



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 2

Commissioner: Honourable Justice Richard LeBlanc

Monday

18 February 2019

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

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

Today we begin Phase 2 of the public hearings related to the Muskrat Falls Project. I welcome those present here in Happy Valley-Goose Bay, as well as those viewing on the Commission's website. In a moment, Commission counsel – co-counsel will be setting out the plan for these Phase 2 hearings. Before he does so, I want to advise that the tentative schedule released earlier on January 29 for the remainder of the Phase 2 hearings has been revised to give us additional preparation time for these Phase 2 hearings.

Since the Phase 1 hearings ended, Commission counsel and staff have been diligently working preparing for Phase 2. Along the way, it has become clear that the massive amount of information we have is taking longer to review than originally expected. There are still disclosure issues that are being reviewed and certain legal issues have arisen which have been taking time to get resolved; however, the Commission feels confident in the schedule that we will now be setting.

It is important for the Commission of Inquiry to respond as best as is possible to the Terms of Reference in the time frame that we have been given. To assist us in this, the revised schedule has a further three weeks during Phase 2 where no hearings will be scheduled. Based upon the advice I have been given, this time will be made up by the rescheduling of certain witnesses and by adding one further week to the end of our Phase 2 schedule.

We expect that the dates set for Phase 3, as well as written and oral submissions will remain as they are on the present schedule. A revised schedule for Phases 2 and 3, as well final submissions will be made available later today or tomorrow. While that revised schedule may have further – some further other minor amendments, we do not expect any further

substantial changes. We remain set on completing this Inquiry on time by December 31, 2019.

These Phase 2 hearings will focus on the cost overruns for the Muskrat Falls Project since the time of sanction. Evidence will also be led regarding general oversight of the project by those within Nalcor Energy as well as the Government of Newfoundland and Labrador.

I reiterate here what I stated at the commencement of the hearings for this Inquiry on September 17, 2018, to the effect that this Inquiry is an opportunity to publicly set out the story of the Muskrat Falls Project, providing those involved to be questioned and to be given an opportunity to speak to the various matters that have occurred.

I would also remind everyone that this is a public Inquiry. It is not a trial. No one is charged with a criminal offence and nor is anyone being sued here. Further, I am not permitted to express a conclusion or make a recommendation regarding criminal or civil responsibility in setting out my findings and recommendations in the Inquiry report.

Our schedule remains tight for the upcoming hearings due to the complexity and extent of the issues to be dealt with, particularly with the addition of parties for Phase 2. It will continue to be my expectation that all counsel present, as well as the parties represented, be cognizant of the need to be as efficient as is possible in their questioning of witnesses to permit the schedule to be met.

From what I am advised, it is not currently expected that there will be any in camera hearings for Phase 2. There may be some documents that will be entered as confidential exhibits and which will not be made publicly available. This is so due to the fact that there are continuing and ongoing contracts in place in order to complete the project. I do not expect that there will be many of these confidential exhibits as this Commission remains committed to a transparent and open process.

I continue to commit to all involved that this Commission of Inquiry will provide for a fair presentation of the facts to the best of our

ability, and that there will be fair and appropriate consideration given to all of the evidence that is presented.

I will now call upon Mr. Learmonth to outline the plans for the Phase 2 hearings.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

I first want to take a few minutes to outline the evidence that will be presented in Phase 2 of the Inquiry which begins today. Before doing that, I have a few things I wanted to say about the work of the Commission.

On September 18, 2018, when Phase 1 of the Inquiry began here at the O'Brien Centre in Goose Bay, the Commission had received and processed approximately 2.5 million documents. Because of ongoing disclosure from parties, the Commission has now received a total of approximately 5,100,000 documents, more than double the September 18, 2018, total.

The challenge of entering this large volume of documents into our database has been met as a result of the dedicated and tireless effort of the Commission's researchers, associate counsel, information management staff and other staff at our St. John's office who have often worked 14 hours a day for more than seven days a week to meet the challenges presented by the receipt of so large a volume of documents. The fact that we're able to start Phase 2 today on schedule is a reflection of this outstanding accomplishment of the Commission's researchers, associate counsel, information management staff and other office staff, some of whom actually were working past midnight last night in the final drive to prepare for this opening today.

I also, on behalf of the Commission, want to recognize the high level of ongoing support and co-operation which the Commission has received from the parties, including the Government of Newfoundland and Labrador and Nalcor, who have had the heaviest burden of meeting the disclosure requirements. I'd also like to recognize the recent support and co-operation which the Commission has received from the federal government in navigating through certain issues relating to the

participation of the independent engineer who is scheduled to testify in St. John's in March.

Before turning to the schedule that we hope will be the final schedule for Phase 2, I want to make one further comment with respect to the volume of documents which the Commission has received, and the extensive range of issues which arise from the Terms of Reference.

We could – if we – if the Commission wanted to delve into every issue in detail, we could easily spend – and I emphasize easily – a year in evidence on Phase 2 alone. We don't have this time so, instead, we have been required to focus on what we believe are the essential issues only.

The result of this time constraint is we will not be able to cover everything in detail. Instead, we will do our best to cover the issues we have selected in such a way that the public will have a good, overall understanding of what occurred during the construction phase of the Muskrat Falls Project.

During Phase 2, the Commission anticipates hearing from approximately 60 witnesses, all of whom – or at least most of whom will be interviewed by Commission counsel and associate counsel prior to their testimony. As you will see from my following comments, we still intend to complete Phase 2 on July 5, 2019. So even though we are going to have some breaks, we are still on schedule.

I just – now I want to just go through the revised schedule, which will be posted on our website today. The first witness, who will be called shortly, will be Jean-Charles Piétacho, of the Ekuanitshit. He will be followed by Scott Shaffer of Grant Thornton, who will present the construction phase report, which has been received in a slightly redacted form by all counsel.

Mr. Shaffer's evidence will be completed, we expect, on February 21, and on February 22, we'll be hearing from Roberta Benefiel and Marjorie Flowers of the Grand Riverkeeper Labrador and the Labrador Land Protectors. So that will be the first week here in Goose Bay.

During the second week in Goose Bay, we will be hearing from Keith Dodson of Westney

Consulting Group. You may recall that Dick – Richard Westney referred to Mr. Dodson’s work for Nalcor when he testified via Skype in the St. John’s portion of the hearings. We’ll also hear from Dr. Guy Holburn from the University of Western Ontario, who also testified in Phase 1. Dr. Holburn will present a paper which is entitled, *Best Practice Principles of Corporate Governance for Crown Corporations*.

Following Dr. Holburn, we will hear from former Premier Paul Davis and he is scheduled to testify on February 26. February 27 will be Derrick Dalley, a former Government of Newfoundland and Labrador minister of Natural Resources and Todd Russell, who has testified earlier.

February 28, which will be the – a week this Thursday, we will be hearing from Anastasia Qupee, Clementine Kuyper of the Innu Nation, and Carl McLean and Rodd Laing of the Nunatsiavut Government.

The final witness in this Goose Bay phase of the hearings will be on March 1, when we’ll hear from Pat Hussey of Nalcor Energy in the – who had senior responsibilities for the procurement work for the Muskrat Falls Project.

Then – this is a change in schedule. The following two weeks – that is from March 4 to March 14 – we will be taking a break. So there’ll be a two-week break after the Goose Bay phase of the hearings is scheduled. And that break will be – is necessary as a result of the ongoing disclosure requirements that we have faced and the fact that certain legal issues have arisen, which we, of course, have to address before we can continue on.

So we will then resume – the schedule now has us taking St. Patrick’s Day off, which is March 18. And then the week starting the Tuesday, March 19, we expect to hear from Nik Argirov, the independent engineer, two witnesses from Valard – B. J. Ducey and Kelly Williams. March 21 we hope to hear from Tim Harrington of Cahill-Ganotec, and March 22, James Meaney of Nalcor Energy.

The – there’s one other group that on March 15 – which I failed to mention – we hope to have a worker’s panel. This will be people from the

bargaining units that have been interviewed by us and have – want to express their perspective on certain – on the way that the work was carried out in the project.

So, on March 25, we hope to hear from Scott Thon and Jean-Daniel Tremblay; both were affiliated by – with SNC-Lavalin, and also Normand Bechard of SNC-Lavalin. They’ll be followed on March 28 and 29 by Derrick Sturge of Nalcor, Rob Hull of Nalcor and Paul Lemay of SNC-Lavalin. That will take us up to the end of March.

Starting in April, we’ll hear from Tom Marshall, former premier, and Kathy Dunderdale, former premier. And they will be followed, on April 2, by Dr. Jim Gilliland of Williams Engineering. Williams Engineering was retained by Grant Thornton to complete some work in relation to the construction report that will be covered by Scott Shaffer’s testimony later on today. Then there will be other witnesses from Nalcor: Mark Turpin. On April 4 we hope to hear from Aaron Rietveld, Barnard-Pennecon, to be followed by William Mavromatis of ANDRITZ.

Then – and this is not a change in the schedule – we’ll have an Easter break of approximately three weeks which will begin on April 8 and will conclude on April 26. That’ll be the last day of the Easter break. When we resume on April 29 – no, excuse me, the Easter break will go into – until May 2. I correct myself there. So we will resume on May 3, at which time we’ll hear from two witnesses from Grid Solutions Canada: Thierry Martin and Lazlo von Lazar. They will be followed on March 6 by Jason Kean who testified in Phase 1 and has some evidence to present for Phase 2. May 7, we will be hearing from Paul Carter and Craig Martin, both of whom are employees of the Government of Newfoundland and Labrador and were – and will be giving evidence with respect to the work of the Oversight Committee.

May 8 to 10, we will be calling a minimum of two, and likely a maximum of three, witnesses from Astaldi. May 13, we’ll hear from Ron Power, to be followed on May 14 by a representative of Ernst Young, who did work on the accounting aspect for ...

John MacIsaac will testify, to be followed on May 16 by Charles Bown, who also testified in Phase 1. May 21 and May 22 will be Scott O'Brien and Lance Clarke. May 24 is an off day. May 27 to May 31, we'll hear from three representatives of the – from labour: Pat McCormick, David Wade and Tom Walsh. Actually they'll be testifying on two days: May 27 and May 28. The 29th to 31st we will not be hearing from any witnesses.

We're now into June. In the first week of June, we'll hear from Paul Harrington, who – the project manager – who also testified in Phase 1, and also, during that week, Julia Mullaley from the Government of Newfoundland and Labrador, and Robert Thompson, the former clerk of the Executive Council. June 10, we expect to hear from Ken Marshall, the former chair of the board of Nalcor, and also Cathy Bennett, former Government of Newfoundland and Labrador official, who also served as a director of the – of Nalcor, so she has two capacities. That will be followed by Edmund Martin, who's expected to testify for two days, June 11 and 12. He'll be followed by Siobhan Coady from the Government of Newfoundland and Labrador.

The following witnesses in – starting on June 18 and going to the end, to July 5, will be Brendan Paddick, the chair of Nalcor; Gilbert Bennett; Stan Marshall. And the final witness in Phase 2 will be Dwight Ball, the present Premier of Newfoundland and Labrador.

So that schedule will be posted on our website today. As I say, we're still on schedule, even though we do have five weeks of breaks, and the reason we'll be able to do that is that we have reduced the amount of time for certain witnesses. In so doing, we're confident that we're going to cover everything, but we just think that we can accomplish that by focusing more clearly on the important issues.

Commissioner, those are my opening comments.

The first witness today will be Chief Jean-Charles Piétacho. Before we hear from Chief Piétacho, I'd ask for a 10-minute adjournment so that we can prepare the witness and the translator.

THE COMMISSIONER: So, yes, we'll do that. I just – I think it's necessary for me just to add something here. I don't want there to be a misunderstanding about where things are right at the moment for the Commission. This change of schedule is not a reflection of any disorganization on our part or, alternatively, a feeling of an inability to meet the mandate.

I want to be very clear here. The schedule that was released on the 29th of January was indicated to be a tentative schedule. And as we've – the last two weeks, we've really had a good, hard look at what we are doing. And from my perspective, based upon what I was advised, it was necessary to get some additional time to ensure that we are prepared.

I also want to indicate this: I don't think it should have been the expectation – I don't think it is the expectation – of the government or anyone else that everything that happened in the Muskrat Falls Project would be something that we would be hearing about in these Inquiry hearings.

What we've done here is – you know, we have a limited time. For me, it's very important that we have a, you know, some financial limitation here. I'm not out to spend money that doesn't need to be spent.

So we've taken, basically, the issues that we think – based upon the advice I've had from counsel – that are the most significant with regard to the Phase 2 issues. And I want to assure everyone that I do believe that the way we are going to be conducting Phase 2 will be very much in line with the expectations from the Commission's Terms of Reference.

So having said that, I want us to begin. I'm very strong on schedule as everybody knows, and I'm gonna push hard to make sure that we meet the schedule that's involved here.

So we'll take 10 minutes. We'll get the first witness up, and we'll begin this morning.

So we'd adjourn for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: The –

MS. O'BRIEN: Your microphone, Commissioner.

Commissioner, your microphone. Thank you.

THE COMMISSIONER: The first witness then, Mr. Learmonth.

MR. LEARMONTH: Yes.

The first witness is Chief Jean-Charles Piétacho.

Before we deal with his evidence, there's just one small housekeeping matter that I wanted to deal with, arising from the stage – Phase 1 hearings. In exhibit – there's two exhibits I want to enter. One is Exhibit P-01676, which is just an affidavit of Gary Norris identifying the fact that it was his handwriting on Exhibit P-00206.

THE COMMISSIONER: If you could just speak up just a bit, Mr. Learmonth.

MR. LEARMONTH: Okay.

The first exhibit I would like to enter is P-01676, which is an affidavit of Gary Norris, former Clerk of the House, in which he simply confirms that his handwriting appears on Exhibit P-00206.

And the second Exhibit is P-01675, which is a two-page document entitled Emera Inc. Approves Sanction of the Maritime Link Project. This document was referred to but not entered into evidence at the conclusion of the Phase 1 hearings. So, if those could be entered, we can now move to the witness.

THE COMMISSIONER: Those, then, will be entered as marked, P-01676 and 01675.

MR. LEARMONTH: All right.

THE COMMISSIONER: All right.

MR. LEARMONTH: The – before Chief Piétacho is sworn, I just wanted to state a few things for the record – that people will recall that there was a – as a result of a problem in locating a translator – an Innu translator at the hearings in St. John's, we were unable to hear from Chief Piétacho; and Chief Piétacho had wanted to bring his own translator, but finally agreed to – not, finally, I should say – but did agree to Denina Andrew, who is here.

There is – the reason that Chief Piétacho made a point about having his own interpreter is that, apparently, there may be some slight nuances as a result of the different dialect between Ms. Andrew's people and Chief Piétacho's, and I've talked this over with Ms. Andrew and she agrees with that – that it's possible that there could be, you know, slight differences that arise in the translation because of these dialect issues.

In order to accommodate this legitimate concern of Chief Piétacho – and the fact that we didn't have an interpreter in St. John's was not his fault at all – we've agreed to the following, which we hope will be acceptable to the Commission. When I say we – me and David Schulze, counsel for Chief Piétacho.

So, the plan is that Chief Piétacho and Denina Andrew will be sworn or affirmed in the usual manner. Then, I wanted to put this on the record that, because Chief Piétacho has expressed concern to the Commission about the potential of errors in translation as a result of the differences in dialect, we've agreed that to – in order to address this concern in a way that's satisfactory to both Commission counsel and Chief Piétacho – we've agreed that after Chief Piétacho has completed his evidence and received the transcript and the audio recording, he will be able to review the transcript and the audio recording of his evidence and identify any errors in translation that he believes have been made in the translation of his evidence.

If the Commission and Chief Piétacho cannot resolve this issue, then the Commission will, if necessary, refer the matters in dispute to an independent translator.

The – following the presentation of Chief Piétacho's evidence, we will be asking for a very short adjournment, and if counsel for Chief

Piétacho, David Schulze, is able to identify on the spot any differences in translation then he can raise them and perhaps they can be resolved in that way.

THE COMMISSIONER: I'm not – I don't want to be doing that in the hearing itself so –

MR. LEARMONTH: No, no. It would be an adjournment and then he will –

THE COMMISSIONER: Right.

MR. LEARMONTH: – when he commences his questioning.

THE COMMISSIONER: Right, okay.

MR. LEARMONTH: Okay.

So that's the basis of the understanding and we'll proceed on that basis, and if there's any problem for you, Commissioner, well you can – obviously have the right to, you know, change the procedure and adjust it to the way you want it done.

THE COMMISSIONER: All right.

MR. LEARMONTH: Okay.

So could Chief Piétacho and Denina Andrew, his translator, be given their respective oaths?

THE COMMISSIONER: So I'll ask Chief Piétacho if you could stand, please, Sir.

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: And does mister – does Chief Piétacho wish to be sworn? I believe he was the last occasion. Maybe you could ask him if he wishes to be sworn.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Yes, okay.

CLERK: Do you swear that the evidence you shall give –

MS. ANDREW: (Innu-aimun spoken.)

CLERK: – to this Inquiry –

MS. ANDREW: (Innu-aimun spoken.)

CLERK: – shall be the truth the whole truth and nothing but the truth, so help you God?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

CLERK: Please state your name for the record.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Jean-Charles Piétacho.

CLERK: Thank you.

THE COMMISSIONER: You may be seated, Sir. You can be seated.

If you could stand, Ms. Andrew, please.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: Ms. Andrew, do you swear that you will well and truly interpret the evidence of Chief Jean-Charles Piétacho today for the purposes of the Inquiry?

MS. ANDREW: Yes.

THE COMMISSIONER: Okay.

And just state your name for the record as well.

MS. ANDREW: Denina Andrew.

THE COMMISSIONER: Thank you, Ms. Andrew. You can be seated.

You might want to pull your microphone a little closer to yourself.

MS. ANDREW: Yeah, okay.

THE COMMISSIONER: Okay. All right.

Mr. Learmonth.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: Chief Piétacho, before you give your evidence I wanted to give you an opportunity to make a brief statement of any problems that you believe you've encountered with respect to the translation of your evidence; just a brief statement if you care to make one.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yes, he said he has a lot of stuff that he wants to say and he was going around in his community and talking about the situation. Like, he has so much to say but he has a problem with the translation. He cannot express himself and it's coming from his heart what he's going to say – what he wants to say.

MR. LEARMONTH: Okay. Thank you very much for making that comment.

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: We'll now move into your evidence. Okay.

Chief Piétacho, when you testified here in Goose Bay on September 18, 2018, you spoke –

THE COMMISSIONER: I think what we should do is make sure the translation is (inaudible) speaking just (inaudible) – maybe when we ask questions and answer, because this is going to be important for the purposes of the

record, I think we should just go in small phrases, allow Ms. Andrew to translate. And then the same thing in answering questions, that Chief Piétacho will – Ms. Andrew will translate – try as close to verbatim as is possible.

Can you explain that to Chief Piétacho, please?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Okay.

MR. LEARMONTH: Is that okay?

Yeah.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, okay.

MR. LEARMONTH: Yeah.

Chief Piétacho, when you testified here in Goose Bay on September 18, 2018 –

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: – you spoke about the historical connection of your people to the land which now forms part of Labrador in the area of the Muskrat Falls Project.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: You testified about the annual trip from the Mingan River to Labrador to set up camps for the winter and to hunt caribou?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Is there anything further that you want to add to the evidence that you provided on September 18, 2018, about the historical use of the land by your people?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He is saying that it never stopped. Like, they've been coming in, in Labrador – hunting.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And he – they were here in Labrador and right to that river – (Innu-aimun spoken) it's called. I don't know what's the name of the English.

(Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He just called it, like, that (Innu-aimun spoken). That's what he calls that river.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He just want to express that the Innu people, they didn't have any border; they just hunt what they want to hunt, he said.

MR. LEARMONTH: All right. Okay. Thank you for that evidence.

CHIEF PIÉTACHO: Mmm.

MR. LEARMONTH: I now want to ask you to provide some explanation or evidence on the participation of the Conseil at the Joint Review Panel hearings?

MS. ANDREW: Can you say that again, please?

MR. LEARMONTH: I wanted to ask – I want to ask him some questions about his participation as Chief in the Joint Review Panel hearings –

MS. ANDREW: Okay.

MR. LEARMONTH: – for the Muskrat Falls Project.

MS. ANDREW: Mm-hmm. (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He just want to say that, like, the first time this Inquiry started, like, nobody ever – like, nobody ever came up to them and tell them about it, or even to invite them here in the Inquiry.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And he's saying that, like, they were forgotten and they don't speak English but they do speak French. And, like, it is not their fault that they speak French only and Innu-aimun, that – it's not their fault they said – he said.

MR. LEARMONTH: Yes. Well, I understand that Chief Piétacho and five Elders of the Ekuanitshit appeared and gave evidence before the Joint Review Panel on April 7, 2011, in Sept-Îles, is that right?

CHIEF PIÉTACHO: Mmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, it's correct.

MR. LEARMONTH: Yeah.

And at the Joint Review Panel hearing, before which you testified, was translation provided? And it was an Innu translator there?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, there was a translator, and there was somebody who translated for them.

MR. LEARMONTH: Yes.

MS. ANDREW: In the –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

He's saying that he was sent a box of these kinds of books here, like these booklets here. They're all in English he said, which cannot – he cannot understand them. He cannot – like, there's no way he can understand them, he said. And he said, like, they forgot that we don't speak English. We only speak their language and French.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And the boxes that he had –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: – a box of English – only English documents in there, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said when he came and the – something like this he gave it back to them. He couldn't understand them he said.

MR. LEARMONTH: But he did testify along with five Elders, is that correct?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, he did testify.

MR. LEARMONTH: Yes.

Okay, now before we go any further, there are some exhibits that I'm going to be putting to Chief Piétacho and I want to have them entered into evidence. They are Exhibits P-01710 to P-01768 and P-01812. Please have those documents entered into evidence.

THE COMMISSIONER: All right, those documents will be entered, so you can advise Chief Piétacho that we now have some documents entered as exhibits.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's talking about the first time the Inquiry came here. It was all English, he said. He couldn't understand any of it – any of the books and documents.

THE COMMISSIONER: And I think the same applies right at the moment because, unfortunately, we don't have the ability to get all of these documents translated. These are documents that were created before. So – anyway, let's keep going.

MR. LEARMONTH: Yes, thank you.

Now, there – if you could just advise Chief Piétacho that we have – the documents that are before him in the book – the big book of documents – they are all entered as exhibits, so they will all be considered by the Commissioner when he writes his decision.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

Even though they're all English they're going to be using the exhibit? That's what he wants to know.

THE COMMISSIONER: Well, some – I think some of these exhibits, if not all of them, were actually provided from his counsel, his lawyer. So –

MR. LEARMONTH: Yes.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Well – okay, so, those exhibits are all entered into evidence. Unfortunately, we don't have the resources to translate them, so we'll have to do the best we can with what we have. Many of the documents in the exhibits books were prepared by David Schulze, so they're papers that were given to us by David Schulze.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

UNIDENTIFIED MALE SPEAKER: It's here for him.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: The one that he got here, his own, it's translated in French. He has it in French, he said.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay, well, you can – after – I was just – there's just a couple of documents I want to refer you to. And after I refer you to those documents and take them through them, if there are other submissions that he wants to make, then we can deal with that later. So he will be given an opportunity to refer to the documents that he chooses.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

He's just –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's just expressing this here. He's – I didn't – like, I didn't ask for this, he said, this English version.

MR. LEARMONTH: Yes.

MS. ANDREW: And he said if you want me to understand that, it's you people that have to translate it, he said. It's not for him to translate it. That's what he says.

MR. LEARMONTH: Well, we understand his position on that –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He is saying that he like to express himself like, only in Innu-aimun. He respects his own language.

MR. LEARMONTH: Yes.

MS. ANDREW: And I don't know about the English or the French dialogue, he said, but he respects his own language and he wants to use his own language like we're doing right now.

MR. LEARMONTH: That's fine; that's what we'll do.

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: Did – was Chief Piétacho and group – the Ekuanitshit group – satisfied with the conclusions and the recommendations made by the Joint Review Panel in its report?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said, I am not satisfied because you have damaged a lot of land, he said. That's what he's saying.

MR. LEARMONTH: So he wasn't satisfied with the outcome of the Joint Review Panel –

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: – as far as it relates to the Conseil de Ekuanitshit?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that he wasn't satisfied any of the panels what's going on here, and he expressed himself when he said that at first, he said, I – like, they never respected me and I was never, like – he's saying that he was – never got respected for this. And he's saying that if I was respected, I only needed one thing from them, I want – I asked for my own translator, his own for him to speak to him in his language, and that's all I wanted from the panel and he never got it, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And he's saying that this year, 2019, that all nations, First Nations – he said that they're going to be – like, they're going to respect the language, they're going to bring back the language and for him, he cannot feel – like,

he cannot say that it's being done now, he said, for his language.

MR. LEARMONTH: All right.

Now, there's a – could you please turn to tab 10 in the book?

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: Ms. Andrew, if you could refer to the document in tab 10, which is Exhibit P-00270. Do you have that before you, Ms. Andrew? Tab 10 –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: – in the book.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: This –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Now, Ms. Andrew, I just want you to ask Chief Piétacho, I know this isn't in Innu, but if he can identify this document. It says: Submissions –

THE COMMISSIONER: Maybe what we should do, Mr. Learmonth, is – he does have a French version, so he can't read English so at least he can use the French version to –

MR. LEARMONTH: If –

THE COMMISSIONER: – respond to your question.

MR. LEARMONTH: Well if he does have a French version, if he could turn to it.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Okay. Mr. – let me just hear from Mr. Schulze here for a moment. You’ll have to press your button and stand, please.

MR. SCHULZE: It’s – thank you – it’s tab 8 in Ms. – in Chief Piétacho’s own binder. Onglet 8.

CHIEF PIÉTACHO: Onglet 8?

THE COMMISSIONER: Huit.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Mr. Learmonth?

MR. LEARMONTH: Have you found that, Chief Piétacho? That document?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, he’s right there.

MR. LEARMONTH: Yeah. And the date on the front of it is June 29, 2018.

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: Vingt-neuf de juin?

CHIEF PIÉTACHO: Uh-huh.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Uh-huh. Yeah.

MS. ANDREW: Mm-hmm. (Innu-aimun spoken.) Yeah.

MR. LEARMONTH: Vingt-neuf de juin? Yeah.

CHIEF PIÉTACHO: (Innu-Aimun spoken.)

MR. LEARMONTH: Oui?

MS. ANDREW: 2018?

MR. LEARMONTH: Yeah.

MS. ANDREW: Yeah, that’s the one.

CHIEF PIÉTACHO: (Innu-Aimun spoken.)

MR. LEARMONTH: Okay. We have the right document. So, I want to –

MS. ANDREW: (Inaudible.)

MR. LEARMONTH: – ask you some questions about this document. I’m happy –

MS. ANDREW: (Innu-Aimun spoken.)

MR. LEARMONTH: – that you have a translated version.

CHIEF PIÉTACHO: (Innu-Aimun spoken.)

MS. ANDREW: (Innu-Aimun spoken.)

CHIEF PIÉTACHO: (Innu-Aimun spoken.)

MR. LEARMONTH: Yeah.

Chief Piétacho, I’m now going to ask you some questions based on this document, about the

consultation that was provided by the Government of Newfoundland and Labrador and Nalcor to the Conseil de Ekuanitshit for the Muskrat Falls Project.

And I'll first ask you to provide your comments on the consultation that was provided before December 2012 when the project was authorized or sanctioned.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MR. LEARMONTH: The reference that I'm gonna direct you to is on page 2 of that document.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: And I want to ask you whether you were satisfied with the consultation that was provided to your people before the project was authorized.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MS. ANDREW: (Innu-Aimun spoken.)

CHIEF PIÉTACHO: Mm-hmm.

MR. LEARMONTH: So, was he satisfied with the consultation?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said the first time they had a consultation with the – it was all English, he said. All those paper that he received were all English, he said.

MR. LEARMONTH: Yeah.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Once or twice, he saw a French paper there that, I guess, was translated.

(Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: It was going to be translated to French, he said.

MR. LEARMONTH: But did he – was he –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said the first time they got the paper here – this document here – he said it was –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: – they only had 30 days to translate this paper.

(Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.) They had only 30 days to come forward and just look at the papers here – the paper that was given to them.

MR. LEARMONTH: Yeah.

MS. ANDREW: And, at that time, he said, there was a lot of going on in his community. There was rivers – I think there was a lot of rivers –

(Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: There was four things happening in that – in their area. There was talk about something like this, he said – Muskrat Falls – it was happening in their own community. There was four things that was happening at that time, he said, when they were given this document.

MR. LEARMONTH: Was that La Romaine project?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah, La Romaine.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: And how did he – I don't want to go into a lot detail on this, but how did he compare the environmental review for La Romaine project to the Joint Review Panel for Muskrat Falls?

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: What comparison would he make?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Uh-huh.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: At that time, when they tried to – with La Romaine – that our people didn't agree with it, he said. They didn't agree what's gonna happen to that river – it was, like, they're

gonna shut down, I think, four rivers there – is what he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Dam, yeah. They're gonna dam.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Okay.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: There was four rivers that were gonna be dammed and his people never agreed to that.

MR. LEARMONTH: All right.

Okay. Now, getting back to Muskrat Falls, the Government of Newfoundland and Labrador was required to consult the Conseil de Ekuanitshit before the dam was built. Can you just explain that to him?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that – like, he's talking about Supreme Court now. He's saying that the government said: Whenever you want to take the land or dam the rivers, you have to tell the Aboriginals first about their land – what you're gonna do. That's what he was – the government said to – that's what he heard.

And the other thing was, he said that the –

(Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said in the past nobody ever inquired about what's going to happen to their land. His people, it's like you have to go to the Supreme Court to tell about their land, what they're going to do. You – that's what he's saying, nobody ever confronted us what they're going to do.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And they went to court for that, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: They went to court and they – he heard about it in court, what's going to happen to the dam here in Muskrat, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: So just to make sure I understand, so is Chief Piétacho saying that the Government of Newfoundland and Labrador and Nalcor did not consult the Conseil d'Ekuanitshit before they built Muskrat Falls?

Is that what he's saying?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said there was a confrontation with the other Innu but, like, they were the last people to be confronted even though, like, they said he – the people, like his community, have to be there too to be confronted. They wanted to hear what it was said, what's gonna be done, and they were the last people to hear that.

MR. LEARMONTH: All right.

And was the land in the area of the Muskrat Falls Project part of the land that the Conseil des Ekuanitshit used to use to hunt caribou and fish for salmon? Was that the same area of land?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that in the first time they came here with his Elders, the Elders told about that – the land they used. And they used that land – that part of the land that's going to be – that's flooded now. He said they used that. A lot of those Quebec Elders – there was no border then. Nobody ever said this is a border, he said. It's like they hunt everywhere they want to go hunting in Labrador and they used that land, he said, to Muskrat, that river there.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And he's saying that when he came here – I don't know if it was last time or the first time – he had a book about the stories of an elder man and I don't know if it's still here.

He said he made copies of – those people to read it.

But other than that, he said the Elders have passed on, those people who told stories about this river. And he said we use this river a long time. These Elders have hunted their – have hunted a lot of times in that area, he said. And he's saying that a lot of those people have passed on, then the stories goes on that it was used, how people were using them – those rivers.

MR. LEARMONTH: Yeah, that's fine.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that we people, like his people, are always going to be here. We fight; we say what we want to say. The panels, every time they come here, they say that they used the land, and we are still here and we still can fight, he said. And we will always be heard, his people. That's what he's saying. He's –

MR. LEARMONTH: Okay, well, thank you very much.

We – I'm going to ask the other counsel if they have some questions for Chief Piétacho. And, of course, David Schulze will have an opportunity to question him on anything that he believes requires further expression.

Can you –

MS. ANDREW: Yeah.

MR. LEARMONTH: – please tell Chief Piétacho that?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: So he understands that –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: – so he understands that. And just before I turn the matter over to the other counsel, could you please ask Chief Piétacho whether that – whether there's anything further he wants to say to me in – at this time?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that it has been 40 years since he lead his people. After that – like before that, his father and grandfather were the leaders, and he's the last leader of his people – he said. And the thing we always say – me, and my grandfather pass on to my father – is that we respect the land, very, very much. We use the land. We respect it. And it's always been like that with my grandfather, my father and himself.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: And he's saying that he respects the land and right now, he said, it's like we are forgotten people. We use the land for hunting. We use the land to, like, to travel and we were the ones who – all of us – were the ones who used the land and all of this, like, right now, to the people who are inquiring about this, it's all about money, he said. That's all they think of this land, is money. But to us it's our heritage. It's where we were born. It's like a homeland to us, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said, the caribou is not respected, and, like my people, we are not respected. We are forgotten people, he said, like the caribou. They forgot all about the caribou and he said that there's a lot of – going on right now, he said, in the – where the caribou used to travel. There's a lot of damaged land, like the caribou, where they feed on. And all this dam that's going on, that's going to – that hurts the caribou, too, he said.

MR. LEARMONTH: Okay.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Yes? Was there something else?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He is saying that – he's talking about his grandfather, his father and himself. He said: What we respected and what we talked about, he said, what's going to happen to our – all those things that we said. Are they all going to be, like, omitted, or they'd be deleted from what we are saying, he said. He's expressing that he said this before and he'll keep on saying it; what's going to happen? Are they are going to throw away our words?

MR. LEARMONTH: Mmm.

MS. ANDREW: What we are trying to say here? And he will keep on saying what he's saying in the Inquiry, he said.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. LEARMONTH: Okay.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He is saying that: I have said what I was going to say. He said that: All this talk about this Inquiry, what we are saying – what are they going to do? Are they going to use

these words I'm trying to say to them? Are they going to just dump them somewhere, he said.

Like, he's talking about the fish that's going to be damaged into this – all this rivers that are dammed. The fish are the ones that are going to be, like, damaged, and all the animals that we have here and all these – we rely on, he said, my grandfather, my father used to say all these things, but what are they going to do.

Are they going to use these things we say to them?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that, if anything can – if anything starts again with damming the rivers, can they at least respect the animals. The animals like caribou, the fish. That's all I want to say, he said. I wish they can respect that because it's so respectful in my – in his family, his father, that they said he respected that, and the least they can do is just think about before they do something like that again.

MR. LEARMONTH: Okay.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Right now, he said, they're in the Supreme Court. There are panels like this, there are people there that's supposed to fight for us but we never heard anything about that, we never see anybody fighting for us, he said. And that's where they are right now, in court fighting for their rights and fighting for what they believe in.

MR. LEARMONTH: Okay, well, thank you very much. I think you've stated your – the position of your people very well and –

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: – we appreciate your speaking from the heart, as you obviously have.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

He's saying that even though we can go on to pages after pages, he said, everything is finished – it's done deal, he said. All of this – what's in – on the book, he said.

MR. LEARMONTH: Oh, everything in the book will be read, and we can assure him of that.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that even though it's going to be read – all of that document there – but it's – they already dammed the river, he said; it's done. That's what he's –

MR. LEARMONTH: Yes.

MS. ANDREW: – trying to say.

MR. LEARMONTH: Yes. That's right, yeah.

Okay, well, thank you very much. I'll now ask the Commissioner to turn the matter over for questioning by the other counsel, and –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Right. The Government of Newfoundland and Labrador?

MR. RALPH: No questions.

THE COMMISSIONER: Nalcor Energy.

MS. ANDREW: (Innu-aimun spoken.)

MR. SIMMONS: No questions. Thank you, Commissioner.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: Concerned Citizens Coalition.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

MR. BUDDEN: No questions, Commissioner.

THE COMMISSIONER: Edmund Martin.

MR. CONSTANTINE: No questions.

THE COMMISSIONER: Kathy Dunderdale.

UNIDENTIFIED MALE SPEAKER: No questions, Commissioner.

THE COMMISSIONER: Former Provincial Government Officials 2003 to 2015.

MR. T. WILLIAMS: No questions, Mr. Commissioner.

THE COMMISSIONER: Julia Mullaley, Charles Bown.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MR. FITZGERALD: No questions. Thank you.

THE COMMISSIONER: Robert Thompson. He's not here.

Consumer Advocate?

MR. HOGAN: No questions, Commissioner.

THE COMMISSIONER: The Innu Nation. Not here.

Nunatsiavut Government.

MR. GILLETTE: No questions. Thank you.

THE COMMISSIONER: NunatuKavut Community Council.

MR. RYAN: No questions. Thank you.

THE COMMISSIONER: Grand Riverkeeper Labrador/Labrador Land Protectors.

MS. URQUHART: No question. Thank you.

THE COMMISSIONER: Former Nalcor Board Members.

MS. MORRIS: No questions, Commissioner.

THE COMMISSIONER: Okay. Dwight Ball and Siobhan Coady. Not here.

All right.

Could you advise the Chief that there are no other questions for him?

MS. ANDREW: (Innu-aimun spoken.)

MR. LEARMONTH: Mr. Schulze.

THE COMMISSIONER: Oh, I'm sorry! Mr. Schulze; I apologize.

Mr. Schulze will be – but there are no other questions for him from other counsel, but I'm going to ask his lawyer now if he has any questions to ask the Chief.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: Okay.

MS. ANDREW: (Innu-aimun spoken.)

MR. SCHULZE: Good morning, Mr. Commissioner.

If – first a matter of – just of procedure, if it pleases the Commission. I'll ask my questions and then if – we'll take the short break to just decide whether we're happy with the translation. Would that be acceptable?

THE COMMISSIONER: That's fine.

MR. SCHULZE: And I – it occurred to me, perhaps I could ask my questions in English and then repeat them in French, and Chief Piétacho could answer in Innu. That might – some of the terms are – when they go from English to Innu and back to – Chief Piétacho has heard them more often in French; it might go more easily.

THE COMMISSIONER: Just confirm with you, too, Mr. Schulze – the documents that are actually contained in this booklet that I have here – Chief Piétacho obviously has a black binder. So, are those documents that were provided to him that are – basically, translations for him into the French language?

MR. SCHULZE: He – the – I'm – I cannot promise that all of the exhibits Mr. Learmonth referred to are available to him in that binder, but the most important are available to him and in both languages.

THE COMMISSIONER: Right. And the exhibits that are in the booklet that I have – these are exhibits that you've had an opportunity to review and assess?

MR. SCHULZE: They're exhibits, largely, that we submitted to the Commission, and most of them would be available in – most would be available in French as well as in English to Mr. – Chief Piétacho when he wants to consult them. I think there was some – just some document-management problems just now.

But for – as we saw, for instance, the submission to this Commission – Chief Piétacho has the French version –

THE COMMISSIONER: Okay.

MR. SCHULZE: – in his own binder.

THE COMMISSIONER: So, in French, could you just tell Chief Piétacho that it's my understanding that the documents that he has in the white book are similar to those that are in the black book that he has, and that these are documents that you have submitted on his behalf.

MR. SCHULZE: Yeah, it'd be my pleasure.

Donc, Chef Piétacho, le commissaire tient à ce que je vous dise – il tient à ce que je vous dise que les documents qu’ils vous ont remis dans le cartable par Maître Learmonth sont des documents que nous, comme procureurs du Conseil, avons soumis à la commission. Ils vous sont disponibles en français – presque tous, mais pas forcément dans ce cartable-là.

THE COMMISSIONER: And could you also explain to Chief Piétacho how you’re gonna be asking your questions? You’ll ask in English, then in French and then it’ll be translated?

MR. SCHULZE: Donc, ce que je viens de – le commissaire, monsieur le commissaire vient de me donner la permission de poser mes questions en anglais, ensuite en français, et vous, vous pouvez répondre en Innu.

And maybe I’ll just – is that also clear to the translator – to Ms. Andrew?

MS. ANDREW: Yeah.

MR. SCHULZE: So I’ll ask in English and French, and Chief Piétacho will answer in Innu.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He wants to speak in French, he said, to you.

MR. SCHULZE: In answer to my questions, he would prefer to answer in French?

MS. ANDREW: That’s what he said, yeah.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Yeah.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Okay, so we don’t have a French translator, so I’ll be depending on you – we’ll have a transcript and I speak French –

MS. ANDREW: (Innu-aimun spoken.)

THE COMMISSIONER: – so I’ll get enough, but we have – we’ll get it also transcribed afterwards, so you can just translate into English for those here who don’t understand.

MR. SCHULZE: Okay.

THE COMMISSIONER: Okay. Go ahead.

MR. SCHULZE: Donc le – ce que le juge LeBlanc, monsieur le juge LeBlanc dit, que lui il comprend le français. Moi je vais devoir traduire vos propos, et il y aura des notes sténographiques. Mais surtout – forcément, n’hésitez pas si vous préférez changer à l’Innu.

I said don’t hesitate if you prefer to switch to Innu.

The – there was a question about current use of the territory affected by the project.

Il y avait une question sur l’utilisation contemporaine du territoire affecté par le projet.

CHIEF PIÉTACHO: Mm-hmm.

MR. SCHULZE: Could you explain to the Commission what use now, in this – in the last few years and currently – what use does your community make of territory in Labrador?

Pourriez-vous expliquer à la commission, maintenant ou dans les dernières années, quelle utilisation fait la communauté du territoire au Labrador?

CHIEF PIÉTACHO: (Innu-aimun spoken.)

Mais vous savez que – on a continué à occuper le territoire peu importe la – je pense ce qui est important ici, là c’est – on parle toujours de frontières mais nous on a jamais – on s’est jamais occupé s’il y avait une frontière ou pas. On a continué à occuper le territoire tel quel, tel que le – nos aînés – les gens de la communauté ont toujours fait – je vais donner juste un exemple –

MR. SCHULZE: Je vais vous interrompre – c’est que c’est beaucoup à traduire d’un coup.

I’m just going to interrupt. So we’ve continued to use the territory, as we always did. There’s

been a lot of discussion of the borders, but we've continued to use the territory as our Elders taught us.

CHIEF PIÉTACHO: Aujourd'hui, nos familles – nous avons crée – mais même avant, il n'y avait pas de programmes – un programme qu'on appelle Innu-aitun, qui permet maintenant des familles d'occuper, d'être sur les lieux où eux étaient, qui va au-delà de – des limites qu'on dit Québec-Labrador, puis je voulais donner l'exemple du lac Brûlé, lac Joseph, lac Sénécal – ces gens-là vont là et occupent ce territoire –

MR. SCHULZE: Je vais vous interrompre.

So today – and even before there was a program – but now we have a program called Innu-aitun – that allows us to go north of the Labrador border, to places like lac Brûlé, lac Joseph, lac Sénécal.

CHIEF PIÉTACHO: Et le caribou a toujours été un animal qu'on a suivi, peu importe où il était, et au-delà des limites. Les familles ont toujours – étaient toujours près de cet animal.

MR. SCHULZE: So the caribou is an animal that we've always followed no matter where it was and the families have followed this animal.

CHIEF PIÉTACHO: Ce que j'essaye d'expliquer – nos gens allaient très loin, très loin – quand je dis très loin, mon grand-père adoptif se rendait jusqu'à la rivière Kaniapiskau.

MR. SCHULZE: So what I'm trying to say is our people went very far. For instance, my adoptive grandfather went up to Lake Kaniapiskau.

CHIEF PIÉTACHO: Et dans un livre qu'on a dans la communauté, l'ainé Mathieu Mestokosho parle de ces jours, pis un lieu – Watistun – et ça – allez chercher, et vous comprendrez comment les gens continuaient à occuper le territoire.

MR. SCHULZE: So in a book that we have in the community that we filed, Mathieu Mestokosho talks about spending time at Watistun so if you look in that, you'll see how far we went.

I'm going to ask the witness where that is, Watistun.

Pourriez-vous indiquer à la commission, c'est où Watistun?

CHIEF PIÉTACHO: Pardon?

MR. SCHULZE: C'est quel lieu – avez-vous une idée – vous avez parlé de Mathieu Mestokosho à –

CHIEF PIÉTACHO: Entre Nain et Sheshatshiu

MR. SCHULZE: Entre – between Nain and Sheshatshiu.

Okay, thank you.

CHIEF PIÉTACHO: Et on continue, malgré tous les problématiques qu'on rencontre de harcèlement, de saisie d'équipement, et les gens ont toujours, toujours, toujours occupé les lieux.

MR. SCHULZE: We continue in spite of all the problems we have – the harassment and the seizures – the people continue.

I'll just ask a question. When you're speaking about harassment and seizures, you're talking about during the caribou hunt?

Lorsque vous parlez de harcèlement, des saisies, vous parlez de lors de la chasse aux caribous?

CHIEF PIÉTACHO: Oui, oui, surtout, pis – mais c'est sûr, le saumon aussi, là, mais (inaudible) c'est plus le caribou.

MR. SCHULZE: Yes, above all, obviously the salmon as well, but especially the caribou.

Okay. And maybe – I'll just ask a quick question. You referred to the program – so that's the Innu-aitun program set up with the La Romaine compensation?

Vous avez référé au programme Innu-aitun – la on parle du programme établi avec les fonds que vous avez – de compensation reçu pour le projet de La Romaine?

CHIEF PIÉTACHO: Mais, après oui – oui, c’est un programme qu’en plutôt bonifié mais nous l’avions déjà – un coup moins – mais on l’avait déjà dans le passé.

MR. SCHULZE: Yes, it’s a program we had already but afterwards, we were able to improve it – but we had it already.

Chief Piétacho, when you were asked about the Joint Review Panel hearings, you talked about being before an inquiry.

Lorsque on vous a posé des questions sur la commission d’examen conjoint, vous avez parlé d’être devant une enquête – devant un autre – des audiences.

Could we try to separate the different phases?

Je vais essayer de séparer les phases.

Am I correct that you were consulted at the – first by people from Nalcor?

Est-ce que j’ai raison que d’abord vous avez été consulté par les représentants de Nalcor?

CHIEF PIÉTACHO: Oui.

MR. SCHULZE: Okay.

And was that a satisfactory consultation?

Est-ce que ces consultations étaient satisfaisantes?

CHIEF PIÉTACHO: No.

MR. SCHULZE: Could you explain why?

Pourriez-vous expliquer pourquoi?

CHIEF PIÉTACHO: C’est le peu de considération que ces gens-là ont tenu à nos préoccupations.

MR. SCHULZE: The lack of consideration for our concerns.

CHIEF PIÉTACHO: On leur a fait des propositions acceptables pour nous, qu’ils ont refusé pour des raisons soit de délais, ou d’autres facteurs.

MR. SCHULZE: We made proposals that were acceptable to us, and they refused due to reasons of timing, of deadlines or other reasons.

CHIEF PIÉTACHO: Et jusqu’à ce faire dire qu’on devrait financer nous-mêmes la consultation qu’on voulait tenir dans notre communauté

MR. SCHULZE: To the point of being told we should finance the consultation ourselves that we want to hold in the community.

CHIEF PIÉTACHO: C’est la moindre des choses. Il y a des jugements à la Cour suprême sur la consultation, comment ça devrait être mené.

MR. SCHULZE: It’s – the very least is – would be to follow the judgments of the Supreme Court on how a consultation should be carried out.

CHIEF PIÉTACHO: Et on nous a toujours référé qu’il y avait les délais de 30 jours, l’impossibilité de se rencontrer, ou même on parlait de financement, le peu et non – le financement qu’ils nous offraient aussi était insatisfaisant, par rapport aux délais, quand on veut parler de notre vie, de notre culture, de l’utilisation du territoire, de tout ce qui est liée, qui allait être affecté par ce projet ou par les autres projets qui nous concernaient aussi.

MR. SCHULZE: They would talk about deadlines of 30 days, that it was impossible to meet, or funding that was insufficient because we wanted to talk about our culture, our use of the territory and everything that affected us.

If I – before the hearings in Sept-Îles, you remember meetings with Nalcor?

Avant les audiences à Sept-Îles vous vous rappelez de réunions avec Nalcor?

CHIEF PIÉTACHO: Oui.

MR. SCHULZE: Okay.

And what you just told us about is why that was not an acceptable consultation?

Et ce que vous venez de dire c'est pourquoi cette consultation n'a pas été acceptable.

CHIEF PIÉTACHO: Écoutez, un – la première des choses je pense ça aurait été, comme on avait demandé, que ces gens-là viennent dans notre communauté, parce que c'est nous une des communautés concernées, et l'occasion aussi de bien comprendre la portée de nos préoccupations, c'est juste – c'est pas juste une question financière qu'on voulait être – à faire partie prenante de la démarche, et ça a pas été une consultation adéquate.

Quand tu fais déplacer des aînés, et que tu reviens avec eux dans la nuit, fatigués – j'aurais aimé recevoir le respect envers ces aînés-là, et ils ont – ils ou elles – d'ailleurs ma mère est décédée, elle faisait partie de cette délégation – ont accepté de venir expliquer leurs préoccupations les plus légitimes.

MR. SCHULZE: Okay. I'll try to go back.

So the first thing was that we asked them to come and meet with us. It was – for us, it was to be an opportunity to be well understood, not just a financial issue. We wanted to be a part of the process. We brought Elders and we wanted them – to see a demonstration of respect towards those Elders, including my mother who has since deceased.

I think that – c'est largement ça.

Did you want to continue?

Voulez-vous continuer?

CHIEF PIÉTACHO: Pardon?

MR. SCHULZE: Did you want to continue on what was inadequate before the hearings in Sept-Îles?

Voulez-vous continuer sur ce qui était inadéquat avant les audiences à Sept-Îles?

CHIEF PIÉTACHO: Écoutez, ça c'est le même principe quand – les documents qu'on recevait, que ça soit par courriel, ce serait par la

poste – mais moi j'ai reçu des boîtes complètement en anglais, et quand on est allé à Sept-Îles, on a ramené les boîtes au commissaire qui était là, devant eux autres, pour leur dire: on défend pas la langue seconde, là, le français. On est pas ici pour défendre la langue, on est ici pour défendre nos préoccupations les plus légitimes, et on vous remet vos documents, qui était tout en anglais – j'ai remis les boîtes.

C'est juste manque de considération totale pis c'est ça qui fait qu'une consultation inadéquate. Dans un autre lieu, une société d'état a pris deux ans et demie –

MR. SCHULZE: Oui attends – juste un instant, je vais traduire.

So we received documents, whether were – by mail or by email – they filled up boxes and boxes, and they were all in English. I brought them back to the commissioners – meaning the Joint Review Panel commissioners – and we said we're not here to defend the French language; we're not here to defend our second language. We're here to defend our concerns because it's a lack – a total lack of consideration.

Pardon. Go ahead. Allez-y.

CHIEF PIÉTACHO: Dans un autre projet, malgré le cas – malgré que les gens ont toujours refusé ce projet dans notre territoire, la société a pris deux ans et demie, et a mis les ressources nécessaires, tel que d'engager des ressources au niveau de la communauté, de nous faire participer aux questionnaire qui était requis à ce moment-là. Et pendant – nous avons tenus plus de 32 assemblées publiques – j'en ai manqué trois sur ces 32 – et à la fin de tout –

MR. SCHULZE: Je – je vais –

CHIEF PIÉTACHO: – nous avons tenu un référendum dans la communauté.

MR. SCHULZE: So in another – je vais juste – avant de traduire je vais juste être clair – before I translate I just want to be clear, you're referring now to Hydro-Québec's La Romaine project?

Vous referez au projet de La Romaine d'Hydro-Québec.

CHIEF PIÉTACHO: Ouais. Avec les quatre (inaudible).

MR. SCHULZE: With – avec – with four what?

CHIEF PIÉTACHO: Les quatre barrages.

MR. SCHULZE: Okay. With –

CHIEF PIÉTACHO: Ouais. Avec –

MR. SCHULZE: With four dams.

CHIEF PIÉTACHO: – les réservoirs et (inaudible).

MR. SCHULZE: Et un autre petit point. Another little point. The translator talked about four rivers, but I think you meant four dams on the La Romaine River.

L'interprète a parlé de quatre rivières mais je pense que vous parliez de –

CHIEF PIÉTACHO: Là c'est plutôt quatre barrages dans une rivière.

MR. SCHULZE: Four dams in one river.

So to go back – excuse me – to what Chief Piétacho said. He said in a – in the case of another project, in spite of the fact that the community had always refused this project on its territory, the Crown corporation took 2½ years and used the necessary resources – applied the necessary resources. They hired local community members; they developed a questionnaire; they had 32 public meetings, of which Chief Piétacho missed only five [sp. three], and at the end the community held a referendum.

And so how would you compare that with the experience with Nalcor on Muskrat Falls?

Comment vous comparez ça avec l'expérience avec Nalcor concernant Muskrat Falls?

CHIEF PIÉTACHO: Il n'y a pas de comparaison.

MR. SCHULZE: There is no comparison.

And if I ask you about – to the extent that you can remember the different phases, I'm now going to ask you about the consultation that took place after the hearings in Sept-Îles and after the Joint Review Panel report.

Donc, dans la mesure que vous pouvez distinguer les différentes étapes, je vais maintenant vous poser des questions sur après la période, après les audiences à Sept-Îles et après le rapport de la commission d'examen conjoint.

Do you remember receiving consultation documents from either the Newfoundland government or from Nalcor once the project was authorized and construction was either about to begin or was underway?

Est-ce que vous rappelez d'avoir reçu des – la documentation soit de Nalcor, soit du gouvernement de Terre-Neuve, une fois que la construction a été projeté, ou une fois qu'elle était – que la construction était en cours?

CHIEF PIÉTACHO: En ma connaissance, parce que – à l'autre côté, avec – comme je vous l'ai dit, on avait – d'où on vient, il y a aussi beaucoup, beaucoup de demandes de consultation pour très peu de ressources qu'on a dans la communauté, on doit surcharger nos ressources et à (inaudible) essayer de faire traduire sans nécessairement tout traduire le document, mais l'essentiel et – et comme je vous l'ai dit là, il y a le gouvernement du Québec, le gouvernement du Canada, il y a – les gens, des – la (inaudible) notre région qui nous demande – les demandes de consultation et ça n'en finit plus. Et tout ça pour vous dire sincèrement là, les ressources – pis aujourd'hui si on a reçu ou pas reçu – voyez le contexte auquel on est confronté aujourd'hui.

MR. SCHULZE: So, to be honest, the answer is – to be honest, not really. We receive many consultation requests and we have very few resources. We have to translate at least the essential elements. We get consultation requests from Quebec, from Canada, from the regional municipality. There's no end to it. And we don't have the resources for it.

So if I can ask you, when the Conseil des Innu de Ekuanitshit receives dozens of documents in English about this project, what is the – what

resources, what capacity does the council have to respond to them?

Donc, si je peux vous demander, lorsque le Conseil des Innu d'Ekuanitshit reçoit des dizaines de documents ou de – en anglais, quels sont les ressources dont vous disposez pour y répondre?

CHIEF PIÉTACHO: On est très, très, très limité dans nos ressources, puis la personne auquel on se réfère souvent est déjà débordé ailleurs aussi par son travail, mais en plus on lui demande de faire comme vous le dites, (inaudible) l'essentiel mais – sauf que c'est pas évident. Et c'est encore comme ça aujourd'hui.

MR. SCHULZE: We are very, very, very limited. The person who receives them is already overwhelmed and tries to deal with it, but it is not – it's not easy, it's not obvious to deal with it, and that's still the situation today.

Maybe I'll just – before we take a break, I'll just ask one other question.

Avant que je prenne une pause, je vais juste poser une autre question

Could you explain, maybe just a bit more, the connection you see between this project and your community's concerns about the caribou?

Est-ce que vous pourriez juste expliquer un peu plus le lien que vous voyez entre ce projet et les préoccupations de votre communauté concernant le caribou?

CHIEF PIÉTACHO: Écoutez, tel que je l'ai exprimé dans la langue, l'animal le plus important sinon ce qu'il y a de plus sacré, pis qui – qu'on doit à notre survie, d'être ici encore c'est grâce à cet animal. Et une de nos préoccupations était qu'on prenne le temps, tout comme le saumon, tout comme les autres chasses qu'on voulait faire faire, mais la réponse reçue c'était des délais.

Dans un délai très court, parce qu'ils ont déjà donné des – au-delà peut-être de 1,900 permis de tous les façons. Ces permis-là ont été donné sans être consulté, au moins sans le savoir.

MR. SCHULZE: So, as I said before in my own language, the animal that's the most important, the most sacred, to which we owe our survival is – along with the salmon – is the caribou. What we wanted was to – that they take the time. And the answer we got was that the deadlines were very short because there had already been over 1,900 permits given out; permits on which we hadn't been consulted, or not adequately consulted.

Pardon, continuez. Please continue.

CHIEF PIÉTACHO: Nous avons toujours gardé un lien important jusqu'au jour où quelqu'un d'autre nous a dit je vais faire la gestion du caribou. Qu'on a jamais permis. On a toujours gardé ce lien malgré que maintenant c'est géré ailleurs et aujourd'hui la situation du caribou à travers le pays, à travers les provinces, est très critique.

MR. SCHULZE: So we've always maintained a connection, a very important connection to the caribou, in spite of the fact that we were told that other people would manage the caribou; that it's being managed elsewhere. And now we're in a critical situation concerning the caribou across the country and in other provinces as well.

Pardon, allez-y. Excuse me, go ahead.

CHIEF PIÉTACHO: C'est pour ça qu'on a demandé qu'on prenne le temps – comme eux ils ont pris le temps pour d'autres considérations ailleurs. Mais nous, l'important c'était vraiment le caribou, le saumon. Et ça n'a pas été considéré lorsqu'ils ont fait la construction de leurs lignes. Parce qu'il y a des impacts. Il y aura des impacts.

MR. SCHULZE: So that's why we asked that we take the time, because the important thing for us was really the caribou and the salmon. But it wasn't taken into consideration, for instance, when they planned the transmission lines. And there will be impacts.

CHIEF PIÉTACHO: Et je pense que la moindre des choses est si ce qu'on dit ici, ce qu'on a essayé d'expliquer – nous, les Innu d'Ekuanitshit – puisse être un jour comprise et éviter qu'on répète ce qu'on a fait dans ce projet.

MR. SCHULZE: And I think that what – the least we can ask for is that – is if what we said here – the Innu of Ekuanitshit can be taken into account one day and that we don't repeat what was done with this project.

Pardon, continuez. Go ahead.

CHIEF PIÉTACHO: Oui, j'avais – peut-être – est-ce que vous avez d'autres questions?

MR. SCHULZE: Moi, j'ai posé mes questions.

CHIEF PIÉTACHO: Oui.

MR. SCHULZE: I've asked my questions.

CHIEF PIÉTACHO: Peut-être, en dernier lieu; c'est aberrant de constater – nous, les Innu d'Ekuanitshit et les Innu de toutes les régions – qu'on soit obligés d'être ici pour – je me sens comme celui qui est le fautif ou je sais pas comment – pourquoi je dois réexpliquer ce qui normalement aurait dû être respecté? Puis là je vais pas faire de joke – c'est en anglais, ça, joke – regardez.

MR. SCHULZE: Juste un instant.

In the – finally, I'd like to say, it is – it's incongruous to see that the Innu of Ekuanitshit and the Innu of all the regions that were obliged to be here – I feel almost like I'm at fault, like I'm the person who is at fault here, when I ask myself why do we have to repeat what should've been understood already.

Pardon, continuez.

Excuse me. Continue.

CHIEF PIÉTACHO: J'allais dire, y'a deux (inaudible). Souvent on se fait dire qu'on est contre le développement. On n'est pas contre le développement – c'est le type de développement qui se fait sur le territoire sans réel consultation, accommodement, et encore bien moins obtenir notre consentement.

MR. SCHULZE: We often are told that we're against development. We're not against development. It's the kind of development that's carried out without consultation, without accommodation, and without our consent.

CHIEF PIÉTACHO: Ce qui est aberrant, celui qui devait être – qui se dit qu'a des obligations fiduciaires envers nous dans la région de Québec où je viens, dans un dossier amené à la cour, je suis seul avec mes aînés à me défendre. Et de l'autre côté je vois la province de Québec, les sociétés, le gouvernement du Canada, qui normalement devrait, comme il se dit, défendre nos droits, et il est dans l'autre partie.

MR. SCHULZE: Juste un instant.

What is also – aberrant, inconceivable, is that the party that says it has fiduciary obligations – if I look in the region of Quebec, I'm by myself in a court case, with my Elders. On the other side, I see Quebec, and the corporations and Canada.

CHIEF PIÉTACHO: Pis là, là – c'est triste ce que je vais dire. Ça peut être considéré comme une farce, comme on dit, mais c'est très triste. Moi – on se défend. On se protège. Nous, maintenant, les Innu, que ça soit dans la langue seconde, peu importe, anglais ou français – néanmoins – mais c'est triste, là, c'est – dans un dossier aussi important que les projets qui se font en territoire – c'est Ottawa qui a émis des permis, qui cautionne des projets, et c'est là que je veux le dire, je vais amener ce point-là: le fédéral au lieu de nous protéger, ne le fait pas, mais accepte ce qui se fait sur le territoire. Et fédéral – regardez ça, là – l'aberration des fois, là. Le fédéral a défendu une grenouille dans un projet immobilier dans la région du Québec, et nous les Innu – qu'est-ce qu'il a fait pour nous?

MR. SCHULZE: Okay. So –

CHIEF PIÉTACHO: Je termine –

MR. SCHULZE: – it's sad, what I'm going to say. It's almost a joke. But we defend ourselves; we protect ourselves, whether it's in English or in French – in our second language. But in a file, in an – on an issue as important as the projects on our territory, it's Ottawa that's – that issues the permits that authorizes these things, instead of protecting us, and accepts what's done on our territory. The federal government defended a frog against a – the residential development in Quebec, but not the Innu.

Continuez. Pardon, go ahead.

CHIEF PIÉTACHO: Je pense que – c’est comme j’ai dit, je pourrais aller paginer, prendre page par page – à mon avis, là, on – comme je l’ai dit, on est devant un fait accompli. Là on nous redemande nos avis – et moi, si une recommandation peut être écoutée, entendue et utilisée dernièrement pour les autres projets, ce sera ça.

Mais pour le moment, je ne vais pas répéter ce que j’ai dit là, au niveau du respect, pis – et là je veux terminer ici, pis je veux aller – je veux retourner chez moi.

MR. SCHULZE: Okay, if – I could go through this binder page by page, but we’re faced with a fait accompli. We’re at – once again, we’re asked for our opinion. But if our recommendations could be adopted, could be followed, that would be something.

But for the moment, I’ve said what I have to say and I’d like to go home.

THE COMMISSIONER: All right.

Any other questions then, Mr. Schulze?

MR. SCHULZE: No if – except that I’ll just ask for a very brief break to compare notes.

THE COMMISSIONER: Okay. Thank you.

We’ll take a break in a moment.

Thank you.

You can just be seated.

MR. SCHULZE: (Inaudible.)

THE COMMISSIONER: Mr. Learmonth, any redirect?

MR. LEARMONTH: No redirect.

THE COMMISSIONER: Okay.

Can I just ask you a couple of questions before you go home?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Can you tell me if you received –if your Conseil received any money from the provincial government or from Nalcor to assist in the consultation process?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: The first time that it was started, he said, they were going to get \$87,000 for all this – what is going on here on the panels, and all the – four months, he was given four months, he said.

THE COMMISSIONER: Okay.

Was there any other money received?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: No.

THE COMMISSIONER: Because you live far away from the Muskrat Falls Project, do you feel any less connection to that land than you do to land closer to you?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: Hmm.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He's saying that – like he said in the first time, like, the Innu people never had borders and for them it's like their land too, because the Innu of their people used that land too, he said. So it's much like theirs too, their land.

THE COMMISSIONER: Can you tell Chief Piétacho that I have read the documents that his lawyer has provided to me?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Can you tell me if the Ekuanitshit ever went to court related to the Muskrat Falls Project?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said that they didn't go to the Supreme Court but they did go to the court –

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Federal Court.

MS. ANDREW: Yeah, Federal Court and they talk about that in the Federal Court.

THE COMMISSIONER: And was he happy with the result of the decision from the Federal Court?

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: Mm-hmm.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

MS. ANDREW: He said there were some things that weren't followed. He said that there was stuff that they wanted to bring in but it – the people that were doing the inquiries, they didn't want to use our opinions, I guess – what they were saying to the court.

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Okay.

Thank you very much.

We're going to take a short break, and then we'll come back and see if you can go home after that.

MS. ANDREW: (Innu-aimun spoken.)

CHIEF PIÉTACHO: (Innu-aimun spoken.)

THE COMMISSIONER: Take 10 minutes.

CLERK: All rise.

Recess

THE COMMISSIONER: Mr. Schulze, I understand that there's a couple of points you'd like to have clarified.

Is Chief Piétacho here?

UNIDENTIFIED MALE SPEAKER: Do you need the translator?

MR. SCHULZE: No, thank you, unless the Commission prefers it.

Mr. Commissioner, what we propose to just do, is there are really just two points that I think may not have come out clearly in the translation and that weren't – there were a few others that were corrected in the subsequent questions. There are just two points; I'm going to ask Chief Piétacho if my understanding of them are correct in English and French and then he'll answer.

Is that acceptable to Commission?

THE COMMISSIONER: Perfect, yeah.

MR. SCHULZE: So, Chief Piétacho, just two points; one is that you referred to a year concerning Indigenous languages. Were you

referring to the United Nations International language – Year of Indigenous Languages, which is 2019?

Je vais juste reprendre en français, chef Piétacho. Vous avez parlé d'une année spéciale; est-ce que vous étiez en train – est-ce que vous faisiez référence à l'Année internationale de l'O.N.U. sur les langues autochtones?

CHIEF PIÉTACHO: Oui, depuis le commencement de la commission j'ai toujours opté pour qu'une personne me traduise qui provient de ma région. Et j'ai cette ressource qui connaît la profondeur de mes propos, et je me suis senti blessé – puis je vais pas jouer à l'éternelle victime ici, là, mais sauf j'ai senti un manque de respect envers la langue que je parle et (inaudible) à la commission – ils n'ont pas reconnue c'est important.

Que pour moi là, c'est important de parler dans ma langue seconde. Très important et cette année, 2019, la déclaration pour les langues autochtones au niveau internationale, et moi come dirigeant, on me refuse simplement de parler ma langue avec une personne de ma région.

MR. SCHULZE: So the answer was, yes. I had – from the beginning of the work of this Commission, I had wanted to choose somebody from my region. I felt hurt and a lack of respect towards the language that I speak, the – that the Commission didn't understand the importance for me to speak my language and have someone from my region, I – for me as a leader and the importance I attach to my language in this International Year of Indigenous Languages.

And I'll just ask one little point. Chief Piétacho, you said dans ma langue seconde mais – but I think you meant ma langue première.

Vous avez dit dans ma langue seconde mais je crois que vous vouliez dire dans ma langue première.

CHIEF PIÉTACHO: Non, non, c'est ça que je dis, dans ma langue première qui est l'Innu.

MR. SCHULZE: That's what I mean, in my first language, which is Innu.

One other point to clear up; the translator talked about – the interpreter talked about a confrontation with other Innu where Ekuanitshit was the last community to be confronted. Am I correct that what you meant was a consultation where Ekuanitshit was the last to be consulted?

L'interprète avait parlé d'une confrontation où Ekuanitshit – où d'autres communautés Innu ont été confrontés mais Ekuanitshit a été la dernière confronté – est-ce que j'ai raison que vous vouliez plutôt dire une consultation où vous étiez les derniers à être consulté?

CHIEF PIÉTACHO: Oui, je confirme, le fait qu'on a été la dernière communauté à être consulté dans le projet dans la région du Québec.

MR. SCHULZE: Dans la région –?

CHIEF PIÉTACHO: Du Québec.

MR. SCHULZE: Okay.

Yes, I confirm that we were the last community consulted in the region of Quebec.

And there, are you referring to this project or are you referring to the La Romaine project?

Est-ce que vous réferez au projet – celui-ci, ou au projet de La Romaine?

CHIEF PIÉTACHO: Je parle du projet de la rivière Romaine.

MR. SCHULZE: I'm speaking about the La Romaine River project.

CHIEF PIÉTACHO: Il y a aussi le fait – peut-être c'est bien la rivière Romaine, mais avec quatre barrages.

MR. SCHULZE: And there's also the fact that it's the one Romaine River with four dams.

That completes my questions, Mr. Commissioner.

Ça complète pour moi.

THE COMMISSIONER: Thank you very much.

MR. SCHULZE: Thank you.

THE COMMISSIONER: Thank you, Chief.

CHIEF PIÉTACHO: Merci.

THE COMMISSIONER: Thank you, Ms. Andrew.

MS. ANDREW: (Inaudible.) Okay.

THE COMMISSIONER: Thank you very much. You can step down.

All right, it's almost 10 after 12 and I'm losing my voice quickly, so I'd like to try to – and I understand this has been discussed with everyone – is take our break now for an hour and a half. We'll come back at 20 to 2 and we'll start with Mr. Shaffer at 20 to 2 today.

All right, so we're adjourned then 'til that time.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

THE COMMISSIONER: Mr. Learmonth?

MR. LEARMONTH: Thank you. The witness this afternoon will be Scott Shaffer.

THE COMMISSIONER: Okay. Mr. Shaffer, could you stand please?

MR. SHAFFER: Yeah.

THE COMMISSIONER: And I can't recall. Do you wish to be sworn or affirmed?

MR. SHAFFER: Affirmed.

THE COMMISSIONER: Affirmed.

CLERK: Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. SHAFFER: I do.

CLERK: Please state your name.

MR. SHAFFER: Scott Shaffer.

CLERK: Thank you.

MR. LEARMONTH: Yes. I would ask that the following exhibits be entered into the record: P-01677 to P-01683, P-01808 to P-01809, P-01811, P-01835 to P-01843, P-01898, P-01940, P-01981 to P-01988 and P-01898 to P-01940. I may have already said them, but anyway. Can they be entered into the record, please?

THE COMMISSIONER: I think the last two –

MR. LEARMONTH: I already – that's repetitive, yeah.

THE COMMISSIONER: Yes.

MR. LEARMONTH: I stated them twice.

THE COMMISSIONER: Okay. Those will be marked as numbered.

MR. LEARMONTH: All right. Now, the last – in Phase 1, Mr. Shaffer was qualified as an expert, and the subject matter of his testimony today, I expect, will fall – is in the same area of expertise for which he was qualified. So it wasn't my intention to have him re-qualified.

THE COMMISSIONER: Okay. Well, we have some additional parties here, as well, today. So just wondering whether or not anybody takes issue or – this morning – or this afternoon with the qualifications of this witness?

Okay. And you can proceed, and he will continue to be qualified in the area of forensic accounting.

MR. LEARMONTH: Yeah. I just wanted to – just on the qualifications, I just wanted Mr. Shaffer to confirm that there are no changes in his accreditations, that he continues to be a CCA, certified construction auditor, certified public accountant, certified fraud examiner?

MR. SHAFFER: Correct.

MR. LEARMONTH: No changes in your qualifications or accreditations?

MR. SHAFFER: No.

MR. LEARMONTH: All right. Mr. Shaffer, could you state your full name?

MR. SHAFFER: Scott I. N. Shaffer.

MR. LEARMONTH: Yes. And where do you work, Mr. Shaffer?

MR. SHAFFER: I'm with Grant Thornton.

MR. LEARMONTH: Yeah, and where?

MR. SHAFFER: Out of the Milwaukee office. I split my time between Chicago and Milwaukee –

MR. LEARMONTH: Okay. Thank you.

MR. SHAFFER: – when I'm not traveling on the road.

MR. LEARMONTH: Yeah. Now, the Exhibit P-01677, which you have before you. Can you identify this exhibit?

MR. SHAFFER: Yeah, this is my report, dated December 7 of 2018.

MR. LEARMONTH: And you've signed it, have you?

MR. SHAFFER: I did.

MR. LEARMONTH: Yes. Okay, well, we'll – I'm not going to ask you to, you know, take you through it word for word, 'cause we'd be here for a long time, and I don't think it's necessary. So I'd just like to – you to turn to page 4 of the report, and just give us, in a summary fashion, your understanding of the background of this report, why it was done.

MR. SHAFFER: Well, this is same background that we had on our sanction report and that – basically, the facilities was in the process of being built: the generation facility, the Labrador-Island Link and the LTA. The Maritime Link was not part of this project. And at the time that the capital cost estimate was made, it was budgeted to be at \$6.2 billion, and as of – at least as of March of 2018, it was according to the financial forecast, it was about \$10.1 billion.

And as a result, this Inquiry was triggered and we – been engaged by the Commission.

MR. LEARMONTH: Yeah, and those figures – 6.2 and 10.1 – are exclusive of financing costs and interest, et cetera, is that correct?

MR. SHAFFER: Correct.

MR. LEARMONTH: Right. All right, if we turn to page 5 and 6 of your report. By the way, I'll refer to it as your report or the report, and when I do that, I'm referring to Exhibit P-01677.

MR. SHAFFER: Okay.

MR. LEARMONTH: Could you turn to page 5 of the report and give us a – in summary fashion – your – a statement of the scope of work that you carried out in this construction phase of the Muskrat Falls Project?

MR. SHAFFER: Sure. As you know, this is a continuing part of our engagement, that we were engaged originally for the sanctioning phase, and this is just a continuation of that, to now look at what happened here from the sanctioning on through – during the construction phase. And basically, what we were asked to do – and I could read it word for word or – but it's listed on the bottom of page 5 –

MR. LEARMONTH: Yes.

MR. SHAFFER: – and the top of page 6.

MR. LEARMONTH: Yes.

MR. SHAFFER: And that's what drove the scope of our engagement.

MR. LEARMONTH: Okay.

MR. SHAFFER: Additionally, we performed many procedures, we – as listed on page 6, starting at line 18, we identified and reviewed supporting documentation; we conducted many interviews with various people. We were submitting questions and information requests to Nalcor and the project management team, performed various analyses, and we also had independent experts that we were consulting with in this engagement.

MR. LEARMONTH: Yeah, and can you confirm that you received a reasonable level of co-operation from all those parties from who you sought information and additional documentation?

MR. SHAFFER: We absolutely did, yeah.

MR. LEARMONTH: Good.

Page 7 of the report you refer to the reliance on third parties and Nalcor's internal audit. Could you explain in summary fashion what third party reports you relied on and the reliance you placed on them?

MR. SHAFFER: Sure, there were three firms that we engaged in this matter; they're listed. One was R. W. Block Consulting, Derek Hennessey. The other was –

MR. LEARMONTH: Where are they located?

MR. SHAFFER: They're actually based out of – the main office is out of, I think, Orlando, Florida. Derek is based out of Boston, Massachusetts.

MR. LEARMONTH: All right.

MR. SHAFFER: William –

MR. LEARMONTH: So –

MR. SHAFFER: Sorry, go ahead.

MR. LEARMONTH: So you retained them to provide advice on what matters?

MR. SHAFFER: Yes.

MR. LEARMONTH: On what matters did you retain them? For what purpose?

MR. SHAFFER: Their work – primarily to look at the Valard agreements and the Astaldi agreements and to answer certain questions that we had in that area. And that's – that was outlined, I believe, in subsection 10 of our report.

MR. LEARMONTH: Yes. And we can confirm that – please confirm that the reports of R. W. Block Consulting are Exhibits 01680,

01681, 01682 and 01683. If you look at your index – your documents, those are – am I correct in that?

MR. SHAFFER: Let me take a look at them.

MR. LEARMONTH: I'm reading from the index of the documents that you have before you.

MR. SHAFFER: I – yeah, I know. I'm just double-checking what's in the binder here.

MR. LEARMONTH: Okay.

MR. SHAFFER: That's part of them. I believe Mr. Hennessey actually issued five reports.

MR. LEARMONTH: Okay.

MR. SHAFFER: I think a couple of them were supplements.

MR. LEARMONTH: Yes.

MR. SHAFFER: For clarification purposes. So I think three of them are in the – or maybe four of them are in binder actually.

MR. LEARMONTH: Okay. Well, we'll get into –

MR. SHAFFER: Okay.

MR. LEARMONTH: – better identification of them later.

Williams Engineering, for what purpose did you – did Grant Thornton retain Williams Engineering?

MR. SHAFFER: To answer specific questions that we had. Off the top of my head one of them had to do with: When does mitigation actually take place in terms of reducing contingencies? Is it actually when that scope of work is done or is it when the scope of work is being planned to be done?

MR. LEARMONTH: Okay.

MR. SHAFFER: And that was a question that we had and there were other areas that we asked them about. We asked them about the ICS, the

integrated cover system, and to comment on the geotechnical aspect of the – of this, in terms of the link.

MR. LEARMONTH: Okay. And can you confirm that the report of Williams Engineering dated November 30, 2018, has been entered as Exhibit P-01678?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

Last of the experts – Miller Thomson LLP, Aaron Atcheson, partner. For what purpose did you retain Miller Thompson LLP?

MR. SHAFFER: To review the Valard and Astaldi contracts and to get their viewpoint on it.

MR. LEARMONTH: Okay.

And can you confirm that the reports of Miller Thomson LLP is contained in Exhibit P-01679?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

And the next heading on page 7 of the report is entitled: Nalcor's Internal Audit. And you write about that subject. Can you give us a brief overview of what – of the reliance you placed on Nalcor's internal audit and the findings that you made as a result of your review of those documents?

MR. SHAFFER: Sure.

The first question was: Whether or not we could've relied on Nalcor's internal audit? And we determined we could based off the IIA assessment that was done in 2013; that their internal audit activity generally conforms to the standards and definition of internal audit, and generally conforms as the top rating an internal audit group can have. Additionally, Emera conducted a reliance review on the internal audit function, and they noted that based on the work that they performed, that they concluded that Nalcor's internal audit function met the necessary standards to allow Emera to place a high-level reliance on their work.

MR. LEARMONTH: Yes.

MR. SHAFFER: As such, we placed reliance on their work. And what we did – then we looked at their internal audit reports in terms of various programs that they were auditing that were relevant – that we felt were relevant to our scope of the review, and we relied upon what they did.

MR. LEARMONTH: And so you found no fault with the internal audit procedures that were followed by Nalcor, correct?

MR. SHAFFER: Absolutely not.

MR. LEARMONTH: All right.

On page 9 you refer to the Restrictions and Limitations. Those are rather standard restrictions and limitations for a report of this kind, is that right, Mr. Shaffer?

MR. SHAFFER: Yes.

MR. LEARMONTH: Yeah, okay. They speak for themselves.

Now, we'll turn to page 10 and this – the heading of this part of the report is entitled: Detailed Findings and Observations. Could you just give us your comments with respect to background so that the people watching this will understand?

MR. SHAFFER: Yes.

Our last report dealt with sanctioning and so basically that time period we were looking at was as of December 2012. So we picked up from there to determine the sequence of events that happened between December 2012 until financial close, which was November 29, 2013. And so we looked at various things. One of the things that we looked at and saw – that we were given actually by the project management team, which was listed on page 11 of the report, were – as bids were coming in we were comparing the amount – well, they compared the amount of the bid packages, the value of the bid packages to the DG3 budget amount. And then they were calculating the variances between the budget amount and the value of the bid package.

MR. LEARMONTH: Yeah.

MR. SHAFFER: And so what I did is I re-sorted it in date order, and to determine when the contingency that was set at sanctioning, the \$368 million, I believe it was – or \$362 million, I forget. But I know it's in that area. When –

MR. LEARMONTH: \$368 million, I think, is the correct – yeah.

MR. SHAFFER: Okay. I've got this, actually, on the next page. Yeah, it was \$368 million.

When it became exhausted, meaning when did – basically, when did that variance exceed the contingency that was set at sanctioning? And what this table tells me is that by April of 2013, the contingency was exhausted. And then if you take that further until the time of financial close, by – right before financial close, the contingent – the variance between the packages and the – I'm sorry, the DG3 budget for those packages, and the value of the bids that were coming in was a \$600 million variance or the package – the DG3 budget was less than the bids that were coming in. So, obviously, what I was deeming – these are my words – negative variance, the budget was less than the bids.

MR. LEARMONTH: All right.

Now, at the bottom of page 11 of the report there's a – something appears to have been added: "Cumulative variance under DG3 budget amount = \$50 million."

Was that part of your report?

MR. SHAFFER: Originally?

MR. LEARMONTH: Yes.

MR. SHAFFER: No.

MR. LEARMONTH: Okay. Why was it added to your report and by whom?

MR. SHAFFER: I believe – maybe the Commission added it, I believe, and it was added because of commercial sensitivity, as I understand it.

MR. LEARMONTH: All right.

And why – we see on the chart on page 11 that the variances are ranked and the – what appears to be the dollar values are – have been redacted. Can you confirm that was done as result of, as far as you know, as an application by Nalcor to redact things on the grounds that they were commercially sensitive and that the Commissioner ordered that these items be redacted? Is that your understanding?

MR. SHAFFER: My understanding is that it was ordered by the Commissioner to redact these items, yes.

MR. LEARMONTH: All right.

Now, if we turn to page 12, I believe you've already gone into this, but I just want to ask you a few questions. First, you refer throughout your report to financial close, which – and the date of that was November 29, 2013, correct?

MR. SHAFFER: Correct.

MR. LEARMONTH: And for those who aren't aware, what is financial close? What is the significance of it and what happened on the date of November 29, the date of financial close?

MR. SHAFFER: Well, as I understand it, it was when the – basically, the paperwork was signed for the funding and, really, because of the certain terms in the financial close, is what I call the – basically the point of no return. It's the point where the province is basically committed to doing this project. And if they were to step out from doing the project, then the Government of Canada could have come in, finished the project and have the province pay for those costs.

MR. LEARMONTH: Okay.

So November 29, which we refer to as financial close, was the date on which the loan guarantee, then \$5 billion, provided by the bank of – by the Government of Canada, was signed. Is that right?

MR. SHAFFER: That's my understanding, yes.

MR. LEARMONTH: All right.

Now, on page 2, you refer to some of those figures. Have you already – do you want to add anything to the first paragraphs, line 1 and 10? You already gave some information on that. Just go through that and tell us whether there's something else you want to add to your earlier testimony on these.

MR. SHAFFER: Mr. Learmonth, you said page 2?

MR. LEARMONTH: Excuse me, page 12.

MR. SHAFFER: Okay. And, I'm sorry, can you repeat that question?

MR. LEARMONTH: Well, you did refer to the \$368 million contingency, which you said was exhausted by financial close.

Do you just want to look at lines 1 to 10 on page 12 and say whether – see whether there's anything further you want to say about what you said earlier about that contingency being exhausted?

MR. SHAFFER: Sure, and not only –

MR. LEARMONTH: You can read it out if you want to.

MR. SHAFFER: Okay.

MR. LEARMONTH: Yeah.

MR. SHAFFER: All right.

“As indicated above, prior to financial close, bids were received from contractors whom ultimately were hired which collectively, exceeded the DG3 budget by approximately \$600 million, a twenty five percent (25%) overage. The amount of this overage exceeded DG3 tactical contingency amount (\$368 million) by over \$230 million. Hence, prior to financial close, Nalcor should have been aware that the contingency amount included in DG3 budget was insufficient. Furthermore, Nalcor should have known that by April 2013 when the CH0007 bids were received (four months after sanctioning) that the DG3 contingency amount was exhausted. Accordingly, Nalcor knew that the remaining budget of \$4.2 billion,” which is the “(\$5.8 billion which is base plus escalation,

less \$1.6 ...” total of the bids that came in up to financial close, the \$4.2 billion “after the consideration of CH0007 did not have any contingency remaining.”

MR. LEARMONTH: Okay.

And what is CH0007? Whose contract are we talking about there?

MR. SHAFFER: Oh, it became Astaldi –

MR. LEARMONTH: Astaldi.

MR. SHAFFER: – after they – the bid evaluation team looked at it.

MR. LEARMONTH: Yeah.

So, would you just explain briefly what contingency is? You're saying that – on line 10 – that “after the consideration of CH0007 did not have any contingency” What is contingency?

MR. SHAFFER: It's an amount of money that's set aside for potential unknown events.

MR. LEARMONTH: All right.

MR. SHAFFER: That's one definition.

MR. LEARMONTH: All right.

MR. SHAFFER: I've seen others.

MR. LEARMONTH: Okay.

Now, just take us through lines 11 to 15 on page 12. What is – what point are you making there?

MR. SHAFFER: I asked Paul Harrington in an interview –

MR. LEARMONTH: And he's the Lower Churchill Project project director, correct?

MR. SHAFFER: Yes. I'm sorry, yes.

MR. LEARMONTH: Yeah.

MR. SHAFFER: If there was anything that precluded Nalcor from either re-baselining, rerunning this thing, re-looking at this, rerunning

the CPW calculation. Is there anything that would have precluded Nalcor from doing that? And his response was, when he knew – when they knew the contingency was exhausted by April of 2013, he responded, it's not my call.

And I asked him whose call was it, and he responded, senior management, which I meant to mean Mr. Martin and Mr. Bennett, and he said, and government.

MR. LEARMONTH: Okay.

MR. SHAFFER: Additionally, I recall that in an interview with Mr. Bennett, I don't know if I asked him that specific question, but I did ask him about sanctioning. And he said that once the decision at sanction is made, it's made. Meaning – I took that to mean no turning back.

MR. LEARMONTH: Okay, but sanctioning was December 17, 2012. Correct?

MR. SHAFFER: December, 2012, yes.

MR. LEARMONTH: And the financial close – the federal government loan guarantee was November 29, 2013, correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: All right.

Now, on the – so, your conclusion was – I think this is covered in (inaudible) 01623 that you were unable to find any evidence to indicate that Nalcor attempted to recalculate the contingency, or the – and/or the entire capital cost estimate between April 2013 and financial close. Is that correct?

MR. SHAFFER: That's correct.

MR. LEARMONTH: Okay. Does – did – you didn't find any indication of that at all? Is that correct?

MR. SHAFFER: No.

MR. LEARMONTH: Correct?

MR. SHAFFER: Correct, yes –

MR. LEARMONTH: Yeah.

MR. SHAFFER: – correct.

MR. LEARMONTH: All right. The next heading we're gonna consider is page 12: Construction Schedule.

Can you take us through your findings on this article 1.3, or paragraph 1.3, of your agreement, which is – of your report, which is on page 12 and 13?

MR. SHAFFER: Sure.

One of the issues here is that – in this matter is the aggressive construction schedule that was set out. We know that Westney originally came out at 1 per cent and then I guess after the – what I heard is after the project team met with them and talked about mitigation strategies, that Westney said there was a 3 per cent – a P3 of hitting that schedule.

MR. LEARMONTH: Okay, now what is a P1 or a P3, just generally? What does a P1 signify?

MR. SHAFFER: That there's a 1 per cent probability you're going to hit the schedule.

MR. LEARMONTH: 1 per cent?

MR. SHAFFER: 1 per cent.

MR. LEARMONTH: And obviously a P3 is a 3 per cent chance.

MR. SHAFFER: So in other words, 97 to 99 per cent chance you're going to miss the schedule.

MR. LEARMONTH: Yes.

MR. SHAFFER: In any event, we know that what was going on after sanctioning and up until financial close – that there were two events that was happening that was delaying the project. One was the environmental assessment that was delayed six months. And I also understand that financial close was being delayed.

So, immediately after sanction, you're having delays of getting this thing done, which basically, you know, what Westney indicated is starting to happen. And then – I said this more than once in the report – we talked to Don

Delarosbil, the Astaldi project manager, about this. And we asked him – one of the questions we asked him: What’s the impact of starting in November for the generation facility that they were doing?

And he indicated, if you start in November instead of June – meaning the following year or before that, I suppose – you’re not just losing four months; you’re losing 10 months. You almost lost a year of production and that’s – and I took that to mean, obviously, because of the winter season up here in Labrador.

MR. LEARMONTH: Yeah, and you refer to Mr. Delarosbil’s comments on that subject later on in your report –

MR. SHAFFER: I do.

MR. LEARMONTH: – is that correct?

MR. SHAFFER: Yeah, I do.

MR. LEARMONTH: Okay.

Now, please describe for us the report, or the information you received from Edward Merrow’s book – the founder of Independent Project Analysis. Did he have any comments on that subject matter that you felt was appropriate to these facts?

MR. SHAFFER: He did. Edward Merrow is the CEO and founder of IPA, which I know is a consultant that Nalcor used here in this project. And based on, you know, what I was – I think I was told this by John Hollmann – that Mr. Merrow is a – I would say a well-known individual in the engineering world and megaprojects.

Well, Mr. Merrow wrote a book, *Industrial Megaprojects: Concepts, Strategies, and Practices*, which we bought. And one the things I was curious about – what was his viewpoint on schedule? And what he said here, and it’s quoted, that schedule pressure “*dooms*” megaprojects – “*dooms more megaprojects than any other single factor. When there is pressure to move a project along quickly from the outset, corners get cut and opportunists have a field day.*”

He goes on to say that, “*But taking risks with megaproject schedules is a fool’s game.*”

MR. LEARMONTH: Okay.

Now, once again, on page 13, paragraphs 1.4, 1.4.1 and 1.4.2, you offer some of your findings and comments on the federal loan guarantee that we know was – came into effect on November 29, 2013.

Can you just take us through what you have found and the opinions as expressed with respect to the completion guarantee and the cost run escrow account, that COREA account?

MR. SHAFFER: Sure.

One of the things when the project manager – management team met with us in their presentation and one of the things I highlighted for us was the completion guarantee and the Cost Overrun Escrow Account. And we looked further into it and what the project manager – management team told us on the completion guarantee was that the government, the provincial government, had to provide an equity guarantee for the project as obtaining – as a condition obtaining the federal loan guarantee.

We almost formalized a commitment letter from the former Premier Kathy Dunderdale in October 2011. We talked about that with Derrick Sturge, when we interviewed him and he confirmed that Nalcor’s board of directors knew that Canada could step in – as a result of the guarantee and, I guess, the indemnification that was part of this along with the step-in rights – that Canada could step in and force completion of the project at – not Nalcor’s cost, it really should be the government’s cost.

So, we came to the conclusion, as a result of that – that accordingly, that Nalcor didn’t complete the project. After execution of the federal loan guarantee, the province would still have been required to fund the cost to complete the project under Canada’s direction. And therefore, prior to the execution of the federal loan guarantee, we came to the conclusion that they had the ability to stop the construction without funding the remaining costs to complete. But – however, once that guarantee was issued, they were

committed to funding the project. It was all in at that point – is my understanding of it.

MR. LEARMONTH: Okay.

And is that the reason why you have attached considerable significance to November 29, 2013 and throughout your report?

MR. SHAFFER: Oh, sure. I mean, when you look at – when you go back to the DG3 estimate, and you're at 6.2 billion and you know that from DG3 estimate time until the federal loan guarantee that bids are coming in far exceeding your estimate, you know, the question was: Could you have done anything about it prior to executing the federal loan guarantee? Once that's done, it's done – at least, you know, before financial close, I mean. Once that's done, it's done; you're stuck at that point.

So you had a – you knew by April, the contingency was basically exhausted and you had another seven months from April until November to do something about it. You also knew, as more bids were coming in, it was – there was also problems in terms of the bids exceeding the budget amount for those bids that came in after April 13. So, you know, I looked at it and said: Well, there's an issue here. And so – again, once you sign into that federal loan guarantee and the financial close, you're stuck at that point – is my understanding.

MR. LEARMONTH: Okay.

MR. SHAFFER: The other provision they highlighted for us was the COREA – escrow account – Cost Overrun Escrow Account, the COREA

MR. LEARMONTH: And this had to do with the federal loan guarantee, was it?

MR. SHAFFER: Yes.

MR. LEARMONTH: Yeah.

MR. SHAFFER: And, basically, it's a – the federal loan guarantee, as I understand it, required cost overruns for the project to be funded with equity and additional debt. And there's a provision here that we stated from the FLG, that – basically, that – and I won't read it,

but, basically, they – every year, as I understood it, the cost overruns had to be funded and prior to the first advance of the debt for that year to fund the project.

And so, project management team told us, in their presentation, that they described the provision as a requirement where any forecast of cost overruns, above a set baseline, budget must be prefunded with equity from Nalcor or the province, annually. They also told us that it was understood that – Canada and the independent engineer – that only fixed and firm costs would be considered in the cost overrun calculation; therefore, until there were firm, fixed and executed contract costs available, the DG3 estimated cost would be utilized. And the key term that's there is executed contract costs.

So, we sent a question and – it was to Nalcor. And it was responded that respected the understanding on the LCP – the cost updates and the impact on the COREA calculation, it became formalized in the 2015 as it related to ongoing commercial negotiation with Astaldi. And it was acknowledged that between Nalcor and the independent – Canada and the independent engineer, there was only going to – that there was going to be a cost – there was going to be an impact on cost or schedule once a commercial settlement was reached with Astaldi, but at the time of the COREA payments from 2015 and '16 – that they couldn't quantify that with certainty.

That the execution of the December '16 completion contract with Astaldi, and related impact it had an overall project cost and schedule, was the means by which it eventually got settled. And it was documented as the Ongoing Commercial Negotiations Caveat in the 2015 and '16 COREA certificates issued by the LCP entities, which Canada and the independent engineer accepted.

So, we reviewed those two certificates, the December '15 and December '16 – that's what it said on page 15. And we noted that – and it's on lines 9 through 12 – there was a provision in each certificate that: This Cost Overrun Certificate is delivered to you pursuant to subsection 10.28.1 of the Muskrat/LTA Project Finance Agreement. And please note that all matters being certified below in paragraphs 2 to

4 and 6 to 8 may be impacted depending on how certain commercial negotiations currently being undertaken, ultimately conclude – parenthesis – (the Ongoing Commercial Negotiations Caveat).

So basically, we were confirming what Nalcor said and it appeared to us that – that it was in the document.

MR. LEARMONTH: Yes.

Now, if we could just bring up – and this is at Tab 8 of your documents, Mr. Shaffer – it's Exhibit P-01898. It's on – if we look at page 14 of the report, this document is referred to in footnote 43, entitled: Response to Grant Thornton Question PTQ1-10, page 1.

Could you bring up –?

THE COMMISSIONER: What tab are we at, Mr. Learmonth?

MR. LEARMONTH: Eight.

THE COMMISSIONER: Tab 8.

MR. LEARMONTH: Maybe that can be brought up on the screen. Yes, thanks.

Are you familiar with the document I just referred you to, Mr. Shaffer?

MR. SHAFFER: I am.

MR. LEARMONTH: Okay.

Can you take us through that please, and tie it in with your earlier evidence if you can?

MR. SHAFFER: Yeah.

You have to go up a few pages. Okay, stop there. Go down a little bit, a little bit more, a little bit more – here we go.

If you look at the last paragraph of this page, this is where it was indicated on the cost overruns certificate. And so this is what we quoted in our report, and this was the source of the document that we used.

MR. LEARMONTH: Okay.

And what – just take us through that and –

MR. SHAFFER: Well, it's – it indicates what we were told that the "Cost Overruns Certificate is delivered to you pursuant to subsection 10.28.1 of the Muskrat/LTA Project Finance Agreement. Please note that all of the matters being certified below in paragraphs 2 to 4 and 7 to 9 may be impacted...on how certain commercial negotiations currently being undertaken ultimately conclude (the 'Ongoing Commercial Negotiations Caveat')."

And so based on that, we assumed that – because Toronto-Dominion Bank was getting it – that Canada knew about it.

MR. LEARMONTH: Yeah.

And did – can you confirm this just applied to the Astaldi contract, 0007?

MR. SHAFFER: Well, the answer was – I mean, the answer we got from Nalcor mentioned just Astaldi.

MR. LEARMONTH: It was just Astaldi?

MR. SHAFFER: That's my understanding.

MR. LEARMONTH: That's the information you got?

MR. SHAFFER: Yeah.

MR. LEARMONTH: All right.

And that's 0007, right?

MR. SHAFFER: Yes.

MR. LEARMONTH: All right.

Okay.

Now, on page 15 of your report –

THE COMMISSIONER: Just – can I just go back just for a minute on this, because I'm struggling to understand exactly what you're saying here now.

So did this apply only to the Astaldi contract, or did this apply to all the contracts?

MR. SHAFFER: Well, the answer that we received from Nalcor, which is what we quote in the report, it appeared to us it was they only answered to the Astaldi contract, that the ongoing commercial negotiations was only applicable to the Astaldi contract and that until it was finalized, they had that caveat in there.

THE COMMISSIONER: Okay. So the COREA account didn't apply to other contracts?

MR. SHAFFER: I don't know.

MR. LEARMONTH: All right. The – page 15 of your report, Mr. Shaffer, paragraph 1.5 you refer to – it is entitled Independent Engineer Report. Could you just explain who the independent engineer was, both in terms of the job description for the independent engineer and the identity of the independent engineer?

MR. SHAFFER: Sure. In August 2012, Nalcor hired MWH Canada as the independent engineer and in particular a gentleman there by the name of Nik Argirov. And he was to do various things and comment on them, I suppose, and you can see listed through on page 15, 17 through 23, what those various things were.

And so what we did is, we reviewed three versions – and there were other versions – but we reviewed three versions – an independent engineer's report: one that was dated November 15, which was a draft that was sent to Nalcor and, I believe, to Canada for comment and review. The second one was a report dated November 29, 2013, that was publically released, which was the Interim Final. And then there was another report dated December 30, 2013, which was the Final Independent Engineer Report.

And the reasons we were told – what was going on is that the first Draft Report that was sent to Nalcor and Canada for the review was completed by a manager with the firm, and then it was sent out. Apparently, Canada and Nalcor made comments to it, and then it was sent back. Reviewed then by, I assume, Mr. Argirov, and then he either – I – incorporated some of the edits, I assume, and sent out the report – the Interim Final report, which became publically released at that point.

MR. LEARMONTH: Okay. Now, you mentioned that Nalcor had retained the independent engineer, but to whom did the independent engineer report?

MR. SHAFFER: The Government of Canada.

MR. LEARMONTH: The Government of Canada?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

MR. SHAFFER: And so after the November 29 report, Mr. Argirov does a final read-through, and then he takes it to his quality control committee, and then the December 30 report is issued.

MR. LEARMONTH: Okay.

MR. SHAFFER: And one of the things that we noted, and you can see that on – starting on line 15, there's a table there.

MR. LEARMONTH: Just take us through that table, please.

MR. SHAFFER: Sure.

MR. LEARMONTH: Box by box.

MR. SHAFFER: You can see that the Draft Report, dated November 15, 2013, as it pertains – what he says about contingency allowance, the first one on that date, he said the independent engineer "typically sees contingency allowances in the range of 12 percent to 18 percent at this state of project development."

MR. LEARMONTH: Okay, now just for the record, what was the contingency used by Nalcor in the DG3 numbers that were used at the time of sanction?

MR. SHAFFER: It was 6 point something, those – just less than 7, I recall.

MR. LEARMONTH: Yes, okay.

MR. SHAFFER: When you compared that to the language of the Interim Final, dated November 29, 2013, you could see that the 12 to

18 per cent changes to 6 to 10 per cent. And then when you compare that to the Final, dated December 30, 2013, you can see that language has changed and the percentages have changed, and then he indicates: “The IE typically sees scope or tactile contingency allowances in the range of 8 to 12 percent at comparable DG3 stage gates.”

MR. LEARMONTH: All right.

MR. SHAFFER: Another example was on example 2, November 15, he indicated that the values – “contingency values appear low for this stage of project development, in our opinion.” The language changes. He says the “contingency values appear to be at the low end of the observed range which in our opinion is aggressive.” And then on the Final, that language was not in the Final.

Our conclusion, really, is that based on the December 30 report, Nalcor would’ve known – since Nalcor gave us the report – Nalcor would’ve known that the less than 7 per cent “was less than the low end of the range of what the IE typically sees at comparable DG3 stage gates.” And that’s on 16 through 18 on page – on this page, page 16.

MR. LEARMONTH: All right.

Now, your concluding comments on this subject are found on page 19 of the report, paragraph 1.6. I’d just like you to read those –

MS. O’BRIEN: Page 17.

MR. LEARMONTH: Page 17. Read those Observations and Findings into the record, please?

MR. SHAFFER: Yes. “During our review, we observed and found the following:

“By April 2013 (four months after sanctioning), Nalcor should have known the contingency was exhausted.”

That “Nothing came to our attention to indicate that Nalcor attempted to recalculate the contingency and/or the entire capital cost estimate between April 2013 and financial close.”

That “Prior to financial close, Nalcor should have been aware that the contingency included in DG3 budget was insufficient.

“At the time of financial close, the project schedule was delayed by six months, demonstrating that the 97% change of schedule slippage determined at sanctioning was in fact materializing.”

That “Nalcor had the ability to stop the project prior to execution of the FLG and financial close without funding the remaining costs to complete.”

That “Once the FLG was executed, Nalcor” and the province “were committed to funding the project at their costs regardless if the project was stopped or not. Under the FLG, Canada had the right to complete the project with Nalcor” or the province or both “funding it.”

That “Nalcor should have been aware that the contingency they selected for the LCP (less than 7%) was less than the low end of the” stage “of what the IE typically sees at comparable DG3 stage gates.” I’m sorry – “low end of the range of what the IE typically sees at comparable DG3 stage gates.”

MR. LEARMONTH: Okay. Thank you.

We’ll next turn to page 18 of the report. Here we’re dealing with the cost estimate and actual. Just give us a summary of the background of this part of your work.

MR. SHAFFER: Well, one of the things we have been tasked with is why was there significant differences between the estimated cost of Muskrat Falls at the time of sanction and the cost by Nalcor during construction. And so the first thing we wanted to understand and what we were – actually, what we were told when we were questioning Mr. Harrington about this in terms of what was going on, how was cost being monitored, he provided us a history of briefing decks and emails and meeting calls that were used to inform Nalcor executives of the cost and schedule increases that were first identified by the project team.

And so we received this information, these briefing decks, and it seemed to us that the

project team was monitoring the financial – the forecast of final cost to complete the project throughout construction. Also based on the email traffic and the meeting and advice, it looks like that the forecast were communicated to the Nalcor executives, including Mr. Martin and Mr. Bennett, and that the monthly project budgeting monitoring communication to the financiers, basically coming off the monthly construction reports – Toronto Dominion – was based on the authorization for expenditure, which was the budget approved by the board of directors.

And so one of the things we were concerned about that came up with the project management team in our discussions with them was: If you were monitoring these costs, were you telling the executives about it? And that's when Mr. Harrington provided these briefing decks.

MR. LEARMONTH: All right.

MR. SHAFFER: And so what we did, we took these briefing decks and we – and now I'm on page 19 – and we plotted out, based on the briefing decks, versus when the executives would've been informed versus when the AFE actually occurred. And what this chart depicts is that you can see that, for example, the July 2013, the executives were told there was potentially a \$7-billion cost and that the AFE for that \$7-billion cost was not authorized until June of 2014 by the board, via the AFE process. So you have there an 11-month delay going on. And then the same thing happened with March of 2014 where the communication to the executives was \$7.5 billion and the AFE for that was not increased until September of 2015 up to \$7.7 billion. So there you have an 18-month delay.

And so as indicated on lines 5, 6 and 7 on this page that the chart illustrated: "... that throughout the period of construction there were instances where the forecasted cost to complete the project that was communicated to the Nalcor Executives exceeded the AFE approved by the Board of Directors." And in those two instances by, obviously, a number of months.

MR. LEARMONTH: Just to be clear, AFE means authorization for expenditure, correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: Yeah, okay.

MR. SHAFFER: And so what we did, we then charted out the briefing decks by examining the documents that we were given to look at what the project management team's comments were: the emails and the communication to the executives, the email traffic, the meeting invites, little notes that were made on it by Mr. Harrington and what the actual presentation – certain excerpts from the presentation surrounding the forecasted costs.

And so what this chart does, it depicts what was going on, and as you can see that by July of 2013 the project management team was forecasting a cost to be \$7 billion, which was beyond the DG3 by 12 per cent, and if mitigations are successful the FFC would be reduced to \$6.8 billion. So my whole point there, for example, is that by July of '13 they knew that the costs were starting to exceed the budget, and by a lot.

MR. LEARMONTH: And, of course, that was before financial close?

MR. SHAFFER: Before financial close.

MR. LEARMONTH: Yeah.

MR. SHAFFER: And so the rest of this is just the same thing. It's just depicting what we were – these are excerpts from the presentation. And I will want to point out and – that when it says, project management team comments 2018, that was a cover sheet that was apparently typed up by Mr. Harrington, and they were prepared in 2018, those comments. Whereas the communication to the executive, and I'm assuming the presentation, was done back in those years.

MR. LEARMONTH: Okay.

So then you've taken us through in detail the chart on page 19 dealing with the July 2013 final – forecast final cost. And then when we go through page 20 and 21, this is just a continuation of that exercise?

MR. SHAFFER: Yes.

MR. LEARMONTH: In the same format, correct?

MR. SHAFFER: Same format.

MR. LEARMONTH: Okay.

MR. SHAFFER: Same format. And you can see the shaded section where we talk about when the AFE revision occurred – trying to time the difference and show the difference.

MR. LEARMONTH: Okay. And that carries through, I should say, through page 22 and the top of page 33 – 23, correct?

MR. SHAFFER: That's correct.

MR. LEARMONTH: Okay.

So what is the significance of this generally?

MR. SHAFFER: Well, I think it really comes down to the fact that it appears that based on these documents that – and based on what we were told by the project management team, that there was communication to the executive, 'cause I kept asking the question in these – when they did the presentation: If you knew the costs were increasing, why wouldn't the AFEs be increased at the same time? And they – when I asked them that, they said: COREA, for one reason. And I said: Well, did the executives know? And they said absolutely and this is what they gave me.

So the significance is that you have a timing here where the executives at Nalcor knew the costs were going up before the AFE was authorized by the board. And, as I said, in those two instances, a year and a year and a half before.

MR. LEARMONTH: All right.

If you can turn to page 23 of the report, under the heading in paragraph 2.4, Best Practice. What was the – your object in dealing with this subject?

MR. SHAFFER: Well, one of the issues was whether or not the project management team was following best practices in the forecasting and whether or not the project budgeting was

following best practices. And so we used PMBOK, which is the Project Management Institute's *Guide to the Project Management Body of Knowledge*. It's called, parenthesize, PMBOK, and that's – was also recognized by Nalcor's Internal Audit to be best practices. And so we compared what was happening here to what PMBOK said.

And the first aspect of it was project budgeting, and what PMBOK said about project budgeting and – it stated that: "*Management reserves ... are added to the cost baseline to produce the project budget. As changes warranting the use of management reserves arise, the change control process is used to obtain approval to move the applicable management reserve funds into the cost baseline.*" And we know in this case Nalcor did not include the management reserves in the project budget.

The second thing we looked at was forecasting and it states the following: "... *if it becomes obvious that the BAC [budget at completion] is no longer viable, the project manager should consider the forecasted EAC [estimate at completion]. Forecasting the EAC involves making projections of conditions and events in the project's future based on current performance information and other knowledge available at the time of the forecast*"

And we know that on the March of '14 briefing deck, that Paul Harrington prepared, he noted that: "*It was clearly identified in the deck that the \$7.5B was based on certain assumptions with the key caveat being that there was no allowance for any cost increase in the Astaldi Contract because of delays and performance.*"

And so it became clear to us – at least for the March of 2014 presentation – that the PMBOK guidance, in that particular case, wasn't followed.

MR. LEARMONTH: Okay. Just before we go further, I think you wanted to make some clarification about some slight error –

MR. SHAFFER: Oh yeah, yeah.

MR. LEARMONTH: – in your references –

MR. SHAFFER: Thank you.

MR. LEARMONTH: – to PMBOK.

MR. SHAFFER: Yeah. Thank you.

When we looked at this, we were using the sixth edition of PMBOK, which was actually published in 2017. So I went back and looked at the prior edition that was actually published in the 2013, and this wording here is exactly the same.

MR. LEARMONTH: In all respects, wasn't there one quote that was –?

MR. SHAFFER: There was one quote that we used later on in the report. It was a real slight change, but the – and it had to do with their work package selection – the work packages, but it said really the same thing.

MR. LEARMONTH: Okay. All right.

Now, on page 24 paragraph 2.5, Work Package Selection, could you give us some background to this part of your report?

MR. SHAFFER: Yes.

In order to understand the cost increases, obviously we had to look by package by package to see what happened on these packages. So I made a judgment call to pick those packages in excess of a \$100 million variance, where the March 2018 forecast exceeded the original DG3 budget with escalation that was over \$100 million for further review and that's what this is depicting; these are the ones that we looked at. And in total, it was approximately \$3 billion of the \$3.9 billion cost variance.

MR. LEARMONTH: Okay.

MR. SHAFFER: So about 77, 78 per cent.

MR. LEARMONTH: So the six work packages that you did review represent \$3 billion, which is 77.5 per cent, correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: Of the contracts.

MR. SHAFFER: Yeah. And then what I want to point out here is that – so there's no misunderstanding – that if you have a forecast that exceeds the original budget and you have a variance – the difference is the variance – not all that variance is due to a cost overrun. That you're going have scope transfers that were going on throughout this due to packages that were being – scope of work was being transferred from other packages. So that was taken into account in our analysis.

MR. LEARMONTH: Okay.

And just for clarification – once again, we see the chart on page 24 has certain portions of it redacted so some of the information that was in your final report and you're not able to discuss with us today because of these redactions –

MR. SHAFFER: That's my understanding, yeah.

MR. LEARMONTH: Okay.

Now please turn to the – to page 25, paragraph 2.6, Change Order Process and take us through this part of your report.

MR. SHAFFER: Yeah. We took a look at the change order process just to gain an understanding of how the change orders were being approved. And the chart the – going from DAN to Issue Change Order is a – what I would say – summary of what we were looking at. And so that's really what this is and what I want to point out, though, is that on line – 12. Well, let me read it to you. We said here that: Once the DAN is justified, a Project Change Notice is required, and once approved, a Change Order is issued.

It doesn't always have to be required. That's an error in the report here.

MR. LEARMONTH: Okay.

So how would you correct the error? With what language?

MR. SHAFFER: I think we have it in – why don't – we can pull up the chart maybe and –

MR. LEARMONTH: Yeah, okay.

Well, the exhibit that I want you to refer to which is NAL – it's referred to in footnote 101 on page 25: Change Management Plan – December 23, 2014 – Page 24.

So if we can bring up that exhibit and that's Exhibit P-01940 at tab 9 of the – of your documents, Mr. Shaffer. Perhaps you can look at that document and see whether that could assist you in explaining the clarification that you just made.

MR. SHAFFER: Yes, I have it here. Should we wait 'til it's pulled up, up in –?

MR. LEARMONTH: Page 24, I think, is the –

MR. SHAFFER: Yeah. It's page 24 of this, so we have to keep paging down here.

Here we go. That's it. Okay.

It starts out potential inputs – for a number of reasons, you could have a deviation alert notice, a DAN. And you can see, you have the inputs, it goes to a DAN. That DAN is then reviewed. If you want to proceed further with it, if you go no, the DAN is rejected. If you go yes, the next question: Is a project change notice required? In our report, we said – we sort of insinuated it was. That's not always the case, 'cause you can see the line that says: No.

MR. LEARMONTH: Yes.

MR. SHAFFER: That's – you know, look at PCN required. If it's – on top, is a line going up that says: No. Then other things can happen regarding that DAN. And so my whole point is: When we wrote that in the report, that's just not – it's just not right.

MR. LEARMONTH: Okay. Okay, well thank you for clarifying that.

Next, please turn to page 27 of the report. This is the beginning of your analysis and review of the Astaldi contract CH0007.

Can you take us through that review, please?

MR. SHAFFER: Yes.

So with Astaldi contract, this part of the work package – the current overrun, at least as of March 2018, was \$1.2 billion. The financial forecast as of March of '18 was 1.959. And the DG3 estimate, which was base plus escalation, was 752. And there were no transfers from other work packages as far as we could tell.

And so, that access was all overrun. And –

MR. LEARMONTH: So that's \$1.207 billion –

MR. SHAFFER: Billion, yeah.

MR. LEARMONTH: – overrun?

MR. SHAFFER: I'm sorry, \$1,000,000,207.

MR. LEARMONTH: 207 million?

MR. SHAFFER: \$1,207,000,000, yes.

MR. LEARMONTH: Yes. Correct, okay.

MR. SHAFFER: 1.2 billion.

MR. LEARMONTH: Yeah.

MR. SHAFFER: So as we go further into this, we looked at – and I'm on page – filing page right here – 28.

We were looking at the RFP and bidding process on this. And –

MR. LEARMONTH: You're on page 28 now, you said?

MR. SHAFFER: I am, yeah.

MR. LEARMONTH: And RFP is what?

MR. SHAFFER: Request for Proposal.

MR. LEARMONTH: Yes.

MR. SHAFFER: And as you can see, there were four bids that were received on this contract: IKC, Astaldi, Aecon and Salini. And –

MR. LEARMONTH: They were the four bidders for this 0007 contract, right?

MR. SHAFFER: That's my understanding. According to the bid evaluation recommendation for award summary.

MR. LEARMONTH: Yes.

MR. SHAFFER: When the bids came in, it became apparent that the evaluated price was a lot greater than the DG3 estimate with escalation. What also became apparent is that the total labour hours that was included in the – in these bids was greater than the bids – was greater than the labour hours that were estimated for the DG3 estimate by SNC.

And – what I want to point out here though – and because I know I've had some questions about this – is that when you look at the evaluated price, you can see the difference between Astaldi and Aecon. Astaldi was 1.14 billion; Aecon was 2.03 billion. But the labour hours for Astaldi was 6.82 million, and Aecon was 6.89 million.

So the question that was raised – and it's a good question – was: How can Aecon be double Astaldi if the labour hours were basically the same? And the answer to that is that the evaluated price includes the LMax of each of the bidders that they –

MR. LEARMONTH: What is an LMax?

MR. SHAFFER: It's the labour max. It's the max that Nalcor was going to pay for that scope of work in terms of labour costs.

MR. LEARMONTH: Okay.

MR. SHAFFER: And so the evaluated price included the LMax; the hours that are listed here does not include the LMax, the additional hours up unto that LMax they're willing to pay for. When you add in the hours, the LMax hours, the total labour hours with the LMax price for Aecon was 14.4 million, and for Astaldi was 7.7 million, so almost double.

That's one of the reasons why Aecon's cost is higher. The other reason is the non-labour component of the bid for Aecon was \$400 million higher too. So between the labour and the non-labour component, that pretty much makes up the difference between the two bids.

MR. LEARMONTH: Okay.

So is the point that the contractor submitting the bid determined its level for the LMax?

MR. SHAFFER: Yes.

MR. LEARMONTH: It wasn't fixed?

MR. SHAFFER: No, that was up to the contractor –

MR. LEARMONTH: That's the point of this –

MR. SHAFFER: – and I understand.

MR. LEARMONTH: – isn't it?

MR. SHAFFER: Yes.

MR. LEARMONTH: Yeah, okay.

But that accounts for the apparent discrepancy?

MR. SHAFFER: Yeah, that's right.

MR. LEARMONTH: Yeah, okay.

THE COMMISSIONER: Can we just go over that again –

MR. SHAFFER: Yeah.

THE COMMISSIONER: – Mr. Shaffer? Because I'm just –

MR. SHAFFER: Yeah.

THE COMMISSIONER: – I'm not sure I caught everything that you said.

MR. SHAFFER: Would it help if we pulled up the actual document that's from the bid evaluation awards summary? It might be clearer for you, Commissioner.

THE COMMISSIONER: Okay.

MR. SHAFFER: Okay. And maybe – I don't – it's – bear with me a second.

It's NAL0436468, appendix 1.

MR. LEARMONTH: Has that been cleared, (inaudible)?

THE COMMISSIONER: So do we have –

MR. SHAFFER: Is that possible to pull up or no?

MR. LEARMONTH: I'm not sure if that's been cleared.

There was some delay in the review process, not caused by Nalcor, but I'm not sure if that document has been cleared.

Mr. Simmons or Ms. Martin, would you know?

MR. SIMMONS: For the Astaldi contract, I'm not 100 per cent sure, but we –

MR. LEARMONTH: Okay.

MR. SIMMONS: – can certainly check on the break.

MR. LEARMONTH: Well, what we should do is just let it go for now, and then we'll come back to it and deal with that – with it later.

Is that acceptable, Commissioner?

THE COMMISSIONER: And maybe even without going to that document, if you could just go a little slower and explain to me –

MR. SHAFFER: Sure.

THE COMMISSIONER: – the comparison.

I understand there were four bids, you've – on the – on this table that you have here, you've marked basically what the total evaluated price is.

What do you mean by total evaluated price?

MR. SHAFFER: I took that to mean the max price it's gonna cost Nalcor. That's what –

THE COMMISSIONER: Okay.

MR. SHAFFER: – they were looking at in evaluating the bids.

THE COMMISSIONER: That's their bid.

MR. SHAFFER: The hours that I have listed here on the table are the hours without the LMax hours, meaning the additional hours that's gonna bring you up to the labour maximum that you're gonna pay that contractor.

So, an example, Astaldi came in at – their labour cost, I believe, was 508 million, but they said we're gonna want – potential, we're gonna want another \$64 million if we incur that cost, so that their LMax is just 572 then – 508 plus 64 in terms of dollar amount.

The additional labour hours is – are the hours that make up that additional \$64 million, 'cause there – people are working so you're incurring hours. So when you look at the Astaldi and the Aecon numbers, without the LMax for each one, you had 6.82 million for Astaldi, and 6.89 million for Aecon. But if you add the LMax hours in that came from the bid evaluation award summary documents, the Astaldi total hours with the LMax was 7.7 million, and the Aecon total hours with the LMax was 14.4 million, so almost – almost double.

And that's really what drove a lot of the difference between the two bids, in terms of the max price.

THE COMMISSIONER: And then you said there was some non-labour cost as well.

MR. SHAFFER: Yes.

THE COMMISSIONER: Just explain that again please?

MR. SHAFFER: The other part – in looking at the bids, the other part that drove that difference was Aecon had a \$400 million higher non-labour cost component than the Astaldi bid. And between the additional labour that Aecon had – I think dollar amount might have been another \$400 or \$500 million – and between the additional \$400 million non-labour component, that basically makes up the difference of the billion-dollar difference.

THE COMMISSIONER: Right.

So when you – when they bid, their total labour hours to be included in the bid – what does that number actually reflect? Did they know that there was going to be more over and above that for the LMax or what, like, what did it reflect?

MR. SHAFFER: You mean Aecon?

THE COMMISSIONER: For either one of those, for –

MR. SHAFFER: Well, they're saying – in my mind, or what the project management team have said to me, is that: Okay, here's what we think it's gonna take as far as number of hours and here's the cost for that. But there's gonna be a risk to us, so we want to get more money in the event that we're gonna accrue more of those hours. And Astaldi said: Okay, I only want \$64 million more in dollars. Here's what we think the LMax is gonna be. Aecon said: I want another \$400 or \$500 million more for that risk. And that's really what it is.

MR. LEARMONTH: So the LMax is the determining factor here, the LMax that was chosen by the contractors in their bids, is that right?

MR. SHAFFER: Yes, that's up to the contractors, what they wanted to submit, as I understand it.

MR. LEARMONTH: Yeah.

So just explain again, just to make sure – I know we're gonna come back to this when we get some clarification on the document referred to – but just explain, as simply as you can, exactly what the LMax is.

What is it?

MR. SHAFFER: It's – it's the amount of additional hours you think you're gonna incur because of potential risk of doing the project, in the simplest terms. And I think, you know – well, there's lawyers and accountants here, let me put it in that regard.

MR. LEARMONTH: Yeah.

MR. SHAFFER: Client comes to you and says: I wanna do a piece of litigation, I need for you to

represent me. And you say: Well, I think it's gonna cost \$200,000, but – you know, in the event I'd to spend more hours, I think the max you're going to pay is \$300,000. That's really what it is. It's that (inaudible) delta.

MR. LEARMONTH: So, regardless of what the additional hours are, there's a maximum amount – and even if you spend more time on it, you're not gonna get paid for that.

MR. SHAFFER: The contractor eats that.

MR. LEARMONTH: Yeah.

MR. SHAFFER: That's on the contractor.

MR. LEARMONTH: Okay.

So on the – using the LMax, if it goes – if the hours go over the LMax, the risk is on the contractor, not the owner.

MR. SHAFFER: Not Nalcor; it would have been on the contractor.

MR. LEARMONTH: Yes. Okay.

Okay, now, just turning back to page 28. The – give us some information, please, about the manner in which the bids were evaluated and the weightings that were applied in that process.

MR. SHAFFER: Sure.

When we looked at the recommendation for award summary there was a weighting table in there of how the bids were weighted. And you can see this excerpt at 13 is from that table. They're basically, commercial and provincial benefits were going to be 70 per cent; quality program and risk management, 5 per cent; execution of the work, 20 per cent and labour hiring strategy, 5 per cent, for a total of 100 per cent. When you delve further into what makes up the 70 per cent of that particular weight, 90 per cent of that weight was attributed to the low bid price. So when you do the math, that means that 63 per cent of this bid was to be weighted toward low bid price.

MR. LEARMONTH: Yeah.

MR. SHAFFER: And all other things being equal, the low bids, the low bid would win. Period. And that's how they were scoring this bid. And that's, which as a result – because Salini and Astaldi were the low bidders, they were being considered for further consideration.

MR. LEARMONTH: Because of the heavy weighting it was they got from the, in their favour for the fact that their bids were lower than (inaudible).

MR. SHAFFER: Seems that – more Astaldi than Salini –

MR. LEARMONTH: Yeah.

MR. SHAFFER: – the way, from what I recall, but yes.

MR. LEARMONTH: Okay.

Now, did you do any research or form any assessment on whether there are any risks or dangers in selecting a bid that is much lower than others?

MR. SHAFFER: I did. Merrow had a note about low bids.

MR. LEARMONTH: And what did he say?

MR. SHAFFER: What he said –

MR. LEARMONTH: This is on page 29 of your report, correct?

MR. SHAFFER: Yes, top of the page, 1 through 7.

What he said, and this is a quote again: “Acceptance of such bids guarantees that the bidder does not fully understand the project or has made a disastrous bidding error. Either way, the sponsor will lose.”

“When the ‘winning’ contractors realize the magnitude of their low bids, they immediately started to try to recover their losses. They floated the” – schedule – “longer to minimize costs believing (correctly in most cases) that they could avoid liquidated damages.”

And so, I took that to mean that a bidder that has a low bid – and these bids were way far apart, when you think of it, when you look at the numbers – that either the bidder not understand or they made a bidding error, something. It just didn't make sense to me, intuitively. And that's why I looked it up at Merrow.

MR. LEARMONTH: Okay.

And before we leave this subject, can you confirm that in the bid review analysis undertaken by Nalcor that Astaldi had the highest technical score as a result of the integrated cover system that was part of their – a big part of their bid?

MR. SHAFFER: I cannot without seeing it again, no.

MR. LEARMONTH: I beg your pardon?

MR. SHAFFER: I cannot without seeing it again. I have to see the bid again.

MR. LEARMONTH: Okay.

MR. SHAFFER: The bid scoring.

MR. LEARMONTH: So you can't confirm that then?

MR. SHAFFER: No I cannot, not sitting here.

MR. LEARMONTH: Okay, thank you.

The – on page 29, you refer to – on paragraph 3.5 – the original agreement, bridge agreement and completion contract?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay, just before we get into that, was there one other document that came to your attention after you had prepared your report –

MR. SHAFFER: Yes.

MR. LEARMONTH: – you didn't have access to at the time you prepared your report?

MR. SHAFFER: Correct.

MR. LEARMONTH: And if so, what was – what is that document?

MR. SHAFFER: It was a settlement agreement that was for \$20 million that was executed on December 14, 2017.

MR. LEARMONTH: Okay, and under which Nalcor agreed to pay \$20 million in extra compensation to Astaldi. Is that correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

And you didn't have access to that in the database at the time you prepared your report; is that –

MR. SHAFFER: My understanding is that it didn't get into the database until January of '19 and my report was already issued December 7th of –

MR. LEARMONTH: Okay, well in any event you –

MR. SHAFFER: – 2018.

MR. LEARMONTH: – if you had known about it, you would have added it to your report, correct?

MR. SHAFFER: I would have added it to the report, but understand, I'm assuming that because it's dated December '17 and we were working off the March '18 forecast that it's already in the numbers as part of the \$1.959 billion.

MR. LEARMONTH: Okay.

Now, the – you've identified the – for consideration – the original agreement, bridge agreement and completion contract, and you've dealt with those items on pages 29 to 31 of your report.

MR. SHAFFER: Yes.

MR. LEARMONTH: Can you just take us through your analysis of those agreements?

MR. SHAFFER: Sure.

I mean, we looked at the original agreement. We saw it was executed for \$1.024 billion, excluding the LMax. That's \$1.024. And there was some performance security via letters of credit and performance bonding and parental guarantees that we talk about further in section 10 of the report.

So, that was the original agreement. The bridge agreement –

MR. LEARMONTH: And you're on page 30 of your report, paragraph 3.5.2?

MR. SHAFFER: I am.

MR. LEARMONTH: Okay.

MR. SHAFFER: After that there was a bridge agreement entered into. And what happened was, Astaldi got off to a poor start. And as early as – well, based on Mr. Harrington's March 2014 analysis and based on his saying that, that financial forecast does not include the impact of Astaldi, they knew by –

MR. LEARMONTH: Yeah.

MR. SHAFFER: – early '14 that there was a problem.

And what happened was, Nalcor in mid-2015 does an analysis and determines that there's a \$500 to \$800 million gap to complete the Astaldi scope of work. And so that was the first thing that they discovered.

The second thing is that October of 2015, Astaldi demanded \$743 million from Nalcor as additional compensation. So the parties at that time were negotiating. And I will tell you that during 2014 and beginning of 2015, there were numerous meetings, as I understand it, between Astaldi and the project management team, and Mr. Martin and I believe Mr. Bennett attended a few of these.

So they were talking to Astaldi all throughout this process. So I wanted to point that out.

MR. LEARMONTH: Was it your understanding that the year 2014 was not a very productive year in terms of Astaldi's performance?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

MR. SHAFFER: Yes, that's my understanding.

So, they're off to a slow start and they realize there's a gap in performance. Nalcor – Astaldi wants another \$743 million. In February 2016, Nalcor starts looking at it more closely with Westney Consulting helping them. They do a formal analysis and, as part of that formal analysis, they concluded that negotiating with Astaldi provided the least-cost risk exposure to Nalcor.

MR. LEARMONTH: Wait, that would be a lesser cost than what alternative?

MR. SHAFFER: Well, I – the alternative, I would assume, would be to replace Astaldi at that point.

MR. LEARMONTH: Right.

MR. SHAFFER: So, they make a determination to negotiate with Astaldi – that that would provide the least cost exposure to Nalcor. July 27th of 2016, a few months later, there's a bridge agreement entered into.

MR. LEARMONTH: That's when Mr. Stan Marshall – after he had been appointed CEO, is that correct?

MR. SHAFFER: Correct.

MR. LEARMONTH: Yes, okay.

MR. SHAFFER: The bridge agreement's entered into for an additional \$150 million. I assume negotiations continued between the parties. And, finally, the completion contract is entered into on December 1, 2016, to make up the shortfall apparently. And the additional cost there was over \$800 million.

MR. LEARMONTH: And the completion contract is referred to on page 31 of your report, correct?

MR. SHAFFER: Yes, but I think that \$800 million included the \$150 million from the bridge agreement.

MR. LEARMONTH: Okay, well we'll check the agreement to confirm that later on. All right, on page 31, after you've made your comments on the completion contract, which was December 1, 2016, correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: Yeah. And then you've already referred to the settlement agreement.

Okay, 3.5.4 on page 31 is a section entitled Cost Growth Subsequent to the Completion Contract. Can you take us through that portion of your report please?

MR. SHAFFER: Sure.

After the completion contract, there were total change orders totalling \$18 million. In the table on page 31 and 32, we looked at a few of them, and this is what we compiled from the change order information. There's a note that – the one on page 32, second one down, where it says: "Services in Common Areas (i.e. snow clearing, maintenance ...) to the end of March ..." – the first one. That should be end of February, 2018, not March.

So, it grew somewhat after the completion contract, and we just wanted to find out why, and so we were looking at the change orders.

MR. LEARMONTH: Okay.

So, these were change orders that were approved by Nalcor?

MR. SHAFFER: I assume so, but I'm not sure because the \$20 million settlement agreement – that might include those change orders.

MR. LEARMONTH: Or some of them at least, right?

MR. SHAFFER: Yeah, I – maybe, yes.

MR. LEARMONTH: Yeah. Okay.

And then, under the heading on page 32: Variance. Can you take us through that please?

MR. SHAFFER: I'm sorry, where?

MR. LEARMONTH: Page 32.

MR. SHAFFER: Yes.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. SHAFFER: Oh, 3.6.1?

MR. LEARMONTH: Yes.

MR. SHAFFER: Okay, yes.

We compared the labour hours in the Astaldi bid to the labour hours that were included in the DG3 estimate. And there was a document we were given – I think it was prepared by Mr. Lemay at SNC.

MR. LEARMONTH: He was an estimator at SNC-Lavalin, correct?

MR. SHAFFER: He was the lead estimator, as I understand it.

MR. LEARMONTH: Yeah, and he had a large role in the preparation of the DG3 basic cost estimate?

MR. SHAFFER: Yes.

MR. LEARMONTH: Yeah, okay.

MR. SHAFFER: And, from that document, we've gleaned the labour hours that are on the table, starting at – on line 4. And what you can see is that the total labour hours for Astaldi exceeded the DG3 estimate by 3.17 million hours, and the breakup of that was – 2.18 was indirect hours, and about a million was direct person-hours. And –

MR. LEARMONTH: What is the difference between indirect and direct –

MR. SHAFFER: My –

MR. LEARMONTH: – as far as you know?

MR. SHAFFER: Direct – indirect, as I understand it, is – are supervisory people.

MR. LEARMONTH: Yeah, or office staff, for example?

MR. SHAFFER: I'm not sure because I asked Mr. Lemay that, and what he told me was, really, more supervision than anything else.

MR. LEARMONTH: Okay.

MR. SHAFFER: Direct person-hours is just that. It – I took that to mean the folks that are pouring the concrete.

MR. LEARMONTH: Right.

MR. SHAFFER: When you look at the difference between the labour hours (inaudible) that means in dollar-wise, I calculate about \$187-million difference as a result of that.

We then interviewed Mr. Lemay and we were asking him a few questions 'cause we – we really – we were trying to understand well how could there be such a big difference between the bid and the estimate. And what he indicated to us is that he didn't factor any production activity as this would be addressed separately, but they had – in his hours, he included a 20 per cent add-on of the labour force to address possible lack of labour availability and potential unproductivity.

MR. LEARMONTH: That was in the base estimate, correct?

MR. SHAFFER: That was in the base estimate, as I understand it, based on what Mr. Lemay told us.

MR. LEARMONTH: Yes.

MR. SHAFFER: Mr. Lemay also told us when we asked him where'd you get the data, or what were you using to determine the product – production – productivity issue, he said that he employed the services of a gentleman named Jim Daubersmith who was up from the States, who apparently did the concrete estimate here on the labour hours and the productivity.

The second thing he told us when we asked him about, how could there be a million more direct labour hours in the bid than what was in your estimate – and you could see the explanation on three to eight, but what – but the thing that struck me was the last sentence on line 8, that's

where it says: Well, I was a little bit more optimistic on my productivity.

And then – and the last thing we asked –

MR. LEARMONTH: Yeah, that's on page 33, correct?

MR. SHAFFER: Yeah, I'm sorry. It's –

MR. LEARMONTH: Yeah.

MR. SHAFFER: – page 33 on line 8.

MR. LEARMONTH: Yeah.

MR. SHAFFER: And then, we asked him how the winter conditions were factored into the estimate, and he said that for the winter conditions – that the installation of the complete Cover Structure of the two (inaudible) included in the estimate, so the workers could work comfortably inside during the winter months.

So based on that interview, we concluded that the DG3 base estimate compiled by Nalcor included a 20 per cent increase in the hours to account for a lack of labour productivity, labour availability and productivity, and that the Astaldi bid included a higher ratio of supervisors to workers that was assumed in the base estimate, and that the base estimate assumed that the Integrated Cover System would allow the workers to work comfortably inside the structure during the winter season, resulting in no loss or no material loss of labour productivity.

MR. LEARMONTH: Yeah.

So was your objective in carrying out this analysis to determine why the SNC input into the labour hours was so low?

Was that part of it?

MR. SHAFFER: I don't wanna use the words low or high. I'd wanna understand why there was such a difference, why their estimate would be lower than the Astaldi bid.

MR. LEARMONTH: That's what I meant – lower than the others.

MR. SHAFFER: Yeah.

MR. LEARMONTH: Yes.

MR. SHAFFER: Yeah. I was trying to understand that better.

MR. LEARMONTH: Okay.

And the explanation provided by Mr. Lemay is on page 33, lines 3 to 8, correct? And – excuse me –

MR. SHAFFER: Well, prior page too.

MR. LEARMONTH: Prior page also.

MR. SHAFFER: I mean, this is those three questions we asked him. On page 32 and 33 – those are his answers to us.

MR. LEARMONTH: Okay.

So just continue on under that section, please?

MR. SHAFFER: Sure.

The Astaldi scope of work according to the documents included pouring approximately 478,000 cubic metres of concrete. So, one of the things that I wanted to understand is – what was the production rate of direct labour hours per cubic metre? And what this table on line 25 does, it's really – that's what it's depicting. That on the DG3 estimate, there was about four and a half direct labour hours per cubic metre or on the Astaldi bid it was six and a half labour hours per cubic metre. Let's round it up – so, it's five to seven labour hours per cubic metre.

DG3 – five, Astaldi – seven, which is a 40 per cent increase in the direct labour hours. You can also see the indirect labour hours were a lot higher too – more than double.

One of our experts, Williams Engineering, we – one of the things we asked them was: Does the Astaldi – does the productivity factor in the Astaldi bid make sense? And he indicated the following: “At the tender stage the productivity” –

MR. LEARMONTH: This is, by the way, line 27, page 33. Correct?

MR. SHAFFER: Yeah. Thank you. I keep on forgetting to do that.

That “at the tender stage, the productivity rate calculated by Astaldi was reasonable assuming other risks were mitigated appropriately, such as geotechnical conditions, labour scheduling and schedule delays.” He goes on to say: The “significant changes combined with multiple schedule delays can magnify the impact of individual factors on productivity factors. Productivity reductions can be magnified by 30-60% depending on the severity and number of the changes and delays. A combination of factors resulted in the planned productivity rates not being achieved.”

We also noted that Mr. Harrington, in his July ’13 presentation to the executive management, when it came to the cost for CH0007 indicated that there was a “... contractor risk perception. The contractors viewed” – Newfoundland – “as a difficult and expensive place to carry out work, plus the civil” – and – “local contractors are feeding this with high pricing and productivity concerns.”

The “contractors have concerns with the large quantities of concrete, the availability of labour and the complexity of the undertaking....”

So, Mr. Harrington, you know, noted that in the July ’13 presentation

MR. LEARMONTH: Okay.

Now, next on page 34 – 3.6.2 Productivity of Astaldi – can you take us through that please?

THE COMMISSIONER: Just before we do, I think we’re going to take our break for the afternoon here now.

So let’s take 10 minutes here.

CLERK: All rise.

Recess

MR. LEARMONTH: Thank you.

Before we continue on with – at page 33 or 34, I’d like to just take you back because I want a little bit of a clarification on the comments you

made on the COREA – Cost Overrun Escrow Account – on page 14 and 15. You referred to the ongoing commercial negotiations caveat and I think you should clarify exactly what you meant by that.

MR. SHAFFER: The ongoing commercials – commercial negotiations caveat, when you read the answer from Nalcor, applies only to Astaldi.

MR. LEARMONTH: That applies only to Astaldi?

MR. SHAFFER: Yes. It doesn’t –

MR. LEARMONTH: Yes.

MR. SHAFFER: Yes, that applies only to Astaldi. And that’s the provision that they put into the cost overrun certificate.

MR. LEARMONTH: But that only applies to Astaldi.

MR. SHAFFER: Just Astaldi, as I read this, yes.

MR. LEARMONTH: Only Astaldi, okay.

And the rest of your comments on the COREA, did they apply to all the contractors?

MR. SHAFFER: That’s my understanding, yes, the way that’s written.

MR. LEARMONTH: Okay.

Now, if you just – I know we were just beginning to go into page 34, but I want to take you back to page 33 just before we stopped. And could you just go through the direct – the contents of page, starting on page 32 and continuing on to page 33 under labour hours, just go through that again.

MR. SHAFFER: Sure.

When you look at the Astaldi bid, the Astaldi bid included 6.8 million labour hours. Of that, indirect was 3.7 million, direct was 3.1 million. The DG3 estimate had 3.66 million labour hours. The DG3 estimate had 1.5 million indirect and 2.1 million direct. So, the variance between the Astaldi bid and the DG3 estimate,

that excess, was a total of 3.1 million hours, and of that, 2.1 was indirect and about a million was direct, okay.

MR. LEARMONTH: Okay.

MR. SHAFFER: All right, yeah. And that's what led to our questioning to Mr. Lemay.

MR. LEARMONTH: Yeah, and that's what you referred to at page 33 where you cited one of the explanations provided by Mr. Lemay?

MR. SHAFFER: Well, 30 – yeah, it's on the bottom of 32, and then 33.

MR. LEARMONTH: Just go through that again to make sure everyone understands, please, that topic.

MR. SHAFFER: Sure.

All right, so the first question was for Mr. Lemay: ***"How was the lack of labor availability and competition for labor factored into the base estimate? Was the base estimate adjusted for these issues?"***

He said, he asked as instructions to his estimators, he *"asked them to do not factor any production activity, as we would address this issue separately. We ... then included in the base estimate a 20% majoration of the labour force to address a possible lack of ... availability and potential unproductivity."*

So, to that I meant that he had a 20 per cent, additional 20 per cent of hours, to account for that, and then that's included in his DG3 estimate.

MR. LEARMONTH: The base estimate.

MR. SHAFFER: Yes.

MR. LEARMONTH: Yes.

MR. SHAFFER: The second question was: Why did the Astaldi bid contain a million more direct labour hours than the estimate for CH0007?

And, I'll – what he said was – and he talks about the main reason and he talks about indirect hours

too. But he says, also for the direct – and on line 6: *"Also, for the direct ... the main reason why I have less man-hours, is because Astaldi has used a productive average of 7 ... compared to 5 man-hours ... for my estimate. Let say I was little bit more optimistic on productivity."*

And then the third question was: ***"How was the location of the project and winter conditions factored into the estimate? How was labour productivity adjusted in the base estimate?"*** And he talks about the air travel estimate, but then he goes on and says: *"For the winter conditions, the installation of a 'complete coverage structure' over two Group Units, was included in the estimate, in order to have the workers to work comfortably inside the structure for the winter months."*

So what he's saying from all this is that his base estimate included a 20 per cent add-on to account for lack of labour availability and productivity issues, in his numbers.

The second thing is that Astaldi bid had a higher ratio of supervisors to workers than what was assumed in the base estimate. We know he used five hours in the estimate versus seven hours versus Astaldi for direct labour.

And then finally, that his estimate, the base estimate assumed the ISC, the integrated cover system, would allow the workers to work comfortably inside the structure during the winter season resulting in no loss, or no material loss, of labour productivity due to the climate. That's our conclusion after talking to Mr. Lemay.

MR. LEARMONTH: Okay. So the ICS was certainly a factor in his figures.

MR. SHAFFER: No doubt, based on his answers.

MR. LEARMONTH: Yeah. Okay.

Now, on page 34 where we left off, we were speaking of – we came to the paragraph after Mr. Harrington provided his explanation beginning on line three. We're now at 3.6.2, Productivity of Astaldi, beginning line 10.

Can you take us through that section of your report, please?

MR. SHAFFER: Yes.

THE COMMISSIONER: Just before you do, can I just go back to page 33 for a minute?

MR. SHAFFER: I'm sorry, what page?

THE COMMISSIONER: Page 33.

MR. SHAFFER: Yes.

THE COMMISSIONER: I'm struggling with the table at the bottom of the page on the issue of the cubic metres of concrete. And I understand what table means. I'm not sure I quite understand exactly what Williams Engineering was telling you about that?

MR. SHAFFER: Okay.

THE COMMISSIONER: Maybe you could try to explain that to me a little?

MR. SHAFFER: Sure.

It looked like to me what he's saying is that the Astaldi rate was reasonable, assuming other risk that were involved in this was mitigated, and including scheduling risk, geotechnical risk and schedule delays. To me, he's saying if that stuff is mitigated, then the rate would seem reasonable to him.

That's the way I interpreted that statement there, Commissioner.

THE COMMISSIONER: Blame your scheduling meaning – blame your scheduling meaning what? Or do you know?

MR. SHAFFER: Well, I don't think I'd actually tell you right now 100 per cent.

THE COMMISSIONER: Oh okay.

MR. SHAFFER: I'm assuming it meant scheduling the labours over the course of the life of the schedule.

THE COMMISSIONER: Okay.

MR. LEARMONTH: You may have to wait 'til –

THE COMMISSIONER: Yes, okay.

MR. LEARMONTH: – (inaudible) testifies.

THE COMMISSIONER: Yeah.

MR. LEARMONTH: That's not completely clear, I don't think. But we will have an explanation for that, when the representative Williams testifies.

I think that's as far as you can go, Mr. Shaffer?

MR. SHAFFER: Yeah, that's as far as I can go, Mr. Learmonth.

MR. LEARMONTH: Okay. All right.

Okay, 3.6.2 on page 34, Productivity of Astaldi – please, take us through that topic.

MR. SHAFFER: Yes.

So we asked – we know that Astaldi began mobilization at the end of September of 2013 with the limited notice to proceed, which is really toward the end of the construction season. We interviewed Don Delarosbil, who's a current Astaldi project manager, and he was telling us that if you start in November instead of June you're – and I said this before – just not losing four months, you're probably losing 10 months. You almost lost a year of construction meaning – because of the winter season. And the slow ramp-up of Astaldi was identified by Nalcor as early as January of 2014, in the monthly progress report, which stated that the slow ramp-up for Astaldi is due to the availability of key personnel and other issues, and has caused some delays in construction. And the rectification of these issues are in process through ongoing discussions with senior management.

Now we asked also Mr. Delarosbil about them and he told us if he was involved at the time of the signing the contract, he probably would have tried to convince me, personally – probably would have tried to convince everybody – to set the start date as March 15 of the following year. It gets complicated, you need heaters right off the start. So his viewpoint was: Starting in the

middle of the winter season probably was not a good thing to do – the way I interpreted that.

As far as the ICS, Astaldi did plan on providing the ICS during the winter construction season. And the following year, in 2014, Astaldi subcontractor, Proco, began construction of the ICS in July of 2014. But by December of that year, December of '14, the contract was cancelled. So, meaning that you don't – you didn't have the ICS now.

MR. LEARMONTH: Yeah.

Can you just give an explanation of what – we used the term ICS and many of us know what that is, but can you just explain for the public what an integrated cover system is, generally?

MR. SHAFFER: I think in simplest terms it's a big steel structure – a steel building – based on the pictures I've seen of it.

MR. LEARMONTH: Like a warehouse or garage?

MR. SHAFFER: Yeah, like a big steel warehouse. And – yeah, they have cranes inside and whatnot, but it's – all it is, when you look at it, it's a big steel structure, the way I looked at the picture.

MR. LEARMONTH: Yeah, what –

MR. SHAFFER: And it's huge – it's a big structure.

MR. LEARMONTH: And what do you understand the intended benefit was for the ICS?

MR. SHAFFER: So that the workers can work comfortably inside, so there wouldn't be a loss of labour productivity during the winter months.

MR. LEARMONTH: Okay.

And you point out in line 28 that: "The ICS was originally planned to be completed between March 1, 2014 and September 30, 2014. At Astaldi's request, this schedule was delayed with work planned for May 19, 2014 to December 22, 2014."

You referred to the fact that Proco was the contractor?

MR. SHAFFER: Yes, Proco was Astaldi's sub, as I understand, to build the ICS.

MR. LEARMONTH: And what eventually happened to the ICS? Was it ever completed?

MR. SHAFFER: No, I understand – well, Astaldi cancelled the contract in 2014. It stopped, it was done.

MR. LEARMONTH: Yeah.

And what happened to the – whatever – what part – the part of the ICS that was – had been constructed?

MR. SHAFFER: I understand it was torn down.

MR. LEARMONTH: Okay.

But that part of the work plan of Astaldi was abandoned?

MR. SHAFFER: That is my understanding.

MR. LEARMONTH: Okay.

Top of page 35 – you refer to a claim of Proco, which had the contract for building the ICS?

MR. SHAFFER: Yes.

That they're – apparently, they're in some sort of dispute and Proco's claimed that Astaldi also failed to perform its own obligations under the subcontract, including initial work site prep, the timely supply of completed concrete work, et cetera – I mean, it's there.

MR. LEARMONTH: Okay.

So we know that in – 2014 was a difficult year for Astaldi on the contract work.

Is that correct?

MR. SHAFFER: Seems that way, yeah. It sure was.

MR. LEARMONTH: Yeah.

And on page 35, line 15, you refer to some meetings that Nalcor had. I think you've touched on that earlier in your evidence. Just go over that again, please.

MR. SHAFFER: Yeah.

We were talking to Mr. Harrington about this and, you know, a question I was asking was: What were you guys doing about this?

And he indicated they met with Astaldi executives many times during 2014 and the beginning of 2015. And he provided us a copy of his notes, which summarize a timeline of key meetings that he's calling key meetings that he had – that they had with Astaldi, at the time. And we know – and from these notes, it seemed like, besides Mr. Harrington and some of the project team members, that Mr. Martin would be part of these meetings as well as Mr. Bennett. And that's really what this paragraph's about.

MR. LEARMONTH: And where were these meetings held to your knowledge?

MR. SHAFFER: I recall Italy, London – I don't know – have direct knowledge of this, but I heard New York City.

MR. LEARMONTH: Yeah. Okay.

MR. SHAFFER: I would have to look at those notes again, but I do recall Italy and London.

MR. LEARMONTH: And as far as you know, it's your understanding that the purpose of this meetings was to try and reach some agreement with Astaldi or to spur them on to mobilize faster and complete work on the site?

MR. SHAFFER: To my understanding, I mean – obviously, they were having a problem. Nalcor recognized it and they started to have meetings with top executives at Astaldi.

MR. LEARMONTH: Okay.

Now on page 35, line 25, you refer to Nalcor engaging Westney Consulting.

Can you take us through that part of your report, please?

MR. SHAFFER: Yes.

So in first quarter of '16, Nalcor did engage Westney to perform a schedule risk assessment and really to look at what was going on with Astaldi. And you can see that at the time, that – which was June, I believe, June of '15 or at least early on – that Westney indicated that there was significant crew “stand-around” time, limited construction management presence in work areas due to meetings, disorganized laydown areas impacting productivity, and visible debris and clutter creating unnecessary hazards.

However, at the time of the review and the first quarter of '16, Westney observed the following: that they were well-organized and motivated labour; increased management presence; well-organized, easily accessible laydown areas; and greatly improved site cleanliness and overall industry standard safety practices.

And this assessment, by the way – that even though it was dated the first quarter of 2016, I believe that that assessment that Westney did was in June of 2015. So the improvements were happening in June of '15, when you look at the Westney document.

MR. LEARMONTH: So the pace of work picked up on the Astaldi contract?

MR. SHAFFER: There was more concrete being poured at that point, yeah, in 2015.

MR. LEARMONTH: Okay.

On page 36, starting on line 14, you make some comments about the rate of – achieved by Astaldi for concrete placement. Can you provide us with some information on that referring to the chart on the middle of page 36?

MR. SHAFFER: Sure. The amount of concrete that had to be poured, it was about 478,000 cubic metres approximately over a 36-month period. And when you look at the numbers that was provided by Nalcor in terms of the production rate for Astaldi, in reality, even – and I'm – these numbers that I have here now are different. I re-looked at it; this has to be changed. But instead of it being – I think I said, 9 out of 58 times, it's actually months that it exceeded the average – let me digress a second.

The 478,000 over 36 months is an average of 13,000 cubic metres per month – on average they would have to pour to maintain a pour rate over 36 months. Just merely 478,000 divided by 36, 13,000-month average as far as cubic metres that needed to be poured.

When you look at what was actually poured by Astaldi over a –

MR. LEARMONTH: Excuse me.

MR. SHAFFER: – 50-month period – because what we got was from November of 2013 on forward, up 'til sometime in 2018. When you compare that – the actual production to this average of what they had to pour on an average, they've only hit exceeding the 13,000 cubic metres per month 10 times out of 50 months that they were pouring concrete, so basically about 20 per cent of the time. So I just wanted to point that out here. It seemed to me that they were still having issues –

MR. LEARMONTH: Yeah.

MR. SHAFFER: – when you look at the numbers a little bit more closely.

MR. LEARMONTH: So if you were – if it were suggested to you that in – starting – that 2014 was a bad year for Astaldi's performance, but then in '15, the – there was a big ramp-up in their production where they achieved some of their targets, what would you say to that suggestion?

MR. SHAFFER: Well, let me answer that by going to the next page.

MR. LEARMONTH: Okay. Please do.

MR. SHAFFER: This is a chart that was prepared, of which the source of this was from Nalcor.

MR. LEARMONTH: That's page 37, right?

MR. SHAFFER: Yes, 37. "Direct labour hours per cubic meter of concrete placed." There is no doubt in 2014 – and by the way, they didn't start pouring concrete in 2014 until – really in earnest – 'til July of 2014.

MR. LEARMONTH: Yeah. I think the first pour was August, was it not? Or –

MR. SHAFFER: No, the first pour was actually June, but it wasn't a big pour.

MR. LEARMONTH: Okay.

MR. SHAFFER: So it really started in earnest in July of 2014. And for 2014 – you can see the numbers here – they've poured 456,000 cubic metres, and they average about 15 cubic – 15 labour hours per cubic metre. Okay, now remember, Astaldi said they could do it in seven and the bid said they could do it in five.

MR. LEARMONTH: So the 15, obviously, is three times –

MR. SHAFFER: Three times higher than the bid.

MR. LEARMONTH: Yeah.

MR. SHAFFER: And 2.8 higher – whatever the numbers are – higher than the Astaldi – not the bid, higher than the estimate. Three times higher than the estimate, but 2½ times higher than the bid.

MR. LEARMONTH: Yes.

MR. SHAFFER: All right, 2015, things get better from a volume perspective, but when you still look at the direct labour hours per cubic metre, it's 14 hours per cubic metre at that point. You're still twice as high as the Astaldi bid and almost three times as high as the SNC estimate, okay? 2016, you can see the numbers now; it gets a – productivity gets a little bit worse at 17 hours per cubic metre.

So the other thing that I want to point out here is that when you look at what's going on between 2015 and 2016 – I looked at June and July, or maybe July and August of both those – those months for those years. And in 2015, I believe Astaldi exceeded 20,000 cubic metres for each of those months. In 2016, their productivity dropped in half. Now, there might be reasons for it, but I'm just pointing out here that these are – these – what the numbers are showing, what they're laying out. Point being, when you average it all up for the whole life of the project,

they're at 16 direct labour hours per cubic metre when the bid said seven and the SNC estimate said five. And that's the point of this chart.

MR. LEARMONTH: Okay. Thank you.

And then on page 37, beginning line 6, you refer to the March 7, 2015, report of the Ibbs Consulting Group, Inc.

MR. SHAFFER: Yes, the Muskrat Falls Corporation and Astaldi jointly hired Ibbs to do a productivity study, and Ibbs actually issued two reports, March of 2015 and then September of 2015.

The report in March of 2015 noted the following: that at that time "*Labor productivity is degraded on Muskrat Falls by too much waiting time, too much rework, and not enough overall site coordination,*" that when you look at the Project Critical Issues Scorecard, that "*Craft labor direct loss of productivity*" that based on a 2014 site visit "Severe issues existed," that the "project recognized the issues and was moving to remedy" it.

In January '15 visit, "*Significant progress made toward craft labor productivity improvement. Many external blockers prevent such progress from yielding results.*"

And in February 17 – or February 17, 2015, Ibbs stated, "*We understand that most of the blockers still remain, thus preventing material productivity improvement*" and that the score was an extreme concern when it came to labour productivity, at least on the March 15 report.

I also wanna point out something else in that March 15 report that's not written here: that when it came to planning and scheduling, Ibbs indicated it was an extreme concern that – what he said there is that the project no longer appears to acknowledge the issue, meaning the scheduling issue, and that they mistakenly believed it is under control. So obviously Ibbs had a problem with the schedule, too, and as far as hitting the schedule.

In a report that was then dated six months later, Ibbs comes out with a September 2015 report, and he indicated that the – "that a target range of 11.5 to 12 labour hours per cubic metre is

conceivable however" that "the target range would not be possible in cold weather." And then in addition to that, we talked to Mr. Delarosbil about labour productivity factor; he said "6 – 6.5 in the Astaldi bid cannot be done and that a good direct labour productivity factor per cubic metre in Canada" would've been around nine hours.

So the whole point of all this is that you have a estimate that has five hours – direct labour hours per cubic metre – you have the Astaldi bid at seven direct labour hours per cubic metre; you have Ibbs – who's the expert they hired – said 11 to 12 hour – labour hours per cubic metre, only in good weather, and then you have the Astaldi project manager saying we can get nine.

And when you look at the actual numbers, they didn't come anywhere near any of those numbers, really, when you think about it. The 11½ to 12 – well, I take that back. In 14 – in 2015, they had 14 hours per cubic metre, and a sure – they sure didn't come near nine hours per cubic metre, which – according to Mr. Delarosbil.

MR. LEARMONTH: Well, the nine-hours figure that was provided to you by Mr. Delarosbil, at the time he must've been aware that that nine hours was not being met, is that right, what I read?

MR. SHAFFER: Well, I assume so because –

MR. LEARMONTH: Yeah.

MR. SHAFFER: – I mean, we interviewed him during – he was – he's still on the project.

MR. LEARMONTH: Well, he's not on the project now because –

MR. SHAFFER: Oh, he's (inaudible).

MR. LEARMONTH: – Astaldi's gone, yeah.

MR. SHAFFER: Okay.

MR. LEARMONTH: Okay.

But anyway, so he – but he definitely told you about that nine hours, did he?

MR. SHAFFER: Yes.

MR. LEARMONTH: Did you question him as – on that point, that you’re saying nine hours, well, then why can’t – why didn’t you achieve nine hours?

MR. SHAFFER: I don’t recall. I don’t think we did.

MR. LEARMONTH: Okay.

Now, we touched on the Integrated Cover System, and you’ve given some evidence on that. I’d like you to take us through paragraph 3.6.3 on page 38 with respect to the Integrated Cover System.

MR. SHAFFER: So we spoke with Georges Bader, the Astaldi deputy project manager, about the Integrated Cover System and it was an important thing in the bid, obviously, and we wanted to get his viewpoint of it, and I could read it for the record.

MR. LEARMONTH: Please do.

MR. SHAFFER: What he told us – what we asked him was a few questions that we wanted to know. We asked for details outlining whether the ICS was Astaldi’s idea, whether the ICS was contemplated in the RFP and whether Astaldi had built an ICS in prior projects.

Mr. Bader provided the following, he said: *“The concept of the ICS was included in Astaldi’s proposal to Nalcor. In the RFP, the ICS was a concept design, which was modified as progress with construction advanced. The ICS was reviewed and approved by Nalcor. It was initially contemplated that Astaldi would attend at the site in July, 2013, and commence the design for the ICS. Given the Project start date was delayed and the contract was awarded to Astaldi in November, 2013, design of the ICS started in the first quarter of 2014. Normally design would only start after a survey was conducted, but given the time of the year and the fact the site was”* – more – *“snow covered, a survey was not possible. To validate actual foundations”* – or I’m sorry – survey was not possible to validate actual foundation elevations. *“The design of an ICS takes approximately 4-6 weeks, and once the design is completed*

fabrication take approximately 3 months. I am not aware of any other projects carried out by Astaldi which utilized an ICS for the purpose as proposed in Labrador, but this process is not uncommon for projects in Canada. It should also be noted that an ICS is simply a temporary steel structure not different than any steel building, warehouses ...”

MR. LEARMONTH: So, the – given the comments and the time required for – to do the plans for the ICS, is Mr. Bader, in your view, saying: Look, if we had started in July of 2014 we would’ve had time to advance the schedule considerably. Is that a reasonable comment on his evidence?

MR. SHAFFER: I think you can infer that reading this. I mean, that’s about the best I can do on that one.

MR. LEARMONTH: Okay, we’ll leave his quote as it is here.

MR. SHAFFER: Yeah, okay.

MR. LEARMONTH: Now, you consulted Williams Engineering and Williams Engineering provided some comments on the ICS at page 38 of his report starting at line 21 to 30. Can you go over that part of the report, please?

MR. SHAFFER: Yes.

We asked Williams Engineering to review the temporary structure and what we sent him was minutes of meetings between Astaldi and Nalcor. We sent them documents that were in TRIM, particularly the ICS drawings and the Astaldi award recommendation package. And he might have gotten other documents, I just don’t know. But what he said here is that: *“The enclosures strategy is not uncommon in cold climates. Attempting to enclose an area as large as a dam structure combined with an overhead crane, material moving system is not common and warranted detailed scrutiny.”*

He goes on – they go on to say: *“Using the temporary building to support a grid of cranes to move buckets of concrete from concrete trucks to the placement location is also not standard. The proposed system appears to be very congested – moving concrete by bucket to*

concrete pumps.” He also noted that: “Only the Astaldi bid claimed to be able to place concrete during the winter. Astaldi would rely on the temporary structure enclosure to achieve this. Regardless of the ICS ... [SNC] did not believe that the required concrete placement schedule was achievable and anticipated including a contingency to address this risk.”

MR. LEARMONTH: Did – have you come across any information that could possibly be in conflict with the description of the ICS system as stated by Williams in lines 21 to 30 of page 38?

MR. SHAFFER: I did.

MR. LEARMONTH: What is that?

MR. SHAFFER: There was an email which indicated that Don Delarosbil and Georges Bader indicated that the support of the grid of cranes inside the structure was not going to be used to move buckets of concrete, but rather it was going to be used to move steel and other types of material. And that was basically their comment on this.

MR. LEARMONTH: Okay. So, I presume we’ll have to wait ’til Williams testifies to get clarification on that point.

MR. SHAFFER: You’re going to have to talk to Mr. Gilliland about that, yeah.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: Just before we move off this, am I – so is Williams, to the best of your knowledge, correct in saying that only the Astaldi bid claimed to be able to place concrete during the winter?

MR. SHAFFER: I’m not sure, Commissioner. I’m not sure about that one. I would have to check the bids again.

MR. LEARMONTH: Anyway, we’ll have to wait ’til Mr. Williams provides clarity, but you have some –

MR. SHAFFER: Mr. Gilliland from Williams Engineering.

MR. LEARMONTH: Yeah. You have some concern about that, right? That –

MR. SHAFFER: I do, yeah.

MR. LEARMONTH: – will have to be clarified.

MR. SHAFFER: I do.

MR. LEARMONTH: Yeah, okay.

Now, just take us through your Observations and Findings on page 39, the summaries, just read them into the record please. Page 39.

MR. SHAFFER: I know, I just want to make sure. We’re okay on – this wasn’t redacted. I just want to make sure.

MR. LEARMONTH: Pardon?

MR. SHAFFER: I was just making sure the – this wasn’t redacted. I mean –

MR. LEARMONTH: No.

MR. SHAFFER: Yeah, okay.

During our review of CH0007, we observed and found the following which contributed to the differences between the estimated costs of the Muskrat Falls Project at the time of sanction and costs incurred by Nalcor during the project execution.

First, that \$272 million of the \$1.2 billion overrun is attributed to the executed contract amount exceeding the base estimate due to design changes and the labour premium required by Astaldi – the hours, the additional hours.

Second, that \$884 million of the \$1.2 billion overrun was a result of Astaldi’s performance issues which included placing concrete at a rate that was approximately two and a half times slower than what they had estimated in their bid.

That Ibbs indicated that a production rate of 11 to 12 hours per cubic metre was conceivable, but not in colder weather. The Astaldi bid indicated 6.6 direct labour hours per cubic metre, a production rate that was approximately 50 per cent faster.

That Nalcor did not perform a formal analysis to consider replacing Astaldi until Westney's – this says March 2015 and it should be February 2016, I mean, not March 2016 – report despite knowing that, for two years, Astaldi was having performance issues; \$18 million of change orders related to additional costs due to items such as the removal of the ICS, development of a powerhouse emergency safety services plan and common area services.

The remaining \$33 million forecasted overrun is an unallocated budget balance as of March 2018. And as noted by Williams Engineering, an enclosure strategy is not uncommon in cold climates; however, attempting to enclose an area as large as the dam structure combined with an overhead crane, material movement system is not common and warranted detail scrutiny.

MR. LEARMONTH: Now, with respect to your comments on lines 14 to 16, paragraph starting with: Nalcor did not perform a formal analysis before March 2016.

Are you aware of any evidence that indicates that, we'll say, less formal considerations were given to removing Astaldi as early as 2014?

MR. SHAFFER: I know the project team was dealing with those issues. I don't know about formal removing yet. I've seen no document that actually does an analysis of a cost benefit from '14 or '15. The first one that I'm aware of is the Westney analysis of February 2016.

I've seen, I think it was, Mr. Clarke's testimony over that issue, but still, I didn't see anything in terms of a formal analysis. And what I mean by formal is actually sitting down, running numbers and trying to come up with what is the best alternative from a dollar-value perspective.

MR. LEARMONTH: Okay, okay. Thanks for clarifying that.

Well, that's the end of your consideration of the Astaldi contract, CH0007. We'll now move to page 40, which is the start of your analysis of the contract, CT0327, construction of the HVDC transmission line.

MR. SHAFFER: Okay.

MR. LEARMONTH: Can you take us through the summary of the overruns on that contract?

MR. SHAFFER: Sure. As of March of 2018, there's – well, let me digress – there's two pieces of work for the transmission – for this work package. There's the transmission line itself and the right-of-way. And the total forecasted final costs for both, as of March of '18 was \$1.523 billion. And when you compare that to the base estimate, which includes escalation, and you add into that transfers from other work packages – because of \$139 million of transfers into this work package from other work packages – you have a total overrun for this work package of \$649 million split up between transmission line and right-of-way: \$364 million for the transmission line, \$284 million for the right-of-way.

MR. LEARMONTH: Okay. So just so everyone knows, we're talking about this work package, and this is referred to on line 7 on page 40, that this is "the construction of the 1,080km ... HVdc transmission line and the Right of Way ... from Muskrat Falls to Soldiers Pond."

MR. SHAFFER: Correct.

MR. LEARMONTH: Okay.

MR. SHAFFER: This is the – the main contractor was Valard.

MR. LEARMONTH: Valard, yeah. So the work on that would be to build some form of access roads and then clear the right-of-way and then put up the towers, is that right?

MR. SHAFFER: And put up the foundation and the towers.

MR. LEARMONTH: Yeah.

MR. SHAFFER: Yes, and run the lines.

MR. LEARMONTH: Okay. Now, your chart on the bottom of page 40 is self-explanatory, and you've indicated the total amount of the overrun was ...?

MR. SHAFFER: Six hundred and forty-nine million.

MR. LEARMONTH: Okay. At the top of page 41, you provide some reasons for this overrun. Can you take us through those, please?

MR. SHAFFER: Yes. When you look – it's actually the bottom chart on page 41 – the breakup of the \$649 million, you have \$177 million of that as a contractor being – as the contract being greater than the revised estimate. And when I say revised estimate, that includes transfers from other work packages, just so we're clear. As you bring scope and transfers from other work packages into this work package, it's going to have an impact. Basically, it's going to be reducing an overrun because that variance – you have to account for that variance of that scope change, okay?

MR. LEARMONTH: Yes.

MR. SHAFFER: So that's \$177 million.

THE COMMISSIONER: If you have a change from – don't you save the \$177 million somewhere else? If you have – if you – if I understand what you're saying correctly, there was – part of this was transferred over, additional work added to this contract.

MR. SHAFFER: Correct.

THE COMMISSIONER: So it had to come from somewhere.

MR. SHAFFER: Well, it – I – it came from other work packages, right.

THE COMMISSIONER: So there would be a saving on the other work packages?

MR. SHAFFER: I don't – well, the question is if the scope of work for the other work package comes into this work package, then the work's gonna be done here. And they're – you're gonna have very little work to do with the other work package.

THE COMMISSIONER: Right.

MR. LEARMONTH: So it does reduce the – it has to be – if it's added to this work package, it has to reduce it somewhere else, is that right?

MR. SHAFFER: Sure.

MR. LEARMONTH: Yeah.

MR. SHAFFER: It's gonna be – yeah. The – it's gonna be the reduction from the work package it's coming from.

MR. LEARMONTH: Yes.

Does that answer your question, Commissioner?

THE COMMISSIONER: I'm still just trying to figure out – so you're saying that there's a \$649-million overrun for this contract. So you're saying that part of that is made up – or \$177 million of that is related to the difference of – the amount that the contract is greater than the revised estimate, so the revised estimate would have included the additional work?

MR. SHAFFER: It does. It increases the work – the budget for that work package, 'cause that – because that – the scope transfers from another part of the budget came into this work package. So let me – if I walk you – here, let's do it this way.

The forecasts – and I'm talking of the table above this one – the forecast is \$1.523 billion as of March of '18. The base estimate and escalation – the 673 and the 62 – is a total of 735. That's before any transfers from other work packages. You then transfer in another \$139 million from other work packages. That means that your revised estimate is \$874 million. You have to increase that estimate for that transfer into this work package for scope changes, which means that the overrun is the difference between the 874 and the \$1.523 billion, meaning that if you didn't – if you – if I didn't account for the \$139 million coming in, I would have overstated the overrun, because when the – this stuff is going out to bid to the contractors, and they know that scope of work is in that work package, they're gonna bid out that scope of work, and it's gonna be in their price. Does that help?

THE COMMISSIONER: Yeah, thank you.

MR. LEARMONTH: Okay.

MR. SHAFFER: Okay.

MR. LEARMONTH: Thank you.

Okay, so that's your explanation on the charts on page 41?

MR. SHAFFER: Well, I'm not –

MR. LEARMONTH: (Inaudible.)

MR. SHAFFER: Yeah, I'm not quite done yet though.

MR. LEARMONTH: Okay, I think there's something further you may want to add? Yeah.

MR. SHAFFER: Yeah, so the contract greater than revised estimate – revised meaning the scope changes are transferred and now in this work package – was \$177 million. There was a \$245-million settlement agreement with Valard. There was another \$212 million of approved change orders, and then there was a credit for \$25 million of an insurance claim and then another \$40 million of unallocated budget that's in the forecast as of March of 2018. So when you add it all up, that's what makes up the \$649 million.

THE COMMISSIONER: What does unallocated budget mean?

MR. SHAFFER: It's money that has been authorized to be spent on that work package or authorized to be used on that work package, but the money has not been allocated yet to a particular piece of work or that work package. It's money sitting there waiting to be spent, in essence. Just hasn't –

THE COMMISSIONER: Okay.

MR. SHAFFER: – it just hasn't happened yet.

MR. LEARMONTH: Okay. Okay, is that the end of your explanation?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

We'll now turn to page 42, paragraph 4.3, DG3 Base Estimate. We're talking about the base estimate of \$673 million. Can you take us through your review of that topic?

MR. SHAFFER: Yeah. SNC prepared the base estimate, and it was \$673 million, and then there's another \$62 million in escalation that was added to that estimate to come up with a \$735-million dollar figure for this scope of work for this work package. And we know that at the time of the estimate that the work package was 40 per cent complete.

As part of this, we found out there was limited geotechnical data. That was due to the environmental assessment restrictions – at least that's what Mr. Kean told us. And he said that they didn't have any geotechnical data because they weren't allowed under the environmental assessment process, that they "*could fly*" in "*little mini Kubota excavator on a helicopter to dig down one metre in a few locations.*"

That was just because it would be deemed that we would start construction if we were to have entered into a lot of these remote areas. So that challenged that from an estimating perspective. We had to make assumptions based on mapping and geotechnical data that they had.

MR. LEARMONTH: Yeah.

MR. SHAFFER: And we know later that this became an issue with Valard.

MR. LEARMONTH: Yeah.

Can you explain why a geotechnical analysis might be recommended for a transmission line of this length?

MR. SHAFFER: Well, I mean, my knowledge is really – when you – just talking to construction folks – that when you are building the towers, you need a foundation and that foundation is going to be sitting on something. And the question's: What is that something? It – is it muck, is it bog, or is it hard land, is it granite? And apparently, that that's gonna impact the cost of the foundations for the towers.

MR. LEARMONTH: So there wouldn't be one common foundation that would be used all along the line.

Is that your understanding?

MR. SHAFFER: As it was explained to me, but yes. I think actually, it was Mr. MacIsaac that explained that to me.

MR. LEARMONTH: It would depend on the geotechnical – condition of the soil, where the –

MR. SHAFFER: Absolutely, you have different soil conditions, so you need to deal with that as you're laying the foundations down.

MR. LEARMONTH: Yeah.

Do you know what percentage of contingency that Nalcor put on this contract?

MR. SHAFFER: Well, the way it was broken up in the sanctioning documents, from what I recall, you had it broken up between the generation, the transmission assets and the LIL. And the way it was allocated for the LIL part of it, it was approximately 3 per cent.

MR. LEARMONTH: Okay.

Now, 4.3.1 on page 42 is entitled: Transfers from other work packages and scope changes prior to RFP.

Can you take us through that, please?

MR. SHAFFER: Yes.

As we were looking at this, one of the issues we were asking about is: What is this \$139 million? And we were told really two things. The project management team told us that it was due to design changes that were made to increase design reliability after DarkNL. That was their explanation for the \$139 million.

We asked Nalcor that question and they advised us that the 139 million is not a result of additional costs for the transmission line reliability improvements; that those costs were associated to improve reliability were included in AFEs 1, 2, and 3.

So, I can't positively conclude as a result of that – because of those two different answers – what was the cause of the \$139 million.

MR. LEARMONTH: So you weren't able to identify that, were you?

MR. SHAFFER: No.

MR. LEARMONTH: No.

MR. SHAFFER: No.

MR. LEARMONTH: And you referred to, I think, DarkNL, you – that's the same – that – the Liberty review was prepared as a result of that. Is –

MR. SHAFFER: Yes.

MR. LEARMONTH: – that correct?

Yeah, okay.

MR. SHAFFER: Yes.

MR. LEARMONTH: So you're at a loss to explain that then.

MR. SHAFFER: I can't explain it.

MR. LEARMONTH: Okay.

And the evidence you got from the project management team and the – Nalcor was conflicting.

Is that correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

Now on page 43, under paragraph 4.4, you deal with RFP and bidding.

MR. SHAFFER: Yeah.

And basically, on this package that was sent out to RFP and bidding – and in the end, when all the smoke cleared, this thing was sole-sourced to Valard. And – we're on the page 44 now – and with Valard, Nalcor entered into open-book negotiations with them.

And based on our review of the bidder selection and preliminary award recommendation, we understand it went like this: that the – in December '16, that Valard said that the transmission line and the right-of-way would cost \$1.178 billion. There was further

discussions and then in January of '14, they say: It's gonna cost \$1.183 billion.

And then in the end, on August '14, a decision's made that Valard will only handle the transmission line only and that \$809 million contract – just for the transmission line.

And that Nalcor set the target for the right-of-way clearing at \$200 million, but it was not included in the Valard contract.

MR. LEARMONTH: Okay.

Now, you refer to – just for clarification – you're – the contractor was Valard, but Quanta Services was Valard's parent company.

MR. SHAFFER: Parent company. Yes, parent company.

MR. LEARMONTH: And they're located in Houston, are they?

MR. SHAFFER: I'm not sure exactly where they're at.

MR. LEARMONTH: But they're a big international company, are they?

MR. SHAFFER: Yes. That's my understanding (inaudible).

MR. LEARMONTH: And Valard is a wholly owned subsidiary of –

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay. Very good. Okay.

Continue on – on line 14.

THE COMMISSIONER: Clarification on two terms.

You said that there was an RFP and there was supposed to be bidding, but this ended up to be a sole-source contract.

Could you explain to me what that means?

MR. SHAFFER: Yes.

That after – after the bids came in, the bid evaluation team made a decision that Valard was the only contractor that had the capability of constructing the entire HVDC transmission line. So as a result, that was sole-sourced, Valard was the sole-source provider for that then. Apparently, they were the only ones that they had the ability to do it.

THE COMMISSIONER: Okay.

So, the fact that it's sole-sourced doesn't take away from the fact that they did look for others.

MR. SHAFFER: No. They did.

THE COMMISSIONER: They did and they were – but they weren't able to find anyone else who could do the job.

MR. SHAFFER: Well, that's – yeah, that's what's indicated in the documents.

THE COMMISSIONER: Okay.

And what do you – what do you mean by open-book negotiation?

MR. SHAFFER: It means that there's complete transparency, in my mind – that you're showing all your cards, you're showing – laying the costs on the table and you're negotiating – you're negotiating in a transparent manner.

THE COMMISSIONER: Why would you do that?

MR. SHAFFER: It depends. I mean, you want to give the, you know – the contractor's going to want some sort of profit, the owner's going to ask – he wants to know the owner's cost – or the – the owner's going to want to know the contractor's cost. And they start negotiating what the profit margin's going to be.

THE COMMISSIONER: Okay.

MR. LEARMONTH: And that's a common practice, is it?

MR. SHAFFER: It happens in construction, yeah. Happens – I've seen it a lot.

MR. LEARMONTH: Yeah. Okay.

Okay, now, pick up on line 14, page 44, please.

MR. SHAFFER: Yeah.

So the contract was ultimately executed by Valard for the transmission line only for \$809 million in August of 2014. And that's – that was the entering into the initial contract with them.

MR. LEARMONTH: Okay.

MR. SHAFFER: The right-of-way aspect of this was broken down among probably, as I understand it, like 40 contractors at some point.

MR. LEARMONTH: That's clearing the right-of-way?

MR. SHAFFER: Yeah. That's –

MR. LEARMONTH: Cutting the trees down –

MR. SHAFFER: I guess it's clearing the right-of-way, it's – they had to make a change to it to make it a permanent access road at some point. But there were – my understanding, there were numerous contractors involved in that and Valard was not the only, was – Valard was part of that, but not the only contractor in that.

MR. LEARMONTH: Many of the contractors were retained directly by Nalcor.

Is that correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: For that work.

MR. SHAFFER: Yes.

MR. LEARMONTH: Yeah. Okay.

Now on page 45, you speak of cost growth from DG3 to March 2018.

Can you take us through that, please?

MR. SHAFFER: Yeah.

This is just a repeat from the table I testified to earlier, that the costs were up to 649 million in the total column. It's broken down as 177 for the contract greater than revised estimate; the

settlement agreement at 245 million more; approved change orders at 212 million; and insurance claim of 25 million as a negative, as the – Nalcor got \$25 million of insurance money back on the conductor proud stranding issue; and then unallocated budget amount of 40 million, which is in the forecasts, just not earmarked, yes.

MR. LEARMONTH: (Inaudible.)

MR. SHAFFER: Sorry?

MR. LEARMONTH: The settlement agreement with Valard was – do you know how that was broken down? Were there any broken – it was broken –

MR. SHAFFER: No, I –

MR. LEARMONTH: – down into component parts?

MR. SHAFFER: My review of the agreement didn't break it down, really. There was a couple of line items broken down in the contract, but that was a global settlement, as I understand it.

MR. LEARMONTH: A global settlement, okay.

MR. SHAFFER: What we did then – in looking at the overrun, we were given documents by the project management team where they calculated the overrun, what they thought it would be. And they included in their numbers the reliability changes. So it includes, probably, the 139.

MR. LEARMONTH: That's the Liberty report –

MR. SHAFFER: Yes.

MR. LEARMONTH: – item?

MR. SHAFFER: Yes. And, so when you look at what they did, they told us that the overrun was attributable to the following reasons on the transmission line: "Reliability driven change; Environmental assessment driven change; Performance, productivity and market changes; Contractor performance."

Their numbers as of, I think it was maybe October of '17 – maybe later, I just don't recall – was about \$524 million overrun for the transmission line at that time. We're saying if you include the scope transfers, which potentially could be the reliability improvements, it was 474 million based on my calculations.

And then with the Right of Way, project management team noted that the reasons for the change was: "Constructability driven change; Reliability driven change; Contractor performance; Market place driven change." And it wasn't – and they calculated about \$312 million for that. And you can see that if we included 29 million in transfers, which is part of the 139, we had 314 million. So we felt, you know, we were close over there, too.

So, as far as 649 total, we – I think we feel pretty good about it.

MR. LEARMONTH: Okay.

MR. SHAFFER: The – after that, Valard enters into this – and Nalcor into the settlement agreement.

MR. LEARMONTH: You're on page 46, are you?

MR. SHAFFER: I am. I'm sorry; I'm on, yes, the following page.

And in reviewing the settlement agreement, again, we didn't see any breakdown of cost, other than for the "Compensation due to re-stringing for replacement of defective cable" – which I'll be talking about – which was 27 million. And, "Compensation for suspension of stringing between June 3 and September 20." They had a halt to stringing on this because of a conductor proud stranding issue, and that was 9 million.

That's all – as far as we can tell, that's all that was indicated in the contract. So, 245 is really not broken down what it represents in total. Again, it's just a global settlement –

MR. LEARMONTH: Global settlement.

MR. SHAFFER: – as far as we can tell.

MR. LEARMONTH: And you've got 4.7.2 on geotechnical conditions. I guess you've already covered that? Do you wish to add anything to your earlier –

MR. SHAFFER: Yeah.

MR. LEARMONTH: – comments on that?

MR. SHAFFER: Yeah, I do. I think, besides of what the project management team said, one of the things they indicated to us was that: "*The differences in the actual geotechnical conditions versus the geotechnical baseline conditions used for the cost estimate in 2012, resulted in a significant change to the planned versus actual foundations types installed, with a significant increase in solid foundations.*"

B J Ducey, who's a senior vice president of Quanta Services, the parent company of Valard, noted that: "...*the actual conditions proved out to be different than what was assumed... we [Valard] didn't participate in FEED,*" – Front End Engineering Design – "*that was SNC Lavalin, that was Nalcor... we [Valard] used that information to go into this open book negotiation... The assumed family of foundations were not working...*" And then Valard's legal counsel confirmed "*That was part of the settlement that was reached, is payment for these modified foundations...*"

MR. LEARMONTH: Yeah.

MR. SHAFFER: We asked Williams Engineering to look at this and they concluded that: "*The limitations stated in this document indicate that very little field data was available to accurately calculate the foundation design parameters for each transmission tower. In some cases, no data was available at all ...*" Indicated that: "*Best practice is to attend each tower location and complete a minimum of one borehole per tower location. Depending on soil conditions, a site investigation might include an alternate investigation method such as test pit (digging a hole), confirmation of bedrock conditions, or other appropriate testing techniques.*"

MR. LEARMONTH: Now, did you have any – do you have any comment on this recommendation of one borehole per tower

location, given that this is a 1,080-kilometre transmission line through, you know, for heavily forested area? Did you –

MR. SHAFFER: I mean –

MR. LEARMONTH: – have any reaction to that? I'll say, I know Mr. – the Williams group will have to provide an explanation, but did you have any view on that?

MR. SHAFFER: Well, just intuitively, it seems a little bit extreme to me.

MR. LEARMONTH: Yeah, okay.

Now, the – page 47, 4.7.2.2 Conductor Proud Stranding. What is proud stranding?

MR. SHAFFER: Well, the way it works, you have a transmission line, as I understand it, and the transmission line is wrapped and one of the strands of the wire pops up and standing up. So it's called conductor proud stranding, standing proud. That's how I understand it.

MR. LEARMONTH: Okay.

MR. SHAFFER: And apparently because of that, it was explained to us that conductors has core with hundreds of strands of aluminum wrapped in them. And the problem was one of the strands was popping out, causing inefficiencies and heating over long distance. So that required surrounding the stop and he had to go back and replace what you did before because of this issue and then continue stranding after the issue is taken care of.

MR. LEARMONTH: Okay.

MR. SHAFFER: And that was part of the settlement agreement.

MR. LEARMONTH: So Valard was paying an additional 27 million for restringing the – a replacement of the defective cable, correct?

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

On page 48, can you take us through that, starting with paragraph 4.7.3 Change Orders and then going down?

MR. SHAFFER: Yes. The change orders, there were \$25 million for the transmission line. That's after the settlement agreement, or maybe wrapped up in them. I would have to double check. And then \$187 million in the right-of-way for change orders. I would like to talk more about the right-of-way, given the dollar amount.

MR. LEARMONTH: Okay.

MR. SHAFFER: The – we looked at the change orders for the right-of-way, and we got the change order logs and we examined four of the larger change orders totalling 90 million. So we looked at about half of dollar amount and we noted the following reasons for the change, that there's: "Poor onsite geotechnical conditions; Permitting delays; Issues dealing with the complex terrain; Weather conditions."

And the project management team indicated to us, regarding the right-of-way, that: *"For both the HV ac and HV dc transmission lines, NL Hydro advised that it did not require the establishment of a permanent access network to support line operations and maintenance... With this design and operations philosophy established, SLI's [SNC Lavalin] proposed construction planning strategy for the transmission lines largely relied upon the contractor determining what level of temporary construction access would be required..."*

And then they all go on to say that: *"...Nalcor acknowledged that NL Hydro's operations and maintenance philosophy needed adjustment, and that a near permanent access network would be required..."* And that was as a result of the Liberty review.

So it went from temporary access to permanent access. And that was apparently an issue here, too.

MR. LEARMONTH: Okay. Anything more you want to say on what you've had written on page 48? The weather conditions?

MR. SHAFFER: No.

MR. LEARMONTH: No?

MR. SHAFFER: No.

MR. LEARMONTH: That's it.

Okay. Page 49 you deal with Unawarded Scope, Insurance Claim, and then Observations and Findings. Can you take us through that, please?

MR. SHAFFER: Yeah. In Unawarded Scope, it's basically \$40 million. And there's a little bit of a breakdown here of what it was, but it's \$40 million. It was included in the financial forecast. And then in addition, that's on the cost report, there was a \$25 million negative amount, a credit, with the description: "*insurance claim – conductor proud stranding.*" And it was explained to us "that this was an insurance claim for the Conductor Proud Stranding issue" and "the total cost was approximately \$58 million with \$25 million of this recovered through the insurance claims."

MR. LEARMONTH: Yeah.

MR. SHAFFER: And I – and the reason why it's only 25, which is 58, is that was the cap on coverage that Nalcor had.

MR. LEARMONTH: Yeah, and just on that conductor proud stranding issue that we – you said that 27 million was for restringing during your replacement, and did that not include some amount for the suspension of work due to the problem? I think you refer to that on – back on page 47 – suspension of work?

MR. SHAFFER: Yes, they had –

MR. LEARMONTH: Yeah.

MR. SHAFFER: Yeah, they had to stop work.

MR. LEARMONTH: That's included in that?

MR. SHAFFER: Yeah

MR. LEARMONTH: Yeah, okay.

Okay. Now, just take us through, I want you to read into the record, your Observations and Findings with respect to CT0327.

MR. SHAFFER: "During our review of CT0327 we observed and found the following, which for the most part, contributed to the differences between the estimated costs of the Muskrat Falls Project at the time of sanction and the costs incurred by Nalcor during project execution:

"Scope changes and budget transfers from other work packages resulted in \$139 million in additional cost.

"Original contracts in excess of budget resulting in \$177 million of additional cost.

"Amending Agreement 2 for \$245 million with Valard to settle issues such as geotechnical conditions, the conductor proud stranding issue and delays with the right of way work.

"Scope changes associated with developing a permanent right of way resulting in" – I believe this number should be 187 million – "in additional cost; including but not limited to: All season road construction; poor onsite geotechnical conditions; permitting delays; terrain and weather conditions."

And then we said, "Nalcor performed limited geotechnical analysis. Williams Engineering noted that best practice is to attend each tower location and complete a minimum of one borehole per tower location."

MR. LEARMONTH: Yeah.

MR. SHAFFER: If I can just –

MR. LEARMONTH: You mentioned that a change from 212, on line 23, to 187.

MR. SHAFFER: Yes. When you go back to the table on page 45.

MR. LEARMONTH: Yes.

MR. SHAFFER: Our conclusion here is that the scope changes associated with the development of permanent right away –

MR. LEARMONTH: Right.

MR. SHAFFER: – resulting in 212 as is typed here; the 212 also includes \$25 million for the transmission line.

MR. LEARMONTH: Correct. So you –

MR. SHAFFER: I'm just saying it's 187 for the right-of-way.

MR. LEARMONTH: So you want to change that?

MR. SHAFFER: Yeah.

MR. LEARMONTH: Yeah, okay, fine. Because it included something in addition to (inaudible).

MR. SHAFFER: Yes.

MR. LEARMONTH: Okay.

MR. SHAFFER: So, I guess in summary, when you look at this particular contract, what do you really have in terms of the reasons for the cost variances? You have potentially design reliability enhancements, even though it's a little unclear right now, but based on what the project management team said, you had the large settlement for the conductor proud stranding issue, the lost time and escalation issues. You had geotechnical problems with the tower foundations. You had issues with the right-of-way in terms of turning it into permanent access and then they were dealing with the weather and terrain and other problems. And then you had the contracts in excess of the budget amount; when the contracts came in, it exceeded the budget amount. That's really in summary what caused all this.

MR. LEARMONTH: Okay. Thank you.

Did I understand that we will be ending at –

THE COMMISSIONER: 4:30.

MR. LEARMONTH: – 4:30? So I'm just about to start another topic, so maybe it's a good time, but before – is that correct?

THE COMMISSIONER: Yes, that's correct.

MR. LEARMONTH: Yeah. Okay. I just wanted for clarification, you referred to a Mr. Clarke when you were talking about, you know, consideration to terminating – Nalcor's consideration to terminating Astaldi back in 2014 or '15. Were you referring to Lance Clarke?

MR. SHAFFER: I was.

MR. LEARMONTH: And he's on the project management team, is that right?

MR. SHAFFER: He is.

MR. LEARMONTH: Okay. Thank you. I just wanted to clarify that.

So, if that's satisfactory, I would ask that proceedings for today be adjourned and we'll reconvene at 9:30 tomorrow morning.

THE COMMISSIONER: All right. We'll do that. We'll start tomorrow morning then at 9:30 and Mr. Shaffer will continue at that time.

CLERK: All rise.

This Commission of Inquiry is now concluded for the day.