board's jurisdiction” – because of the “Exemption Order.”

So in my view this is essentially Newfoundland and Labrador Hydro, in 2008, saying, well, we are already – we already know that the province's preference is to go ahead with the Lower Churchill Project, and – so why bother.

MS. DUNDERDALE: Well, that wouldn't have been known in 2008 in government. I don't know what whoever wrote this letter thought that they understood about what was going to happen in terms of meeting the needs of ratepayers here in the province, but no decision had been made to go with Muskrat Falls or the Lower Churchill in 2008.

MS. URQUHART: And no integrated resource planning process took place?

MS. DUNDERDALE: And it may not have. And I can't tell you that I have a lot of recall around this issue because –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – I really don't.

MS. URQUHART: And Madam Clerk, if we can please go to P-00041? Now, this is the Joint Review Panel, and they're – they also recommended an IRP process, so an integrated resource planning process. At page 68 and 69 please, Madam Clerk.

If you could scroll down to the bottom, please?

I might have the numbers wrong again.

I'm sorry, I need to update my ...

It's not that one.

In any case, actually, you know, I'll ask, Madam Clerk, if you don't mind, if you can go to P-

01395? The recommendation is in there as well. Thank you.

Thank you, Madam Clerk. If we can scroll down to page 6, please?

So, this is the government's responses. So, just, if you – I'll read here: "The Panel recommends" – and this is from the Joint review Panel – "that the Government of Newfoundland and Labrador and Nalcor consider using Integrated Resource Planning, a concept successfully used in other jurisdictions. Such an approach would involve interested stakeholders and look simultaneously at demand and supply solutions and alternatives used of resource over the medium and long term."

And, so, it says there that the Newfoundland and Labrador Government doesn't – accepts this recommendation, but I know that no IRP process was actually engaged in for this project, and –

MS. DUNDERDALE: I wish that I could help you, but I don't recall discussion around it.

MS. URQUHART: Well, I can tell you that it didn't, and actually, if we scroll down, please, Madam Clerk?

So, the response that was publicly provided – that was provided to the government – or to the public was that this recommendation was accepted.

But if you look at the third point here under the rationale, which was an internal – this is an internal government document and one that is – that was not released.

So, you know, if I were the public, I might expect that: Okay, they've accepted this recommendation. We're going to have an integrated resource planning process and that's the next step.

But, in fact, it actually – the government's intention was to accept the recommendation, but that it would only apply to future projects and not be retracted to this project.

MS. DUNDERDALE: Yes, it does say that, and if you just scroll down a little bit so I can read – no, the other way, thank you.

And I think what the recommendation speaks to is – take a look "... at demand ... supply solutions and alternative uses of resources over the medium and long term." So, from that perspective – but, I really I don't want to speak to it or – to – and be – telling you things that I don't have clear recall of.

MS. URQUHART: Okay.

So, if we can – that's – prior – I'm going to go back in time to when – 2006, when this project was being registered for the environmental assessment process. So, at the time, it was just provincially – registered provincially.

Madam Clerk, if you can please go to P-00175?

THE COMMISSIONER: On your screen.

MS. URQUHART: So, as you'll see, this a presentation deck that was prepared by Newfoundland and Labrador Hydro and it says there on the front page: "November 2006."

And, Madam Clerk, could you please go to P11?

THE COMMISSIONER: P11 or page 11?

MS. URQUHART: Sorry, page 11, apology.

And so here it indicates three different options for how to proceed with the environmental assessment process.

The second option is: Delay process until market access clarity is obtained.

And the third option here is: Register the generation project with the transmission project to follow. And that indicated there is the selected approach.

So, I wonder if you have any recollections of these discussions.

MS. DUNDERDALE: Some – not enough that I could speak to with any clarity.

MS. URQUHART: But at the time you were the minister of –

MS. DUNDERDALE: Just coming into the portfolio.

MS. URQUHART: Yes, so you started July –

MS. DUNDERDALE: July –.

MS. URQUHART: – of 2006.

MS. DUNDERDALE: – 2006 and on a steep learning curve.

MS. URQUHART: I suspect so.

So, at the time, and if we can go please, Madam Clerk, scroll down to page 15.

Actually, I'd ask you if you can please, Ms. Dunderdale, read through that slide there. If you can read it aloud just for the record, that would be perfect.

MS. DUNDERDALE: "Potential Communications Points."

This is Nalcor?

MS. URQUHART: This is from Newfoundland and Labrador Hydro at the time. So, I'm only interested in the first sort of half page.

MS. DUNDERDALE: Okay, so what are the issues?

MS. URQUHART: Yeah.

MS. DUNDERDALE: So, these are the issues that may be raised.

MS. URQUHART: Correct.

Yeah.

MS. DUNDERDALE: So, the environmental issues then are: Lower Churchill is a megaproject – it's not green; mercury pollution; flooding of forest land; destruction of fish habitat and people should conserve more.

MS. URQUHART: So, I mean you're in this, sort of – you are – on this steep learning curve of being introduced to this project.

MS. DUNDERDALE: Yeah.

MS. URQUHART: And this is what you're hearing.

Were you concerned to learn that these –?

MS. DUNDERDALE: No.

These are issues, I understand, that could be raised –

MS. URQUHART: Absolutely.

MS. DUNDERDALE: – because they – at no time did I ever understand that – we ever agreed that a mega hydro project wasn't green.

MS. URQUHART: These are environmental concerns –

MS. DUNDERDALE: Yes, absolutely.

MS. URQUHART: – other people's concerns.

MS. DUNDERDALE: And I understand. All of them would have been on the minds of people who were looking at this project.

MS. URQUHART: So, one of the concerns that people did raise was that to do the selected approach – the approach that Newfoundland and Labrador had selected for environmental assessment was project-splitting. Because you're choosing not to access the transmission line at the same time as the project, knowing that there is going to have to be a transmission line. Because you're not going to have an electricity generation facility in the middle of nowhere that it doesn't affect anything.

MS. DUNDERDALE: Yes, but as I understood the issue at the time, we didn't know where the transmission line was going to be.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: So it's hard to determine what the impact is going to be on the environment –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – if you don't know the line site down through the province.

MS. URQUHART: And so rather than wait to figure out what that line was going to be –

MS. DUNDERDALE: I mean the issue was that both matters come under review –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – and that did happen.

MS. URQUHART: I mean a different level of review, albeit.

MS. DUNDERDALE: Yes, but it did come under review.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: But it's hard to do an environmental review of a transmission line when you don't know where it is and that was the rationale.

MS. URQUHART: And if we can go, Madam Clerk, please, to P-00264. If you could go, please, to page 12.

And so here it's indicating that in 2009, February 2009 – Madam Clerk, if you could please scroll down a little bit, perfect, thank you – indicating here that Nalcor was concerned about the issue of project splitting. That this would be the decision to exclude the link from the EA, the generation environmental assessment process would pose a risk, essentially, that there could be a challenge to the environmental assessment. And it goes on to say: “The perceived risk level was characterized as medium to high. The key mitigating step” is “early registration of the transmission project”

And so, folks within Nalcor, and I expect given there was a very close relationship between Nalcor and your department at the time, you were the minister, were aware of this problem, right? That this is a significant concern that these projects have been split for the purposes of the environmental assessment. And there's a concern that's being raised that the cumulative effects of this project are not going to be taken into account, and your – but your government decided to proceed in any event.

MS. DUNDERDALE: I don't remember a conversation that sounded like that. There was certainly a discussion around splitting and what

that would mean and why it was necessary to do it, and the fact that we were going to upset a whole lot of people.

MS. URQUHART: Who was saying it was necessary?

MS. DUNDERDALE: Pardon?

MS. URQUHART: Who would have said it was necessary?

MS. DUNDERDALE: Well, that would've been discussion between the premier's office, Natural Resources, Nalcor, the Department of Environment and there may have been other people engaged. But I'm pretty sure all of those people would've been at the table.

MS. URQUHART: But who was saying it was necessary to do that?

MS. DUNDERDALE: Well, I don't recall the discussion, so I can't speak – certainly that would've – it would seem to me that that first argument would be made from Nalcor.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: You know, we wouldn't go in and insist that it was absolutely necessary that we get this going.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: You know, their managing the project – running the project. So you look to them and then all the other considerations that have to be put on the table by the various departments and a decision taken.

MS. URQUHART: And, ultimately, your government is responsible for the decision that is taken?

MS. DUNDERDALE: Absolutely.

MS. URQUHART: So I want to move on to the dam failure – potential of dam failure and, particularly, the North Spur. If –

THE COMMISSIONER: So could I just –

MS. URQUHART: Yes.

THE COMMISSIONER: I wonder where it's almost quarter two now.

MS. URQUHART: Oh, sorry.

THE COMMISSIONER: Is this a good spot to break?

MS. URQUHART: Yeah. No, that's a good spot to break, sorry. I got into –

THE COMMISSIONER: So let's adjourn now until 2 o'clock.

MS. URQUHART: Thank you.

CLERK: All rise.

Recess

CLERK: This Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Okay. Right. We'll just wait for Ms. Urquhart now and we'll be ready to proceed.

MR. RYAN: Commissioner, she's just outside.

THE COMMISSIONER: Yup. She's just coming in there now.

MS. URQUHART: Sorry, Commissioner, I was physically held up by the wind. It's very hard to walk back in.

THE COMMISSIONER: I agree.

MS. URQUHART: All right.

So, when we left off I was just asking about the North Spur and potential catastrophic failure of the dams of the Muskrat Falls Project.

So, Madam Clerk, if you can please go to P-00051, which is the Government of Newfoundland and Labrador's response to the JRP.

THE COMMISSIONER: Tab 57. Book 2.

MS. URQUHART: And if – Madam Clerk, if we can go to page 29, please.

So, on this page and the following page, this is the government's response to the JRP's recommendations. So, they had recommended some emergency preparedness in the event of a catastrophic dam failure. And, in their report they indicated that they had concerns that two hours would not be sufficient to evacuate, which was – the two-hour warning system that was in place would not be sufficient to evacuate residents within the flood path.

And the following recommendation if – (inaudible) – if you can continue to scroll down a touch, please – was that – sorry, just up a little bit? That's perfect. Essentially was that Nalcor – the government required Nalcor to assume liability on a no-fault basis for any loss of life and financial losses incurred because of the destruction of property and belongings, and disruption of activities caused by flooding in the event of the catastrophic failure of one or more of the dams.

And this – so that was what was recommended by the Joint Review Panel

Madam Clerk, if you could scroll down please. In response, the Government of Newfoundland and Labrador accepted the intent of this; however, they required only industry-standard insurance for losses as a result of negligence.

And so –

Thank you.

I was basically running up against the wind.

But – what I'm wondering is, you know, this is – so your government released this project from the environmental assessment, knowing that the JRP had concerns that people in the flood path would be impacted, and they've recommended full, no-fault insurance, and yet the government went against that. Why is that?

MS. DUNDERDALE: Because they felt that this was the appropriate response in the circumstance. I can't add much more to it than that. You know, anything that we do in the environment – and there's an associated risk, and so you mitigate that risk to the best degree possible and then there are investigations and

standards set to ensure that the appropriate level of safety has been engineered into the project.

It's – you know, it's appropriate in my view to have insurances for losses and so on in place of a possible dam failure. And, you know, if this is industry standard then, you know, I find that acceptable.

MS. URQUHART: But who bears the cost then? In the event of a failure, where it's not negligent?

MS. DUNDERDALE: I can't speak to the terms of insurance with you here today (inaudible) –

MS. URQUHART: Well I would put to you that it's Labradorians. Labradorians whose homes are in the path – are in this flood path.

MS. DUNDERDALE: It – all I can say to you is that the government of the day, whoever that might be, would respond to a catastrophic failure in what one would expect to be a comprehensive way. That, to me, would be incumbent on government were that to happen.

MS. URQUHART: So rather than the proponent being responsible, the government – so the rate – the taxpayers of the province end up bearing the cost.

MS. DUNDERDALE: Well, the taxpayer is the proponent. The taxpayer, the people of the province, own Nalcor.

MS. URQUHART: But it is not required to bear in its liabilities ledger or to have any accounting for the potential cost that would be incurred in the event of a catastrophic failure.

MS. DUNDERDALE: And one way or the other, this will fall to the feet of government so – should we have such an occurrence. Because Nalcor is fully owned by the people of the province. You know, it's important to understand that the proper mitigation has been done, that the risk has been minimized to an acceptable standard that are – I'm sure is determined by regulation. And then, on top of that, Nalcor does have insurance coverage as per industry standards.

MS. URQUHART: So, I mean, it's mitigated to the extent that it's acceptable to government – not necessarily to the people who live in the flood path.

MS. DUNDERDALE: Well, sometimes that's the conflict that arises in these kinds of circumstances. You know, we had the same issue, for example, with Holyrood and it's been an issue that's been raised in this Inquiry as to whether or not we should commit the precipitators and scrubbers and so on in terms of – and how that affects the CPW.

You know, the people in the Conception Bay area, Holyrood area, you know, might have a different point of view and so you try to find the medium to do everything you can to protect people to the best degree that you can and find the medium between the conflicting objectives.

MS. URQUHART: However, when this project is sanctioned and when it's – or at least when it's released from environmental assessment, the cost and the potential cost of a catastrophic failure of the dams is not – is, you know, we've – it's not written into an insurance policy other than in the event of negligence and there's no – it's not earmarked anywhere that we've set aside this money in the case of that ever happening.

MS. DUNDERDALE: No, it isn't, but that doesn't release government from the fact of Muskrat Falls being their project – the project that they're ultimately responsible for and being subject to consideration under law, I'm sure such a – if such a catastrophe should occur.

MS. URQUHART: I would agree with you on that.

If we can go, please, Madam Clerk, to P-00041. And this is the – again, the Joint Review Panel report. I don't believe it's in your book because it's –

THE COMMISSIONER: No.

MS. URQUHART: – quite large.

THE COMMISSIONER: That's right. You'll have to see it on the screen.

MS. URQUHART: Please, page 271 at the bottom of the page. I think I have my numbers right here.

Perfect. Thank you.

So if you can please read that last paragraph there into the record.

MS. DUNDERDALE: Sure.

“The Panel notes that methylmercury production is an inevitable result of reservoir impoundment and that the consumption of fish or country food contaminated with methylmercury can pose risks to human health, particularly in ... children. The Panel is also aware that fish and country food, such as caribou and seal, remain an important part of many Labrador and Quebec Aboriginal and many non-Aboriginal peoples’ diets for both health and economic reasons. With very high rates of diabetes among Innu in particular, the value of fish and country food as an alternative to highly processed, store-bought food cannot be overstated.”

MS. URQUHART: And, Madam Clerk, if we can please scroll down. I’d ask you just to read – continue just until you see the actual – there’s, like, a pop-out box there, if you can keep scrolling, please? Yeah, and if you don’t mind just reading that – what’s in the box there?

MS. DUNDERDALE: “The Panel concludes that, if consumption advisories are required in Goose Bay and Lake Melville as a result of elevated methylmercury in fish or seal from the Project, this would constitute a significant adverse effect on the residents of the Upper Lake Melville communities and Rigolet.”

MS. URQUHART: So when you were briefed on this report – I mean that, to me, is a very concerning finding – conclusion – what was the intention of government in how they were going to address this significant potential adverse effect?

MS. DUNDERDALE: Well, as we all know, if there’s organic matter –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – underwater, we’re going to have methylmercury. And as I said yesterday, quite a bit of methylmercury has come down the river in the last 30 years, given the reservoir and catchment area of the Upper Churchill.

I know that Nalcor monitors the methylmercury on a regular basis, and my understanding was that the interested parties or parties that would be – could be affected by increased methylmercury from the reservoir, even though it’s much smaller than what’s happening in the Upper Churchill – that together with Nalcor, they would monitor methylmercury in the river. And if the methylmercury became elevated to be a health concern, that measures would be taken to make compensation or repayment to the people who were affected.

MS. URQUHART: So, I guess, your understanding was, well, the Upper Churchill already produced this methylmercury and we expect Nalcor to do monitoring and that was the extent of what was expected. And in the event that this occurs, we’ll compensate people. That’s the –

MS. DUNDERDALE: Well, methylmercury does appear in the river, and, well, all rivers – it’s existent in the river. What I’m saying to you is Methylmercury, which I understand can take 40 to 50 years to dissipate, has been existent in the Churchill River since the build of the Upper Churchill and to a large degree, given that the reservoir is the size of PEI, as I said, and the catchment area the size of New Brunswick.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: So quite a bit of organic matter under water and methylmercury are flowing down the river. And – but Nalcor will have captured that data in terms of how much methylmercury because I understand that they do monitoring all the time.

MS. URQUHART: Is that a present-day monitoring or at the time they were doing monitoring?

MS. DUNDERDALE: No, they do constant monitoring (inaudible).

MS. URQUHART: Do you know when that would have started?

MS. DUNDERDALE: I know they've been doing it for some time. So I have – I can't –

MS. URQUHART: I mean as far as I'm aware it didn't start until 2014, which is following the sanction, so...

MS. DUNDERDALE: I can't speak to it. All I know is that Nalcor – I was told that Nalcor monitors methylmercury. And if it just began in 2014, Commissioner, well, good because we need to know where we are now. And if there are changes to methylmercury levels as a result – and will likely be as a result – then full information around that needs to be shared with the people who are concerned. And together they can work out a method to compensate if their livelihood or their food supply is affected by that.

MS. URQUHART: And so, I mean, just – I just want to clarify. You just said that this would likely result, but they're – we know that methylmercury is an inevitable –

MS. DUNDERDALE: Yes.

MS. URQUHART: – result, right?

MS. DUNDERDALE: Yes.

MS. URQUHART: Like, it's not something that's, like, more likely than not, it will happen.

MS. DUNDERDALE: Yes.

MS. URQUHART: And, Madam Clerk, if we can just go back to P-00051, please, to page 27 and 28?

I know that you didn't have an opportunity to read through the full report, but there are a number of occasions in which the panel comments on the lack of information available from Nalcor. I've directed previous witnesses to some sections which indicate essentially that the proponent – that Nalcor failed to provide information, failed to acknowledge the impacts

on seals, failed to do these studies or monitoring in advance.

And the – some of the conclusions of the recommendations that were to be addressed by the government prior to sanction, or prior to release from environmental assessment, were to perform further testing, to do some of that monitoring test, to do some of those baseline studies.

And when I – I mean, if we scroll down – this one is the implementation of advisories, and on this particular one – oh, sorry, yes. Continue on (inaudible) – sorry, it's really hard to – can you scroll up, please? Yeah. And then – sorry, and then down. I'm just trying to find where the top and bottom of that one is. Scroll down a little bit. On the top of page 28 – there it should be – keep going. That's great.

This isn't the one I was looking at, but these – there's a whole series of them that are talking about these different processes, and essentially, the – so this is the one – sorry.

“The Government of Newfoundland and Labrador believes that the proponent should take the lead with respect to these issues” And that seems to be sort of the – you know, government worked with Nalcor but it's their – it's them – it's for their – them to deal with. That was the – what governed the day when government filed its response.

MS. DUNDERDALE: To work with them and work with the federal government as well, as I understood it –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – to monitor what was happening in the river.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: And if the methylmercury levels were raised to a point –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – to have an impact on the groups identified in this that – and they would monitor together –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – so there'd be no questioning about the validity of the information that was being collected; that everybody have first-hand access –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – and be fully informed as to what the river was telling them about methylmercury. And if it was seen to be having an impact economically on people's food supply or – that they be compensated for that.

MS. URQUHART: So in your view and the view of your government, it was sufficient to financially compensate people for the loss of the ability to hunt and fish their country foods and foods that are culturally significant to them?

MS. DUNDERDALE: Well, you know, I had to take it in the bigger piece. Given the fact that we had one of the largest reservoirs in the world developed on the Churchill River and had been putting methylmercury down the river for 20 or 30 years.

And the other piece that really was interesting to me, and I don't know what value to give it. But as I said, the Inuit Land Claim was negotiated at a time that two attempts had been made to develop Gull and Muskrat, and yet the land claim remained silent on that issue. And that's something, you know, in – this document says is extremely important to those people particularly, and if it were in their land claim there'd be no question about it, you know, because rights are established there.

So, you know, for me I wasn't sure what kind of an impact that increased methylmercury would have, given the fact that up to this point no concern had been expressed to government that I was aware of.

MS. URQUHART: But this report, right – this is the federal government and the provincial government have got together, they've picked these experts, this panel of folks who are going to go and do this environmental assessment. The Indigenous folks, the environmentalists, the stakeholders, everybody gets an opportunity to come together. There's 45 days of hearings.

There's thousands of documents and submissions and experts and all these things that have been gone through. And my clients, for example, went to every single day of hearings. They were there and they participated in this process. And what came out of it was: We have significant concerns about methylmercury, we have significant concerns about the impacts on fish, wildlife, you know, fish, flora, fauna in the area.

We are recommending that before anything starts we get these baseline studies. We get the data first. We get better modelling. We have a better grasp – because as you said, I didn't have a good grasp on what the fate of methylmercury was going to be. That's exactly what they're saying.

We don't have good enough information yet about the fate of methylmercury in this river to be able to say whether or not there's going – in any real concrete (inaudible) whether or not there's going to be significant adverse health impacts.

And when I read this response, I read: We're going to let Nalcor lead that process. It's their responsibility, they can do the baseline studies. We'll work with them, but they're the lead.

MS. DUNDERDALE: Yes, and they can be the lead. But the Department of Environment is still going to be engaged. And the fact that Nalcor is owned by the Government of Newfoundland and Labrador does not let government off the hook – just the opposite. So there's no way that government can walk away.

MS. URQUHART: I guess my challenge here is where you have these experts who are saying: We have not received the data. The proponent is – you know, you were in Natural Resources, this project has been in – you know, cooking for years and it's coming to a head and we're in 2011 and we've – and this is the time where they should have their ducks in a row. And we've asked them for all this information for these studies and they're not producing it. We don't have it. We don't have reliable information about how – you know, about the fate of methylmercury in this river.

And they, you know, on a number of occasions, directly pointed the finger at – Nalcor failed to get us this information. And you say: Oh, we trust that Nalcor is going to get it to them in the future – going forward it's going to be ...

MS. DUNDERDALE: No. What we're saying is we're going to put you in partnership with Nalcor; that you're in here on an equal footing with Nalcor. And together, you're going to do this piece of work around methylmercury. Now, Nalcor's gonna have to fund it –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – and, I mean, that's implicit in it.

But we're not leaving it to Nalcor. We're ensuring that you are there with them. And they have to be 100 per cent inclusive of Aboriginal peoples and people who live along the river, who have a vested interest in this, to monitor what's going on in that river and find ways to deal with it.

MS. URQUHART: And so when you say you're ensuring that this is – you know, you're referring to your departments. And so do you know, like, what checks were in place? This was a conditional – sort of conditional release. What checks were in place to ensure that these conditions were complied with?

MS. DUNDERDALE: Well, just – the Department of Environment certainly –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – would have had a responsibility around that. The groups that came forward and identified themselves as interested parties, certainly would've been a conduit of information to government if they weren't living up to the commitment.

And in terms of what happened after the fact, I know under – I know at least recently, under the Liberal government that there was a workshop put together on methylmercury and evidence and so on, and some scientific evidence and research and so on. Because somebody shared the paper with me, because of my own interest in methylmercury and what was happening on the

river – the information that was presented at that meeting.

MS. URQUHART: So I want to – actually, Madam Clerk, if we go to P-00166. This is from 2006, so it's just as you're stepping into the role or perhaps slightly before.

THE COMMISSIONER: On the screen. There you go.

MS. URQUHART: Thank you.

So this is a Q&A document. It was prepared, presumably, for Premier Williams, but I think it's interesting, and, particularly, if we can go, please, Madam Clerk, to page 3.

So one of the questions here is: Why are you moving forward before consultation? And it says, you know, we're committed and we're going through the *Energy Plan* process and, you know, we're committed to keeping stakeholders informed of changes in development as we move forward.

It just struck me, you know, this is – it's in your own internal government document Q&As are saying: Why are we moving forward before consultation? This is a question that we expect to be asked, and it's something that I wonder and I wonder if you have any, you know, any thoughts on why we were moving ahead prior to doing some sort of an integrated resource plan?

MS. DUNDERDALE: Well, we're moving ahead in gathering information, doing engineering, do comparative costing, it's not precluding consultation, nor is it speaking to making decisions before consultations have been completed.

MS. URQUHART: So I –

MS. DUNDERDALE: I can't speak to the rationale of Premier Williams in this piece when he's making a speech.

MS. URQUHART: I guess my – where I'm really, like, what I'm really trying to get at, actually, is so we have – the *Energy Plan* comes out in 2006, the project is registered for environmental assessment, and this is one of the

things that I'm, you know, I'm still trying to wrap my head around.

So your – we haven't done an integrated resource plan, there hasn't been, you know, there's been consultation on the *Energy Plan*, but not on this particular project, and yet it's being registered for environmental assessment. Like, we're already going into that process.

MS. DUNDERDALE: Yeah.

MS. URQUHART: And, I guess, I think building sort of on what Mr. Ryan was asking about, like, was it the view of government that the environmental assessment was the consultation?

MS. DUNDERDALE: No, there was going to be, and there was a consultation. And a lot of time was spent in Labrador, and when people and the environmental review panel was put in place, on top of that, any time that a consultation was requested it was given to people. The object was to make as much information available to all of the people in the province, but particularly to the people who were closest to the Churchill River and going to be closest to the dam to have a good understanding of what was being proposed and to get their feedback.

And we would have had somebody at our table who would have worked that every day in terms of the MHA. You know, it's hard to describe John Hickey and his passion for Labrador –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – and his determination to ensure that everything that should be in Labrador was in Labrador and that it was done correctly and the consultation and so on. I mean, you could be talking about a drought in the Middle East – and I'm not joking – and John would want to know where the relevance was to Labrador in that and how that might affect – it really could be that extreme.

So John was gonna – you know, he was keenly interested from a number of perspectives about development on the Churchill River, especially with the potential of having it developed for ratepayers on the Island and he would have looked for impact on Labradorians –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – as well as benefits for Labradorians; would've been critical to him. And he wasn't shy about expressing himself.

MS. URQUHART: But, I mean, the fact that you have a strong advocate for Labrador doesn't displace your responsibility as –

MS. DUNDERDALE: And nor did we look to it. But, you know, there's a comfort when you have somebody who has taken on that role. Yes, you have responsibility and you have an awareness, you have an interest even, but if you've got somebody who's never going to let that slip off your agenda, not even for one day, that helps you ensure that you're doing what you ought to do and what the people in the area expect you to do.

MS. URQUHART: So, Madam Clerk, if I can, please – if you can, please, call up 01656?

So despite having a, you know, a strong voice for Labrador within the Cabinet –

THE COMMISSIONER: Tab 142. Sorry.

MS. URQUHART: No. Thank you.

THE COMMISSIONER: Book 4.

MS. URQUHART: Madam Clerk, if you can scroll down, please. Keep scrolling – there's a summary at the end. Keep going, I think it's the last page or the – sorry, this – yeah, I think that's the one. Sorry, go up one more, please. Yeah, thank you.

So this is a press release that was – or a document that was prepared by Todd Russell, who was the MP at the time, and he had done a survey of Labradorians as – in 2011, around, you know, what they thought about Muskrat Falls. So he did a mail out to everyone in his constituency and received results. And he received 200; 200 surveys were submitted at that time and then did a further town hall, which had over 2,000 respondents and that, you know, he states reflected similar responses.

So, if you can see there on the second column, there's the – if you can read aloud the first two

questions there and the answers, would be appreciated.

MS. DUNDERDALE: “Does the proposed Muskrat Falls development provide enough benefit for the people of Labrador?” And 83 per cent of the respondents said no. And, “Are you concerned about the environmental impacts of the proposed Muskrat Falls project?” And 78 per cent of the respondents said yes.

MS. URQUHART: And, sorry, and actually, just – since we’re discussing consultations, I’m just gonna let you – or I’m gonna read the third one as well.

So, “Have Labradorians been properly consulted about the proposed Muskrat Falls project?” And 78 per cent said no.

So you were aware that this was, you know, that there was some dissent –

MS. DUNDERDALE: No question.

MS. URQUHART: – in Labrador.

MS. DUNDERDALE: No question.

Very rarely is there unanimity around these kinds of consult – consultations or questions that are raised, and the fact that, you know, 200 people or 300 people responded to a write-in survey and 80 per cent of them had a concern, I’m not a bit surprised.

I wouldn’t have been surprised if all 200 – if they took the time to write in, it usually means it’s because you have a concern.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: Most people who don’t have a concern aren’t motivated to respond.

MS. URQUHART: Mmm.

MS. DUNDERDALE: And that’s not surprising. You know, you would find that in any kind of a survey. You’d have to be offering up, you know, something pretty good to get everybody to agree that it’s a good thing.

MS. URQUHART: But does that concern you, that –

MS. DUNDERDALE: It –

MS. URQUHART: – voices of Labradorian – of the – a good portion of Labradorians are saying –

MS. DUNDERDALE: Well –

MS. URQUHART: – we are not satisfied –

MS. DUNDERDALE: Well –

MS. URQUHART: – with this plan?

MS. DUNDERDALE: – I don’t know if I would say a good portion. But it doesn’t matter what the portion is, to me, at the end of the day.

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: You know, if people have something to say and they want to express a point of view, then they ought to be heard. And whatever it is they’re expressing has to be weighed to see if it holds merit there or, you know, to what degree do we need to be concerned about this and so on.

So, you know, it is important to consult people. It is important then to listen to what they have to say – which is one of the reasons why in – I like – the third document to me is always – what we heard – so that you can get an understanding of that. But that doesn’t mean we’re all going to concur –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – that we’re all going to share the same opinion. But you have to understand where people are coming from. And I think we made a good effort at doing that.

MS. URQUHART: And so, Madam Clerk, if you can go to 01658, please?

I’m just going to call it up but I don’t think we really – there’s nothing in it in particular other than the fact that this is a media campaign that was – and communications plan that was developed and it’s, you know, it goes through

and addresses that Todd Russel survey as well as Yvonne Jones and a number of other mayors and Labradorians, who are being vocal opponents of this project, who are putting forward their views and the views of their constituents that: This is not a benefit to Labrador, this is solely a benefit to Newfoundland. Or that there're – their concerns around the environmental issues or the socioeconomic impacts are such that it is – there's not enough benefit to Labrador.

And the plan is then to – if we go through it, you can see it's essentially how are we going to address it. It's yourself, Jerome Kennedy, and Ed Martin are going to go out and you're going to –

MS. DUNDERDALE: (Inaudible.)

MS. URQUHART: – engage specific – well, go and provide information and try and sway people to get onside and spend, you know, I believe it was 200 to \$300,000 on a communications plan to try and target, you know, silent supporters and get folks on board.

You know, I guess I wonder whether it might not have been more efficient to just do some of the studies and do some of the work that the JRP was recommending be done rather than spend the money on communications plan.

MS. DUNDERDALE: Well, you have to communicate with people. And if concerns are being raised, as you just said, and they're being raised by prominent people in the community, then we need to respond in a prominent way. And that's part of what we do as politicians, because politics is a part of this and how you communicate with people.

And it's political on the other side as well. Some of the people who are criticizing the project are being driven politically as well. You know, there's not purity on either side.

But the critical piece of all of it is try to get as much information as you can into the hands of the people of the province so that we can have some kind of an informed discussion on this and that people are aware of what we're doing. And then they have a way, very clearly, of making it clear to us whether they support us or not. And

one of the critical components for us was the 2011 election.

MS. URQUHART: And which would explain why the – it was released in – it was released from environmental assessment. Oh, it wasn't released in March 2011, so I guess that doesn't make sense in that context, sorry March 2012, that does make sense. Sorry I'm trying to fit the –

MS. DUNDERDALE: Yes but we're progressing work –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – and there was a broad debate right across the province and the provincial election is geared around that whole discussion. So we go to the people of the province: This is where we are, this is what we're studying, you know. One of two things are going to happen here, something needs to happen. We think we've established that. One of two things are going to happen in terms of energy supply here, particularly for ratepayers on the Island and, you know, this is part of our platform.

So, the election really is: What do you think? Where are we?

MS. URQUHART: But I mean, you understand that that it's a majority rules, you know, elections are based on majorities rather than – based on – the regional, you know, whether or not folks in the Coast of Labrador were in support. It's not reflected in an election.

MS. DUNDERDALE: No. Well, they were. They are represented in terms of their elected MHA who then has a voice in the House of Assembly. You know, there are a number of MHAs in Labrador, as you know, and, you know, together they represent the views. And if you had a group of MHAs standing together on behalf of a region in the province, then, you know, I submit that that makes a terrific impact.

MS. URQUHART: Madam Clerk, if you please call up P-00352. This is the paper that was prepared by Grand Riverkeeper for the Commission in respect to this phase of the Inquiry.

THE COMMISSIONER: It's on the screen.

MS. URQUHART: And, Madam Clerk, if we can go please to page 61?

And if you can, please, just read those first three paragraphs of the Conclusion?

MS. DUNDERDALE: "It is difficult not to be cynical about Newfoundland's relationship with Labrador and its natural resources. GRK participated actively in all aspects of the consultative processes leading up to sanction in good faith and believed that given the known significant and detrimental impact that Project would have on the River, its ecosystem and the local residents who rely on it, such a project could not ever be sanctioned.

"Dr. Rosenberg describes environmental impact assessment ('EIA') in Canada:

"I contend that environmental impact assessment has not progressed much in the past at least three decades that I've been a practicing scientist in Canada. It usually is **a rigidly defined bureaucratic process**. It produces large amounts of descriptive work that does little to predict the effects of the upcoming development. [Emphasis added]

"To GRK and many Labradorians, the fact that the Government of Newfoundland was not required to comply with the recommendations of the Joint Review Panel prior to commencing construction meant that the process was nothing more than an illusion of consultation to justify a foregone conclusion. Perhaps the most cynical among us believe the EA was a distraction to keep us busy while the politicians and businesspeople made deals."

I don't agree with one word of it, I can tell you before you ask the question.

MS. URQUHART: Well, that's –

MS. DUNDERDALE: I do not.

MS. URQUHART: I want get your view on it, because you understand that – you know, what we've been kind of going through is – here, the Joint Review Panel people dedicated their time and energy to giving input. They produced

recommendations and a number of them were either rejected or were accepted in principal. But the government decided to do something entirely different.

So, this is a sentiment that exists. And I wanted to give you an opportunity to explain how that's not the case and – or how you view that.

MS. DUNDERDALE: I don't believe it's the case. I don't believe in going through mock exercises to get a final result. It's disrespectful to people. And I wouldn't be engaged in such an exercise, I really would not.

You know, in terms of our government – we had a policy position that we took in our platform in 2003 that we were gonna develop the Churchill River if we could do so to the benefit of the people of Newfoundland and Labrador, and primarily Labrador in the first instance. We didn't know what – you know, there were a number of proposals on the table of what that might look like. And I can honestly say that from the time that I went in to the department – at the time that I went in the department in 2006, the majority of energy that was being focused on the Churchill River at that time was around power for export, as well as power for economic development in Labrador, which was extremely important to Labradorians.

We had, as I testified here before, eight to 12 mines that were in various stages of development that would provide employment and prosperity for the people in Labrador. There was discussion around what – would there be any way at all to get some of Churchill power down to the coast because of the isolation they lived in, and the difficulty that that created around their own energy needs and the discomfort that they lived with and inconvenience that they lived with.

And we talked about it all the time; we had, you know, a number of MHAs elected in Labrador around that whole platform, that whole piece. And so I would say to you that the majority of Labradorians understood very clearly what our government was proposing, and what our intention was, and we were very clear about it. And just by the election of the number of MHAs we had, indicated that there was a tremendous amount of support in Labrador for what we were

doing. And particularly from Indigenous people in terms of Innu Nation, because they wanted to be participants in the development and direct beneficiaries of the development.

And so that's where we were when – now, I'm not saying to you that everybody in Labrador was of that mind or agreed with that, but we live and work in a democracy and the majority of people supported that proposal. That didn't alleviate us from listening to the others and we did, and I believe that we responded in the way that we felt was appropriate.

MS. URQUHART: And so, I mean, at the end of the day, you're the regulator, so you're responsible for ensuring that the proponent meets whatever standards, or complies to the extent that you've determined is appropriate in your response.

MS. DUNDERDALE: Yes.

MS. URQUHART: And you have to be satisfied that – you're satisfied that the government's response was adequate and addressed the recommendations of the JRP.

MS. DUNDERDALE: Absolutely.

We wouldn't have accepted or rejected recommendations on a willy-nilly basis. They would have been given due consideration that would have been done in consultation with the federal government and the Department of Environment and the appropriate response would have been made.

You know, there is no doubt that there would be people who didn't agree with the position that was taken, and I accept that. And, I don't think either that it relieves us of the responsibility to keep interacting, and to keep listening to concerns, and to mitigate those concerns as we move along.

MS. URQUHART: I just wanted to – you were saying that the response was developed in consultation with the different departments and the federal government, but also with Nalcor. There were discussions with Nalcor about some of these pieces as well.

MS. DUNDERDALE: Absolutely. You know, they did the consultation.

MS. URQUHART: But I'm saying in terms of how the government's response and – to the JRP was, you know, there was –

MS. DUNDERDALE: Well, we consulted with Nalcor, we consulted with Environment, you know, we consulted with any number of departments – anybody who would have had an interest –

MS. URQUHART: Mm-hmm.

MS. DUNDERDALE: – in this project and in the environmental review and so on would have – we wouldn't have left Nalcor out of that, but it wasn't exclusive and they didn't dictate. But they would have been part of the consultative process.

MS. URQUHART: And, you know, how persuasive would they be? I mean their – they didn't dictate what the response were going to be but they were involved in the responses, so how persuasive would they have been?

MS. DUNDERDALE: There's been lots of insinuations made with regard to the influence of Nalcor; and let me tell you something. Nalcor was the proponent, Nalcor was the crown – and the energy company designed and put in place by the Government of Newfoundland and Labrador to do the kind of work that – part of which has been under discussion here and under review for some time – but nowhere in my time in government, either as a minister under Premier Williams or as Premier myself, did Nalcor run the show. There was no question about who was in charge.

MS. URQUHART: That's all.

MS. DUNDERDALE: Thank you.

MS. URQUHART: Thank you, Ms. Dunderdale.

THE COMMISSIONER: All right.

Emera Inc.?

No.

Former Nalcor Board Members?

MR. GRIFFIN: No questions, Commissioner.

THE COMMISSIONER: Manitoba Hydro has indicated they're not gonna be present.

Newfoundland Power?

MR. KELLY: No questions, Commissioner. Thank you.

THE COMMISSIONER: All right. Ms. Best.

MS. E. BEST: I have to make two trips.

Thank you, Commissioner, I will try to be as brief as possible.

THE COMMISSIONER: Take your time.

MS. E. BEST: Ms. Dunderdale, when you were asked about oversight you mentioned a review by Natural Resources Canada and, as you know, we made attempts to obtain some of those documents. They didn't arrive in time, but I think we do have at least one and, Madam Clerk, if you could please pull up P-00054, which we have seen before.

THE COMMISSIONER: Tab 56.

MS. E. BEST: Thank you.

Which –

THE COMMISSIONER: (Inaudible) book 2.

MS. E. BEST: Thank you.

(Inaudible) there?

MS. DUNDERDALE: Yes, I do.

MS. E. BEST: So this is a – excuse me – March 2012 Economic Analysis of the Lower Churchill Hydroelectric Generation Project.

MS. DUNDERDALE: Yes.

MS. E. BEST: Prepared by Natural Resources Canada. Are you aware of this report?

MS. DUNDERDALE: Yes I am.

MS. E. BEST: Okay.

And if we could turn to page 4, please, Madam Clerk. Right at the bottom, the last paragraph, actually.

There we go.

So, I just wanna look very quickly at the part – what was happening here in this analysis. The last paragraph says, “The key economic issue concerns whether the project in its entirety, or the Muskrat Falls or Gull Island components individually, would provide an economic benefit while representing the least-cost option for supplying power to the Island of Newfoundland.”

Is that what you understand?

MS. DUNDERDALE: Yes.

MS. E. BEST: Thank you.

Madam Clerk, if we could also please turn to page 42 – again, at the last – very last paragraph. I believe we have the conclusion of the report here? And I'd just like to read it.

“This economic analysis was developed in order to inform decision making under the *Canadian Environmental Assessment Act*. The key economic issue examined by the report concerns whether the project in its entirety, or the Muskrat Falls or Gull Island components individually, would provide an economic benefit while representing the least-cost option for supplying power to the Island of Newfoundland.”

And then if we can continue on to the next page, please, Madam Clerk.

“The report examined the two alternatives for supplying power to the Island, namely the Interconnected Island (i.e., Muskrat Falls and the Labrador-Island Link) and the Isolated Island (i.e., the no project option). Given Nalcor's assumptions about demand growth, oil prices, investment and operating costs, the Muskrat Falls alternative was found to be lower cost than the Isolated Island alternative. The assumptions were found to be reasonable and the demand projection was consistent with other recent forecasts.”

Do you recall that as being the conclusion of Natural Resources Canada?

MS. DUNDERDALE: Yes, I do.

MS. E. BEST: Thank you.

And that report was created in response to the JRP report, is that right?

MS. DUNDERDALE: Yes, it was.

MS. E. BEST: Thank you.

MS. DUNDERDALE: And their request for an independent analysis.

MS. E. BEST: Thank you.

Now, you've been asked today, and yesterday I believe, about why government sanctioned the project prior to UARB review, so I'd like to address that.

Firstly, I may have misunderstood, but I thought that Commission counsel mentioned that one of the conditions of the federal loan guarantee MOU was that – was approval by the UARB. And I put to you that – I'm not sure that that is technically correct. Do you agree or have any insight on that?

MS. DUNDERDALE: I agree. The UARB was going to determine what was going to be included in the rates for ratepayers in Nova Scotia. However, if there was a shortfall between what that was and what was required by Nalcor as the proponent, that Emera will pick up the difference.

And we understood that that satisfied the federal government, and we both went to sanction thinking all the conditions precedent had been satisfied, that the sanction was accepted by the federal government.

MS. E. BEST: Okay. So I take from that, then, as well that you understood that Emera had sanctioned.

MS. DUNDERDALE: Absolutely. I didn't have a question in my mind in December when we sanctioned that this was a full, unconditional sanction –

MS. E. BEST: Okay.

MS. DUNDERDALE: – by both Emera and Nova Scotia and Newfoundland and Labrador and Nalcor.

MS. E. BEST: Thank you.

I do have a document here that the Commission has; I don't believe it's an exhibit yet, but it is actually a press release issued by Emera on December 17, 2012, so following sanction. It's entitled Emera Inc. Approves Sanction of the Maritime Link Project. And I'll read it to you, and if you can tell me if you were aware of this or if this jives with your recollection of how events progressed.

“Recovery of costs on the Maritime Link project from NS customers remains subject to regulatory approval in Nova Scotia. The project partners have committed to ensure that the Maritime Link is built under the terms of The Sanction Agreement. These terms include:

“Agreement on a mechanism for dealing with adjustments to rate of ROE; Settlement mechanism for payment ... 80/20 true up; Agreement on the conditions under which Emera's investment in the Labrador Island Transmission Link is assured; Agreement on cost sharing of the Federal guarantee payment.”

But that seems to indicate that Emera was under the impression that they had fully sanctioned. Do you agree?

MR. LEARMONTH: Excuse me, is that an exhibit?

MS. E. BEST: No, it's not an exhibit.

MR. LEARMONTH: Well, what are you reading? What is it?

MS. E. BEST: It's the press release from Emera.

MR. LEARMONTH: Okay. Well, I haven't seen that, I don't think.

MS. E. BEST: It was submitted to Commission counsel.

THE COMMISSIONER: It should be made an exhibit anyway. So at some point in time what I'm going to do is I'm going to just check with Commission counsel. Do you know which Commission counsel it was submitted to? Obviously, it wasn't Mr. Learmonth, so?

MS. E. BEST: So –

THE COMMISSIONER: Was it one of our associate counsel?

MS. E. BEST: So Mr. Learmonth was on the email, as was Ms. O'Brien and Adrienne Ding. This was a document that was sent in by government along with three other documents last week, but I was told it was too late to enter them as exhibits.

THE COMMISSIONER: Okay, so it came after our deadline, then?

MS. E. BEST: Yes.

THE COMMISSIONER: Okay.

So that's one exhibit that I wish you had asked me. I would have certainly seen to it – if it was an important exhibit, I'd see to it that it is marked.

But one of the problems that we've been having – and I had to give clear instructions to counsel, because I was getting exhibits when I was walking into this room, and I was saying what's going on here.

MS. E. BEST: Right.

THE COMMISSIONER: I mean, we're supposed to know this earlier.

MS. E. BEST: Yeah.

THE COMMISSIONER: So I've told them to be quite deliberate with regards to the timeline, so ...

MS. E. BEST: Okay.

THE COMMISSIONER: But if counsel has an exhibit that feels really is important, I would like it brought to my attention early on so that I can

deal with it. But this one, because of, obviously, the significance of it from –

MS. E. BEST: Yes.

THE COMMISSIONER: – your point of view, I'm going to make sure that this is going to be marked. And unfortunately we may not have another day to do it, but I'm going to make an order today that it will be marked as an exhibit, and then all counsel will be provided with the number of that exhibit subsequent sometime tomorrow or whenever it can be done.

MS. E. BEST: Thank you.

THE COMMISSIONER: All right?

MS. E. BEST: Okay. So I'm not sure if you finished your answer there. If that jives with your impression that –

MS. DUNDERDALE: Yes.

MS. E. BEST: – Emera had sanctioned –

MS. DUNDERDALE: Yes, it does.

MS. E. BEST: Thank you.

Earlier today, counsel for Nalcor put to you that the decision to sanction Muskrat Falls was a policy decision, and, I believe, he said that you had agreed yesterday. But then he moved on, and I don't think you got the opportunity to finish your answer on that question.

MS. DUNDERDALE: On whether the development of the Churchill was a policy decision?

MS. E. BEST: Well, actually, there's a distinction, I think, between the development of the Churchill and the sanctioning of Muskrat Falls. And I believe that – well, if you want to describe the difference or any confusion, we'd appreciate that.

MS. DUNDERDALE: It definitely was a policy of our government to develop Churchill Falls if it could be done to the benefit of the people of the province. One of the –

MS. E. BEST: Muskrat Falls, you mean?

MS. DUNDERDALE: No, the Churchill River –

MS. E. BEST: The Churchill River.

MS. DUNDERDALE: – which would have been Gull and Muskrat.

MS. E. BEST: Yes.

MS. DUNDERDALE: That was definitely a policy decision of our government. What that might look like at the end of the day was an open question. There was a number of options considered, but, you know, more could have been added.

It didn't necessarily mean that any part of the Churchill would be developed for ratepayers on the Island. It was a possibility; that wasn't the policy. The policy was that we were going to develop the Churchill River to the benefit of the people of the province just the same as we were developing other resources, for example, in the oil and gas sector.

MS. E. BEST: And what about the decision to sanction Muskrat Falls? Was that strictly a policy decision?

MS. DUNDERDALE: No. Because – it couldn't be just a policy decision because we were legislated under the EPCA to provide the least-cost option for power, the cheapest rate of power, to ratepayers on the Island. So unless that was changed, that had to be the primary objective.

MS. E. BEST: Okay. Thank you.

A lot has been said about how you lost confidence in the PUB. And you mentioned some comments that you had heard through the grapevine wherein Andy Wells had voiced his position on Muskrat Falls. And I'm gonna read you a line from his transcript at – and I'd like to know if this accords with your impressions from the time. And Mr. Wells was questioned about this by counsel for Nalcor – for Nalcor former board members.

Mr. Wells says: I went to Ed Roberts's book thing because I'm interested in World War I; I have an obsession with World War I, so I went

to that. He came over to me, this guy, and I was just sitting next to pal, Ron Penney and Ed. And Ed said: Well, Andy, this Muskrat Falls Project is going to be a disaster for the province, isn't it? And I said: Yes, Ed, it's going to be an effing disaster; that's what it's going to be.

I said: It's critically important for prominent people like you to speak out against the project. That was – then he says: That was late 2011, early 2012.

Does that sound like the thing – and isn't that before the reference question was even put to the PUB?

MS. DUNDERDALE: Absolutely.

MS. E. BEST: Okay.

MS. DUNDERDALE: And this was the kind of feedback that was being reported to me through the hearing process.

MS. E. BEST: Thank you.

Madam Clerk, if we could please bring up P-00223.

THE COMMISSIONER: Okay, that one will be on the screen as well.

MS. DUNDERDALE: Okay.

MS. E. BEST: And I'm going out to, I believe, the last page.

Now, this is a 2010 Minute of Council, right? You recognize this?

MS. DUNDERDALE: Yes.

MS. E. BEST: Counsel for Mr. Bown brought this document up, I believe.

MS. DUNDERDALE: Yes.

MS. E. BEST: Now, at this time in 2010 – November 2010 you weren't premier at that time, were you?

MS. DUNDERDALE: No, I wasn't.

MS. E. BEST: Okay.

And do you think that it's even possible that your civil servants, when you were premier, thought that government might proceed with Muskrat if it was not the least-cost option?

MS. DUNDERDALE: Absolutely not.

I mean, we had to be living in different worlds for anybody who was in the public service and working closely to this file, or in the public service period, to believe that we weren't looking for the least-cost option for ratepayers in the province. It was in everything we said, everything we spoke about, everything we did. And you can't work that closely with me, as minister or premier, because that was my view. And I think you can – you know, you heard from testimony directly from Minister Kennedy that that was exactly the case. You'd almost have to be living in parallel worlds to have a different understanding.

There is no way – especially in terms of Robert Thompson or Charles. I don't know how they could have a view that we were doing something different than looking for the least-cost option.

MS. E. BEST: In fact, were they directed to oversee – help government oversee Nalcor's work in finding the least-cost option?

MS. DUNDERDALE: Absolutely. And even when we got down to where we were getting closer and closer to sanction and getting the definitive answer on whether Muskrat Falls might be the least-cost option. Charles Bown, particularly, worked closely with Minister Kennedy to pull the whole project apart to see if they could identify any flaw in reasoning or any fault in the planning and so on, because the project was not gonna go ahead if it wasn't the least-cost option.

MS. E. BEST: Thank you.

Counsel for the Consumer Advocate raised the 2012 Consumer Advocate report; I believe we have that at P-01648, if we could please call that up, Madam Clerk.

THE COMMISSIONER: Tab 138, book 4.

MS. E. BEST: And if we could go to page 12, please.

MS. DUNDERDALE: Could I have that tab number again, Commissioner?

THE COMMISSIONER: I'm sorry. Tab 138.

MS. E. BEST: Page 12 and I – this is the last line of the overview – the last paragraph of the overview section of this report, which I think functions as the summary.

And it says there – you can read the last paragraph: “The Consumer Advocate agrees with MHI's finding that the Muskrat Falls Generating Station and the Labrador Island Link HVdc projects represent the least cost option of the two alternatives, when considered together with the underlying assumptions and inputs provided by Nalcor.”

Is that what you understood the position of the Consumer Advocate to be?

MS. DUNDERDALE: I – it is, and it was something that offered great comfort, again, in terms of oversight because we had somebody who was arm's length who – whose mandate charged him, particularly, around the best interest of consumers – the ratepayers who was saying that upon review, his review and his office's review of the project, that he agreed that it was, as I said there, the least-cost option of the two alternatives.

MS. E. BEST: Thank you.

I just have one final question. Madam Clerk, if we could please go to P-00050?

THE COMMISSIONER: P?

MS. E. BEST: P-00050.

THE COMMISSIONER: 00050.

MS. E. BEST: Which is – oh, probably not in your binder, actually.

THE COMMISSIONER: No, it's not.

MS. E. BEST: (Inaudible.)

If we could scroll down to Recommendation 4.2, please – apologies, I don't have the exact page number. Oh, yeah, and actually – so yes.

So, Ms. Dunderdale, this is the federal government response to the JRP. And Recommendation 4.2, I think, we're all familiar with here at this point. It's the recommendation for an independent analysis of alternatives – of the alternatives.

So if we could please scroll down, Madam Clerk, to get to the answer – or the response.

So you see the federal government's response here: "The Government of Canada does not accept this recommendation. There was sufficient information given to the Panel in order to inform decision-making under the *Canadian Environmental Assessment Act*."

Were you aware that that was the federal government's position on that –

MS. DUNDERDALE: Absolutely.

MS. E. BEST: – recommendation as well?

MS. DUNDERDALE: Yes, I was aware.

MS. E. BEST: Okay. Thank you.

Those are all my questions.

THE COMMISSIONER: And I just noticed it's 10 after 3 here. Do you want a break?

We don't have much longer because I –

MS. DUNDERDALE: I –

MR. LEARMONTH: (Inaudible.)

THE COMMISSIONER: You won't be too long?

So are you prepared to continue on?

MS. DUNDERDALE: Yes, Sir.

THE COMMISSIONER: Okay.

Go ahead, Mr. Learmonth.

Redirect.

MR. LEARMONTH: All right.

Before I ask some questions, just one thing that I wanted to correct, based on the questions put to Ms. Dunderdale by her counsel, that World War I book that Andy Wells referred to in the passage referred, that wasn't even published until November 2014, so the dates that you gave cannot be correct. I think you said it was at some time during the –

MS. E. BEST: With respect, those dates were confirmed by counsel for the Former Nalcor Board Members when – during Mr. Wells' cross-examination, so perhaps he has the book mixed up, but he's twice confirmed the dates.

MR. LEARMONTH: Well, anyway, the book – the World War I book that Mr. Roberts co-authored was not published until November 2014. So, I guess, we – I just want to put that in the record, and if my correction is not warranted, then we'll find that out and deal with it.

Now, Ms. Dunderdale, you gave some evidence on your understanding of the federal loan guarantee, and you referred to it as an insurance policy.

MS. DUNDERDALE: Well, to some – it's a loan guarantee.

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: Yeah, might not have been the right choice – I know the difference between an insurance policy and a guarantee.

MR. LEARMONTH: No, but you referred to it –

MS. DUNDERDALE: Yes –

MR. LEARMONTH: – as being –

MS. DUNDERDALE: – and I meant –

MR. LEARMONTH: – a sort of – an insurance policy.

MS. DUNDERDALE: I understand that, and that probably wasn't a good choice of words. I understand that it's a guarantee, not an insurance policy.

MR. LEARMONTH: Yeah. But – so what is your – was your understanding of it in terms of the – of it affecting the ultimate liability of the province?

MS. DUNDERDALE: In terms of the ultimate liability of the province, if we were in enough difficulty to have to call down the loan guarantee, it probably wouldn't be too much help. The bigger consideration was that we had been promised the loan guarantee –

MR. LEARMONTH: No.

MS. DUNDERDALE: – they were considering the loan guarantee, and if they turned down the loan guarantee, then that would've indicated to me that there was –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – something wrong in terms of the rationale that was being put forward.

MR. LEARMONTH: No, but I'm not questioning you on that. I'm questioning you on the implications of the guarantee, and you said it was an insurance policy. You've corrected that.

MS. DUNDERDALE: Well, if the province went bankrupt or ratepayers weren't in the position and the province wasn't in the position to pay off the commitments made to the banks –

MR. LEARMONTH: Right.

MS. DUNDERDALE: – on our funding, that the loan guarantee would kick in.

MR. LEARMONTH: And pay off to the extent of the guarantee?

MS. DUNDERDALE: Absolutely. Yes.

MR. LEARMONTH: But that wouldn't relieve the province of its obligations.

MS. DUNDERDALE: No, not at all.

MR. LEARMONTH: Yeah. So – because there's something about non-recourse financing in some of the documents we've seen, but I just wanted to make sure you understood that the

government gave a full indemnification to the federal government.

MS. DUNDERDALE: I understand that, Mr. Learmonth.

MR. LEARMONTH: So the benefit of this non-recourse or this discussion about non-recourse doesn't really, in a practical sense, have any application.

MS. DUNDERDALE: I agree and I spoke to that either late yesterday or early today in my testimony saying that if we got to a place that we had to have – the loan guarantee had to kick in, it probably wouldn't be much help.

MR. LEARMONTH: Okay. Well, you know, 'cause Canada would be able to come in and step in, take control of all the assets and then they could complete the project and –

MS. DUNDERDALE: Yes.

MR. LEARMONTH: – send the bill to the government.

MS. DUNDERDALE: Yes.

MR. LEARMONTH: So you –

MS. DUNDERDALE: I understand that.

MR. LEARMONTH: You understand that now.

MS. DUNDERDALE: Yeah.

MR. LEARMONTH: Because it was a little different from what you said yesterday, I think. Yeah, okay, that's fine.

Now, the – in questions from other counsel, you went over this P50 point. And I understood you to say that Mr. Martin, at some point, explained to you that the 6.2 billion cost estimate was a P50, meaning there was a 50 per cent chance of it going over or under.

MS. DUNDERDALE: Yes.

MR. LEARMONTH: When did he advise you of this?

MS. DUNDERDALE: It would've been –

MR. LEARMONTH: Well, do you remember –?

MS. DUNDERDALE: I can't give a precise date. I wouldn't be able to tell you –

MR. LEARMONTH: You don't have any record of it?

MS. DUNDERDALE: – a precise date for that.

MR. LEARMONTH: Well –

MS. DUNDERDALE: But certainly I understood that and that was clear before we went to sanction. I can tell you –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – I've got that degree of surety around it.

MR. LEARMONTH: But if he advised you of that, there had to be someone else from government present at that time. Isn't that correct?

MS. DUNDERDALE: Without a doubt there would've been somebody else there.

MR. LEARMONTH: And the most logical people to have been present –

MS. DUNDERDALE: Yes.

MR. LEARMONTH: – if this statement was made, would be, I put to you: Minister Kennedy or Robert Thompson –

MS. DUNDERDALE: Yes, they probably –

MR. LEARMONTH: – or Charles Bown.

MS. DUNDERDALE: Absolutely.

MR. LEARMONTH: Yeah.

Now, the problem I'm gonna put to you is that none of those three persons has any recollection of such a discussion of P50.

MS. DUNDERDALE: I can't speak to that, Mr. Learmonth.

MR. LEARMONTH: But if – because you never met with Ed Martin alone.

MS. DUNDERDALE: No, I didn't.

MR. LEARMONTH: Except for that discussion about the Hebron matter.

MS. DUNDERDALE: Yes.

MR. LEARMONTH: Yeah.

So I suggest that one of those three persons, if not two or three, would've been present, and the problem as I am putting it to you is that they have no recollection of this discussion of a P50.

MS. DUNDERDALE: I can't speak to it any further than I have. You know, when we arrived at the number –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – Mr. Martin had to share that number with us.

MR. LEARMONTH: Well, he didn't have to.

MS. DUNDERDALE: Well, he did.

MR. LEARMONTH: And you're saying he did.

MS. DUNDERDALE: But he did.

MR. LEARMONTH: The number, but I'm talking –

MS. DUNDERDALE: The 6.2.

MR. LEARMONTH: – about the P50. Yeah.

MS. DUNDERDALE: And so if we're ready, you know, we're ready to make the decision on sanction –

MR. LEARMONTH: Hmm.

MS. DUNDERDALE: – here's where we are. There would have been a discussion around how solid that number was –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – was it going to come in and would it come in over, would've come –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: And my understanding and what I recall is that we had 50 – you know, that the number was solid and everybody concurred that the number was solid because that was the drive and both, I think, Robert and Charles and certainly Minister Kennedy, spoke to that issue, how important the number was.

MR. LEARMONTH: Right.

MS. DUNDERDALE: And –

MR. LEARMONTH: But they didn't have any recollection of a description of a P50, and that's the point I'm trying to focus you on.

MS. DUNDERDALE: Well, all I can tell you is I – I can only tell you what I believe was the discussion at the time. And I understood that there was a P50 value that we had a chance of coming in –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – under budget, you know, or zero. But there was a 50 chance that we could go over one way or the other.

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: Now, you know –

MR. LEARMONTH: Well –

MS. DUNDERDALE: – that information had to come to me –

MR. LEARMONTH: Hmm.

MS. DUNDERDALE: – from Mr. Martin.

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: I can't imagine that anybody else would have – unless it was somebody from the Nalcor team, but in my memory, it's Mr. Martin.

MR. LEARMONTH: But you have no idea when?

MS. DUNDERDALE: It just would've been at the time that we were informed, Commissioner, that we have a solid number that would could move ahead on –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – that we could go to sanction. That the decision could be made –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – we could move through Gate 3.

MR. LEARMONTH: But, you know, Mr. Kennedy – we'll talk about Mr. Kennedy first, and I think it's been acknowledged that he was, if not, obsessed with the question of costs, which Charles Bown said he was certainly driven to get a firm handle on costs. Do you agree with that?

MS. DUNDERDALE: Oh, yes.

MR. LEARMONTH: And he said, categorically, that he has no recollection of a discussion of a P50. The only reference he had in his notes was some minor reference to something doing with the Maritime Link. So, the problem that some people might have with this is you have this recollection and the minister of Natural Resources does not have such a recollection.

MS. DUNDERDALE: (Inaudible.)

MR. LEARMONTH: Nor does the chief, Mr. Thompson, nor does Mr. Bown.

So I'm suggesting to you that you're mixing up your memory with information – your memory before sanction with information you've heard through this Inquiry, that you may have an honest belief that you were told that before sanction – I'm not saying that – but I suggest to you that you're mistaken and this P50 came up as a result of your listening to evidence given at the – at this Commission because, as I say, Mr. Bown had no recollection of it, Mr. Thompson didn't, Mr. Kennedy didn't, Tom Marshall didn't.

So how is it that you're the only person that now says they have a memory of it when you never met with Ed Martin without at least someone from Natural Resources and, probably, the clerk being present? Can you help me understand that point?

MS. DUNDERDALE: Mr. Commissioner, I can't help Mr. Learmonth, and I'm not going to be able to help you on that issue.

I heard that testimony, so it would have been easy enough for me to come in here and say, well, I concur with everybody else, I didn't hear anything about it. But I believe that I did hear about it, and I'm sworn to come here and tell the truth as I perceive the truth, and that's what I'm going to do.

You may very well be right, but I can't tell you you're right. In my memory –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – I remember having a discussion around – we had a 50 per cent chance either way, and – which led to, if we go the other way, how bad are we going the other way.

MR. LEARMONTH: Okay.

So even based on the – what I just put to you as to Mr. Kennedy's recollection, Mr. Bown's, Mr. Thompson, you stick by your evidence that you were told – given that information on the P50 in the presence of other persons who have testified to this inquiry, is that what you're saying?

MS. DUNDERDALE: Other people would have been in the room. You know, I – other – but in my memory bank, I was told.

MR. LEARMONTH: Yeah.

But your memory isn't very solid on all points, is it?

MS. DUNDERDALE: Well, Mr. Learmonth, it's been a long time.

MR. LEARMONTH: I realize that.

MS. DUNDERDALE: And I've had – you know, when I walked away from government, I walked away.

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: And I had other things that preoccupied me that were pretty significant in my life.

MR. LEARMONTH: Yes.

MS. DUNDERDALE: And so it was five years before I looked – you know, since I'd seen either piece of paper –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – with regard to all of this. And I've tried to go through thousands of –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – pieces of paper, tried to recollect as I went along listening to testimony and so on, because a lot of the things that we talked about in our interview, for example, were isolated pieces of paper –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – for me that I didn't have any context around –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – and so on. So to the best of my ability –

MR. LEARMONTH: Yes.

MS. DUNDERDALE: – I have been trying to rely on the materials that have –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – been made available to me and the memories that that triggered and so on –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – and to come here and tell the truth as I understand it.

MR. LEARMONTH: Yeah, but don't you agree that, having read all this information in the documentation, there's certainly a possibility that you're mixing up the memory you had before sanction –

MS. DUNDERDALE: That's –

MR. LEARMONTH: – with the information that you learned since the Inquiry?

MS. DUNDERDALE: That's entirely possible –

MR. LEARMONTH: Yes.

MS. DUNDERDALE: – Mr. Learmonth, but I have to say –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – here what I believe to be true.

MR. LEARMONTH: Yeah. But you recognize that as a possibility?

MS. DUNDERDALE: Look –

MR. LEARMONTH: And –

MS. DUNDERDALE: – all of this has taken place over the span now –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – Commissioner, of about 15 years.

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: And so, you know, I don't claim to recollect everything perfectly, but what I do recollect, or I think, that, you know, makes sense to me or I have it in my head, then I have to tell the Commissioner exactly that.

MR. LEARMONTH: Yes, okay. But, you know, Robert Thompson's a very reliable person, isn't he?

MS. DUNDERDALE: Absolutely. As is Charles Bown, as is Ed Martin, as is Robert Thompson, Jerome Kennedy and so on.

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: I mean –

MR. LEARMONTH: But –

MS. DUNDERDALE: – I don't think any of those people would try to lead me astray or certainly not come in here and try to lead the Commissioner astray.

MR. LEARMONTH: But does it not give you some concern, when we look at the record, and we know that Mr. Kennedy was a very proficient note taker – he – notes after notes after notes – yet he has nothing in his memory, or nothing in his notes, about this, and he kept notes of all meetings. Doesn't that give you some cause for concern?

MS. DUNDERDALE: That's certainly something that would be unusual, for Jerome not to note that.

MR. LEARMONTH: Yes.

MS. DUNDERDALE: And what I'm saying to you, Mr. Learmonth, and saying to the Commissioner, the easy thing to do is come in and say I don't have any memory of it one way or the other. And for me, it doesn't hold a great degree of significance –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – other than – you know, I wasn't being naive that somebody was guaranteeing \$6.2 billion was the number and that was that.

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: And it seems to me, in all of my recollections of business deals, that I would've asked some questions around that. But I understand that there's a difficulty here in terms of who remembers and who doesn't. But –

MR. LEARMONTH: Yes.

MS. DUNDERDALE: – my obligation is to tell you what I recollect or what I believe –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – I recollect.

MR. LEARMONTH: Yes.

Well, Ms. Dunderdale, I just wanted to let you know that, for the purpose of this question, I'm not suggesting that you're lying.

MS. DUNDERDALE: Thank you.

MR. LEARMONTH: I'm suggesting that, as a human being, that you have to recognize the problems with memory when we go back to something we haven't thought about for a long time and, then, we're presented with all kinds of documentations on the same subject. Do you see what I'm saying?

MS. DUNDERDALE: I recognize that, Mr. Learmonth.

MR. LEARMONTH: Yeah.

MS. E. BEST: Commissioner, I guess I object to, you know, where this questioning has gone.

There's a lot of – everyone who has testified here at the Inquiry has – is more or less relying on a memory, which is not perfect, and I don't see how we can hold Ms. Dunderdale to any different standard than that.

THE COMMISSIONER: I don't disagree with your comment. You know, but, again, I have to assess people's memories and assess what I – what – in conjunction with the evidence and try to put it together the best I can. But I don't disagree with what you just said.

MR. LEARMONTH: No. May I respond to that?

THE COMMISSIONER: You can.

MR. LEARMONTH: If you don't mind. The – it's very common when a trier of fact – I know you're not a trial judge, but when someone has to decide something – is to look at the surrounding circumstances where there's different evidence. Now, Mr. Kennedy was a note keeper.

THE COMMISSIONER: I think you made your point on that.

MR. LEARMONTH: Okay.

THE COMMISSIONER: And I understand.

MR. LEARMONTH: All right.

Now, the next thing – point I wanted – which came up in cross-examination was this point about this \$500-million cost overrun. And you said that that might have been said at a coffee break.

MS. DUNDERDALE: I can't tell you – I cannot describe for you, Mr. Learmonth, exactly where or how that conversation took place. There were lots of asides and so on –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – that took place when we had meetings.

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: You know, you stop; everybody's standing in the room; you mill around –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – you pull somebody to one side, ask a few questions and so on.

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: So I can't tell you if it was in that kind of environment or –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: But I certainly have a memory of hundreds of millions of dollars – less than 5 – 5 or less –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – and taking comfort in the fact that if we did go over by a couple hundred million dollars that there was lots of opportunity in the business plan to account for that without placing a burden on taxpayers –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – on ratepayers.

MR. LEARMONTH: Okay. So that could have been at a coffee break? You don't know whether –

MS. DUNDERDALE: I can't –

MR. LEARMONTH: – there were other people present?

MS. DUNDERDALE: It was in the mix of determining – yeah, the final decisions around –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – you know, have we arrived at the number?

MR. LEARMONTH: Yeah, yeah.

Now, once again, it's the same point I'm going to put to you, that Mr. Kennedy had no recollection of any such information. Mr. Marshall had no recollection of any such recollection nor did Robert Thompson or Charles Bown.

MS. DUNDERDALE: Yes. And I can't speak to that, Mr. Learmonth. You know, again I'm under an obligation to come here and speak what I know. You know, and I took comfort at the time, its poor comfort now, you know, \$500 million is, you know, not a significant amount given that, you know, the project is now 10.1.

But at the time, you know, I had a different view.

MR. LEARMONTH: But did you inform Cabinet of this \$500-million decision when the sanction point was discussed on December 6, 2012?

MS. DUNDERDALE: I don't know, Mr. Learmonth. It wouldn't have been unusual for me to do it or speak to one or two about – it just – but I don't remember doing that.

MR. LEARMONTH: Yeah, because I suggest to you that based on the evidence of Mr. – I'll say, Marshall and Mr. Kennedy that if such information had been presented, that they would have done something about that. Mr. Kennedy

has said time and time again that this was the best estimate he could possibly get.

MS. DUNDERDALE: Yes.

MR. LEARMONTH: And Mr. – and likewise, in different words, Mr. Marshall said that.

MS. DUNDERDALE: Yes.

MR. LEARMONTH: So don't you agree to me that if at a Cabinet meeting where this – the sanction question was before the Cabinet – if you had mentioned a figure of \$500 million that it's highly likely that if not all the Cabinet ministers at least Mr. Kennedy and Mr. Marshall would want further information on that?

MS. DUNDERDALE: Yes. But I'm also dealing with reasonable people who have been engaged in project development and execution over 10 years in government.

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: And who – more than times than ought – know that projects come in over budget. So, it would be very unusual – in my estimation – that they would accept 6.2 as solid and that there was no chance of an overrun and not question where we would get the money to cover an overrun if something extraordinary did happen.

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: But I can't speak to any of it because I –

MR. LEARMONTH: You don't remember.

MS. DUNDERDALE: I don't recall the conversation. They're numbers that I have in my head that, I believe, were provided to me but I can't say any more than that. I can't give you any more context about where we were, I can't even tell you where we were, when we came to the conclusion that we were ready to go through Gate 3, that Muskrat Falls was the project. I can't tell you where we were or who was in the room.

MR. LEARMONTH: Okay.

But just to turn to the exhibit that we looked at, at least on two occasions in your testimony – that’s Exhibit P-00067 – that’s volume 3, tab 29, Ms. Dunderdale.

This is the memorandum prepared by Mr. Kennedy on the sanction decision.

MS. DUNDERDALE: Mm-hmm.

MR. LEARMONTH: Do you have it there?

MS. DUNDERDALE: Yes, I do.

MR. LEARMONTH: Okay, if you turn to page 10.

Okay. So we have under financial considerations, this – the paragraph beginning with DG3. Do you see that?

MS. DUNDERDALE: Yes.

MR. LEARMONTH: DG3 estimates the total capital cost of the project 6.2 billion. This estimate includes MF costs of 2.9, LTA of .7 and at LIL at 2.6. The 6.2B billion represents the total cost to the Province and Nalcor and excludes interest during construction.

Now, I suggest that if there’d been any discussion about a possible – possibility of a \$500-million overrun, that Mr. Kennedy, A – would’ve known about it, and he would’ve put it in this memorandum, and that –

MS. DUNDERDALE: (Inaudible.)

MR. LEARMONTH: – and that –

MS. DUNDERDALE: (Inaudible.)

MR. LEARMONTH: – the reason it’s not in the memorandum is ‘cause you didn’t know anything about it.

MS. DUNDERDALE: No, I don’t agree.

I don’t agree that he would’ve put it in the – a memorandum, ‘cause we’re gonna stick to the 6.2 billion. That was –

MR. LEARMONTH: But it says the total cost, though.

MS. DUNDERDALE: This – and it is total cost, because we’re going in with an expectation that this is \$6.2 billion –

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: – and hopefully we’re gonna come in on budget.

MR. LEARMONTH: But is that enough?

If you know that there’s a range of an overrun, I know that you can’t say that – you know, in any megaproject, even if you have the best assessment you can make, there’s still a possibility of other overruns.

But, when you – if you’re suggesting that you told the members of Cabinet of this \$500-million figure, I suggest that something would’ve been done about it, and Mr. Kennedy would’ve made reference to it in his memorandum, so that it would’ve informed the other members of Cabinet before they voted.

MS. DUNDERDALE: I’m not saying that. I’m not saying that I told Cabinet. I don’t recall.

MR. LEARMONTH: Okay. Okay, fair enough.

MS. DUNDERDALE: What I’m saying is: You always go around thinking in your head you might have a possibility –

MR. LEARMONTH: Okay.

MS. DUNDERDALE: – of an overrun, but you won’t necessarily put it in the paper.

MR. LEARMONTH: Okay. So you’re not saying that you said you told Cabinet.

MS. DUNDERDALE: No.

MR. LEARMONTH: That’s fine.

MS. DUNDERDALE: No, I have –

MR. LEARMONTH: And –

MS. DUNDERDALE: – no memory of telling Cabinet.

MR. LEARMONTH: Okay.

Why not? Why didn't you tell Cabinet?

MS. DUNDERDALE: I – I don't – because 6.2 billion was the number.

You know, when I'm saying to – Nalcor, to decide, you know, if this goes over, are we gonna be able to pay this down? You know, because we live in the real world here.

MR. LEARMONTH: Right.

MS. DUNDERDALE: What happens if we go over? And Nalcor's answer has to be that: Well, we're going to do our very best to stay on budget. But if we go over, we've got the means within the business plan to pay the overrun.

Well, how much could the overrun be then? Like, what are we talking about? And that could very well be in a side conversation. Well –

MR. LEARMONTH: A side conversation, yeah.

MS. DUNDERDALE: It could very well be.

MR. LEARMONTH: Well, that would – if the 500, if a P50 and the 500 million were in a side conversation, well, if that were the case then that would be compatible with the fact that no one else was advised of it.

MS. DUNDERDALE: And it could very well have been –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – a side conversation.

MR. LEARMONTH: For both P50 and –

MS. DUNDERDALE: But I would prod around it, Commissioner, because –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – I had enough experience by then to know that, you know –

MR. LEARMONTH: Yeah, well –

MS. DUNDERDALE: – nailing this down to 6.2 – that's great, we've done what we should do here and done our due diligence, but still –

MR. LEARMONTH: Now, at the Cabinet meeting where the sanction decision was made – I think it was December 6 or thereabouts, 2012 – was there any discussion of a P-factor?

MS. DUNDERDALE: No.

MR. LEARMONTH: No.

MS. DUNDERDALE: No. Not that I recall.

MR. LEARMONTH: And there was no communication to the PUB but that there was a P50 factor, was there?

MS. DUNDERDALE: No.

MR. LEARMONTH: No.

Well, why wouldn't you advise the Cabinet of that? Because what the Cabinet members saw – there may have been other things, but was this statement on page 10 of Exhibit P-00067 – that the 6.2 represents the total cost to the province.

MS. DUNDERDALE: Because that's – I mean that's what we expected that the total cost would be.

MR. LEARMONTH: Mm-hmm.

MS. DUNDERDALE: You know, there had been lots and lots of discussions and briefings and it's the same issue, Commissioner, as around risk. You know, we talked about risk all the time, you know. And – members at the backbench got up, members of Cabinet got up in the months and months before sanction and talked about risk, and mitigation of risk, and how much risk was in DG2 and what we were looking to put in DG3 when the – when we were having the debate around sanction and so on.

But we wouldn't have labelled it, because Nalcor generally didn't talk to us in those kinds of terms – that this is management reserve and this is tactical risk and contingent risk and – they just didn't. And that might have been a mistake, you know, given that everybody was aware of the 7 per cent inclusion in the 6.2 and didn't

understand the different buckets that, you know, risk could fall into and that it wasn't unnecessarily dealt with in the 7 per cent.

But it didn't get broken out in our discussions in those kinds of terms.

MR. LEARMONTH: No.

Well, I think you've already been aware that there was evidence that Westney recommended a P75 to a P90. You were aware of that? You found that out?

MS. DUNDERDALE: I wasn't aware –

MR. LEARMONTH: Well, that –

MS. DUNDERDALE: – of –

MR. LEARMONTH: – that's the evidence.

MS. DUNDERDALE: I mean, I've heard it in testimony here.

MR. LEARMONTH: And there will be evidence presented at the next Phase of the Inquiry that – from Mr. – from someone at Westney that Nalcor wanted Westney to say that a P50 was a good thing and Westney said no.

You weren't aware of that, were you?

MS. DUNDERDALE: No, I was not aware of that.

MR. LEARMONTH: Well, you will be when the evidence is given, anyway.

Okay, one last question. I just wanted to clarify something –

THE COMMISSIONER: Excuse me just for a second, Mr. Learmonth.

MS. E. BEST: No, sorry. If it's his last question – I was going to suggest that we take the break if there was much more, but –

MR. LEARMONTH: No.

THE COMMISSIONER: Are you okay, Ms. Dunderdale?

MS. DUNDERDALE: I'm fine.

MR. LEARMONTH: I have one very simple question. So is it all right, Ms. Dunderdale?

MS. DUNDERDALE: Yes, Mr. Learmonth, go ahead.

MR. LEARMONTH: On the PUB extension, you referred to the fact that we already gave them one extension or something to that effect. Is that correct?

MS. DUNDERDALE: Well, we –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – we gave them an extra three months –

MR. LEARMONTH: Yeah.

MS. DUNDERDALE: – because of the delay they experienced in getting the information –

MR. LEARMONTH: From –

MS. DUNDERDALE: – which retarded their work.

MR. LEARMONTH: From Nalcor?

MS. DUNDERDALE: Yes.

MR. LEARMONTH: Yeah, because they didn't get the documents –

MS. DUNDERDALE: Yes.

MR. LEARMONTH: – from Nalcor – the submissions.

MS. DUNDERDALE: Yes.

MR. LEARMONTH: So you're aware that's the reason for it?

MS. DUNDERDALE: Oh, absolutely.

MR. LEARMONTH: So that was certainly a legitimate reason.

MS. DUNDERDALE: Oh, absolutely. I understood.

MR. LEARMONTH: Yeah.

Those are my questions. Thank you very much.

MS. DUNDERDALE: Thank you, Mr. Learmonth.

THE COMMISSIONER: Yeah.

I have a few questions if you're okay to continue
–

MS. DUNDERDALE: Yes, I am, Commissioner.

THE COMMISSIONER: – for a few minutes?

So I want to ask you a question, and maybe it's from a legal perspective, so – and I recognize you're not a lawyer – but you're – you've mentioned yourself that you were aware the – of the provision in the Electrical Control Act [sp Electrical Power Control Act] that deals with the fact that you – the government has legislated that it's going to be the least-cost power consistent with reliability basically.

MS. DUNDERDALE: Yes.

THE COMMISSIONER: And you also are likely aware that, in your Energy Plan at page 48, there was a reference to the fact that the primary objective, with regards to the provision of power, was to provide it in the least cost to the ratepayers.

MS. DUNDERDALE: Yes.

THE COMMISSIONER: So that was fairly consistent?

MS. DUNDERDALE: Yes.

THE COMMISSIONER: Okay.

So somehow we got from what was the least cost to a reference that it was a least-cost option with the comparator being Muskrat Falls or the Lower Churchill Project, and I'm going to suggest to you that – and I'd like to hear your comments on this. I'm going to suggest to you that those are two separate things.

What is least cost, pursuant to the act and pursuant to the plan, may not be the least-cost option when you are taking one particular project and trying to cost and compare it to something else. And the reason I'm saying this is because by doing the Muskrat Falls Project as the comparator, it meant – according to what I've – the evidence I've heard so far is that this apples-to-apples thing had to happen, which meant that you had to compare it for the total lifespan or expected lifespan of the Muskrat Falls Project – 50 years out.

And I'm going to suggest to you that if we had looked at – and that would be fine if there were no other obvious places where we were going to get power, but we have Churchill Falls, and in 2041, at that time, the contract with Hydro-Québec ended. You know, whether they were a part owner of Churchill Falls or not, power was available.

So is it possible that by using Muskrat Falls as the comparator we ended up not looking at the least cost for the ratepayer of the province by comparing – by looking for something that had to go out 50 years?

MS. DUNDERDALE: I think that we couldn't use 2041 as a comparator, Commissioner.

THE COMMISSIONER: Yeah. I'm not saying that you would use 2041 as a comparator, but I'm saying that because 2041 was coming and we knew something was going to happen – we have a power source in 2041 –

MS. DUNDERDALE: Mm-hmm.

THE COMMISSIONER: – why is it – are we getting the least cost to the ratepayer by comparing that to a project that has to out over 40 years beyond 2041?

MS. DUNDERDALE: I don't think that we could have introduced – I mean, it was examined because it was raised, but 2041 to – because we can't predict anything that's going to happen in 2041.

So reliability goes completely out the window when we consider – you know – you have to wait 30 years, back then in 2010, before you have access to that power; there's tremendous

demand in Labrador, never mind what's happening in the Island part of the province. But we don't know if we're going to get access to that power in 2041.

Yes, it comes back to CF(L)Co, but, for instance, Commissioner, if Quebec decided not to replace the generation that it was going to lose from the contract, if they felt that they – you know, if they decided to wait, we're not going to do anything, we're just going to wait for the contract to expire, and then we'll go in a bidding war against Newfoundland and Labrador, and we'll offer the highest cost, because, for example, if they had to build as they anticipated in Plan Nord, the projects that they were looking – that they announced in their energy plan, development plan, for that area of the province, it was much, much more expensive than Muskrat Falls.

So they may have decided that we're not going to build new transmission, we're going to wait 'til the power reverts back to CF(L)Co, and then, you know, we're going to bid for the power, and we'll bid for the power – we can bid a very high price for the power, because, for us, to build new generation is going to be extremely expensive. So we can go high on the bid, and CF(L)Co is going to have to do what's in the best interest of CF(L)Co, not particularly the Province of Newfoundland and Labrador. So it was those kinds of scenarios that we had to take into consideration.

THE COMMISSIONER: But we are a 65 per cent owner of Churchill Falls.

MS. DUNDERDALE: Yes.

THE COMMISSIONER: So the rate of return – the higher you go, the more your returns.

MS. DUNDERDALE: Yes.

THE COMMISSIONER: So let's assume for instance that there is a bidding war. Ultimately, at the end of the day, the vast majority of that price is coming back to Newfoundlanders. So if we wanted – if Quebec wanted to do that, and they wanted to pay a high price, what prevented Newfoundland from doing the same thing?

MS. DUNDERDALE: Yeah, and – but there was a high risk involved in all of that and the advice we got that that wasn't a good path to follow. And on top of all of that was the consideration that we were going to have to do something on the Island in the meantime.

You know, we were going to have an energy crunch in 2015, an energy deficit in 2019. We couldn't wait to address that until 2041, and the minute that we started – Holyrood certainly wasn't going to stand up until 2041. And the minute we went down the road of replacing Holyrood and so on, then in essence, Commissioner, we'd made the decision.

THE COMMISSIONER: Right.

But we still had 30 years, as you said. So again, I'm trying to look at the least cost, because it seems to me – and I – you know, I certainly need to reflect on this a lot more, but it still seems to me the fact that we were comparing it to a 50-year project may not necessarily have led us to a situation where the ratepayer is paying the least cost or would pay the least cost for power. Because even if you did enough in 2015, 2020, wouldn't it involve an expenditure of \$6.2 billion?

But in any event, I've heard your answer on that, and I appreciate the fact that you have answered it.

I wanted to ask you as well, you mentioned – and this hasn't been raised in cross-examination, and I was hoping it might be – but you raised, in your examination, that, in June of 2012, you were made aware of the fact that – through CF(L)Co, I assume through Mr. Martin – that Hydro-Québec was not taking the same position with regards to the interpretation of the renewal contract. You mentioned that yesterday.

Remember you had a question that was asked to you about water management and you talked about how you were minister at the time and you saw the legislation put through or whatever. And you were asked whether or not you had been advised that CF(L)Co – or that Hydro-Québec was taking a different position with regards to the Nalcor position on the interpretation of the renewal contract. It's not exactly the way it was

asked, but I think the answer you gave was that you were made aware of that?

MS. DUNDERDALE: I was – somewhere along the line, I was made aware.

THE COMMISSIONER: Right.

And this would've been – do you believe that this was prior to sanction? Because it was in June – I'll just to tell you – because my – the evidence that we have so far is – and this is – even though this was in a hearing that was confidential, I don't think this part of it is confidential.

I've heard evidence that – in June of 2012, CF(L)Co was made aware of the fact that Hydro-Québec – through its planning document, its supply document – that they were not looking at the renewal contract the same way that Nalcor was looking at it.

So I'm wondering whether or not you were made aware – or can you recall if you were made aware of that prior to sanction?

MS. DUNDERDALE: I was made aware of it, Commissioner, but I can't tell you when.

THE COMMISSIONER: Okay.

When you were made aware of it, what did you anticipate or what were you told about the potential impact of that interpretation?

And I'm not getting into legal advice –

MS. DUNDERDALE: No.

THE COMMISSIONER: – that you were told, so –

MS. DUNDERDALE: No.

THE COMMISSIONER: – please stay away from that.

MS. DUNDERDALE: And – I didn't understand that we were at serious risk of an impediment, something that was gonna stop construction of Muskrat Falls. If I understood from anything that was said to me, that we were running a very high risk of – because of –

actions being taken by Hydro-Québec that the project would have to stop, would go on hold – that would have been a very serious matter for me.

THE COMMISSIONER: Right.

MS. DUNDERDALE: Yeah. When we went to sanction, my understanding, from all the advice that I had received, Commissioner, was that we were on a pretty good, smooth course to building the project.

THE COMMISSIONER: Right.

So, aside from the issue of construction for a moment, were you made aware of anything about the issue of water flow and the impact of water flow on the Muskrat Falls Project should Newfoundlanders, should Nalcor and CF(L)Co not be able to reach an agreement on the flow of water?

MS. DUNDERDALE: I – the legislation that was brought –

THE COMMISSIONER: Right.

MS. DUNDERDALE: – into the House of Assembly –

THE COMMISSIONER: That's what it was for.

MS. DUNDERDALE: – spoke to that piece.

THE COMMISSIONER: But did anybody speak to you when you were told about or when you became aware of the fact that Hydro-Québec may not be taking the same position with regards to the issue of the – their interpretation of their new contract?

Were you told anything about the potential impact on water flow?

MS. DUNDERDALE: I can tell you that I was advised that if we ever got to a situation where the taps were gonna be turned off at the Upper Churchill, that the – that it would stop all water flow on the river and all generation of electricity. And the bigger price for that was gonna be felt on the other end and not Muskrat Falls.

THE COMMISSIONER: All right. Okay.

And also you would have been aware, I assume, during – because you were still premier at the time and this was – would have been before financial close that almost at the same time that – the UARB came up with the first – the first response in the UARB that Hydro-Québec filed its declaratory action in the Quebec courts?

MS. DUNDERDALE: I was aware.

THE COMMISSIONER: Or that – and so notwithstanding the fact they took that position, you – and I don't want you to get into legal opinions or anything – but you felt comfortable enough that you could proceed?

MS. DUNDERDALE: Absolutely. I didn't feel any discomfort. And, you know, I felt we were in a strong position, Commissioner.

THE COMMISSIONER: Okay.

Now, at the end of the day, I'm going to be requested or required to make some recommendations to future governments with regard to projects, megaprojects – whether it's hydro dams or something like that. And that's what I intend to do. So I'd like to get your views on this.

So, you advised that – you've stated here you understood at the time – and you believe you understood it based upon conversation prior to sanction and not from the evidence, but – that you were proceeding with a P50 number. So I think you understand that P50 means there's a 50 per cent chance it could go over, it could go under. If it goes up, P75 means 75 per cent confidence level. And if the number goes to 90, it's a 90 per cent confidence level; 95, et cetera.

Recognizing that this province has a small population, recognizing the financial position of the province – even back in 2010 or 2012 – I'm gonna suggest to you that proceeding on the basis that the number might be 50 per cent right or 50 per cent wrong may not be the best choice to make when you're dealing with a \$6.2 billion project.

I'm just wondering what your thoughts would be with regard to, you know, big developments and

what kind of numbers – now that you understand P-factors and whatever – I'm sure people will certainly be looking at them in the future based upon what we've heard so far.

What is your thinking with regard to the confidence level the government should have before it makes such a decision?

MS. DUNDERDALE: Hindsight is a wonderful thing, Commissioner.

THE COMMISSIONER: Right.

MS. DUNDERDALE: And I wouldn't consider going less than a P75 or a P90.

THE COMMISSIONER: Okay.

And the other question I did have for you – and only because it hasn't been asked of you – you understand that an adjudicated board, whether it's a court, whether it's the PUB or some other adjudicated board, that merely because they have evidence before it, doesn't necessarily mean they have to accept the evidence that they have.

MS. DUNDERDALE: Yes (inaudible.)

THE COMMISSIONER: Okay.

So, when we look at the PUB and the fact that MHI had done the report – and the MHI report is there – but if you read it closely, which you may not have but you were briefed on it, it's not totally unqualified.

So, my query would be: Would you not respect the fact that assuming this board was legitimately hearing the matter and I heard what you had to say about Mr. Wells, but, I think the other members, I don't think you take an issue with the other members of the board.

MS. DUNDERDALE: No.

THE COMMISSIONER: So when you hear a decision that they don't believe they have the certainty that they require in order to make a decision – just because they have a piece of evidence in front of them – do you understand that they have the right to reject that evidence if they wished to?

MS. DUNDERDALE: I understand they have that right.

THE COMMISSIONER: Okay.

All right, good.

Thank you very much, Ms. Dunderdale. I appreciate your time.

MS. DUNDERDALE: Okay, you're welcome, Sir.

THE COMMISSIONER: So this ends this portion of the Inquiry and I do want to make a couple of comments, which will be very brief because I know everybody wants to get home.

So, before we conclude what we have termed as Phase 1 for this Inquiry, I first of all want to take the opportunity to thank Commission staff and counsel, all counsel here with standing as well as those working so hard behind the scenes for all the parties responding to information requests by the Commission, including the Nalcor people and the government people for their efforts. Your efforts and your work has been very much appreciated by myself.

I would also like to express my gratitude to the technical people working behind the scenes who are publicizing this Inquiry as well as to the media for their efforts in providing the public with information concerning Inquiry's evidence.

To date, we've sat for 62 days and I checked this morning and Ms. Dunderdale is the 62nd witness that I've heard from. While Phase 1 is concluding, I believe based upon my looking at Phase 2 that there may well be some other evidence called in Phase 2 that will have a bit of overlap with Phase 1 issues. However, what we will be dealing with in Phase 2 is obviously the issue of the cost increases.

We plan to commence Phase 2 hearings in Happy Valley-Goose Bay on February 18, 2019. Before that, obviously, much work needs to be done by Commission counsel and by staff of the Commission and we will be ready at that stage.

Finally, I want to wish all of you a very happy Christmas season and all the best in 2019. And I look forward to your continued co-operation.

Thank you very much.

MS. DUNDERDALE: Thank you

THE COMMISSIONER: We're adjourned.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.