



COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 8

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

26 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. Mr. Holburn – or Dr. Holburn, you remain sworn at this time. And the next party to cross-examine: Edmund Martin?

MR. SMITH: No questions, Mr. Commissioner.

THE COMMISSIONER: Okay. Kathy Dunderdale?

MR. HEWITT: Good morning, Dr. Holburn. Excuse me – my name is Justin Hewitt, and I represent former premier, Kathy Dunderdale.

DR. HOLBURN: Good morning.

MR. HEWITT: Just – the first question that I want to ask you pertains to this concept of best practice. Your report is entitled Best Practice Principles of Corporate Governance for Crown Corporations. And yesterday you were asked a line of questions, and you were asked to respond as to whether you agreed certain practices constituted a best practice.

Could you help us understand a little better how you've determined what are best practices for Crown corporations?

DR. HOLBURN: Yes.

So, this is based on a review of reports and studies that have looked at the functioning of corporate governance practices in a wide range of Crown corporations and other government-owned enterprises, and that come up with an assessment of whether certain practices are working well or not, and then that lead to recommendations for changes that would make improvements, and that might be considered a best practice.

MR. HEWITT: Okay, so your report lists a series of what you would determine to be best practices. Have you done a comparison between

those Crown corporations which have implemented these practices and those which have not?

DR. HOLBURN: So, the scope of my report was focused, essentially, on reviewing written studies that have considered these issues in detail. So, I haven't, personally, looked at individual Crown corporations to do a detailed case study analysis in a specific Crown corporation of a particular practice to make that assessment.

MR. HEWITT: Okay. Thank you.

Madam Clerk, could we please turn to Exhibit P-00431, please?

So, Dr. Holburn, this is the *Energy Corporation Act*, the legislation that establishes an energy corporation for the province. And, of course, that energy corporation is known as Nalcor Energy.

You've seen this before, I assume?

DR. HOLBURN: Yes, I've looked at this in – as part of my previous work for the Commission.

MR. HEWITT: Madam Clerk, could we please go to page 8?

So, section 5.1 here provides that: "The corporation shall hold an annual meeting in the province, which shall be open to the general public"

Would you, in your opinion, determine this to be a best practice?

DR. HOLBURN: So we're just looking at 5.1? Is that the part?

MR. HEWITT: That's right.

DR. HOLBURN: Yes, this would be best practice in terms of having that public transparency and opportunity to make reports to the public.

MR. HEWITT: Okay. Great.

Now, if we could just scroll down a little to see section 5.2. This section establishes a requirement for the corporation to, each year, provide a report to the minister, and that report ought to contain an audited consolidated financial statement, a report by the board and a report by each subsidiary of the corporation.

And then, down at section – subsection (2), we see that the minister may demand further information of the corporation. And if we could scroll down just a little to subsection (3), it says that this report shall be made public by the minister and, in fact, shall be presented to the House of Assembly of provincial legislature.

Would you say that this is a best practice?

DR. HOLBURN: Yes, this would be consistent in terms of providing that transparency regarding the operations of the corporation over the last year. Yes, this would be consistent with what we see in other provinces as well.

MR. HEWITT: Thank you.

Now, Madam Clerk, could we please turn to P-01770, which is Dr. Holburn's report?

Okay, and if we could just go to page 15, please?

Thank you.

Now, Dr. Holburn, in this section of your report, you talk about best practices for communications for boards of directors of Crown corporations.

Yesterday – I thought I heard you say this, but please correct me if I'm mistaken. I thought you said that it would be a best practice for a board of directors of a Crown corporation to communicate to a shareholder at least once quarterly. Is that correct?

DR. HOLBURN: I think what I said was that it's been recommended that the minister meet with the board about once a year so that all the board members have an opportunity to have a discussion with a minister.

MR. HEWITT: Okay. But – so the communication function – the best practice for

communication could be executed in other ways. So, for example, the CEO would be expected to report to the shareholder on a fairly regular basis. You would agree?

DR. HOLBURN: So –

MR. HEWITT: (Inaudible) – sorry, go ahead.

DR. HOLBURN: So, generally, the expectations are that there would be communications by both the chair of the board and also the CEO, but to different parts of government. So the primary relationship with the chair would be with the minister responsible for the Crown corporation, and it would be expected that the CEO would have ongoing communications with a deputy minister and, I think also, occasionally with a minister as well, given that the CEO has specific and more detailed knowledge about the operations of the corporation.

MR. HEWITT: But you would agree that it would not be best practice? In fact, perhaps it would be inappropriate for the shareholder to be involved in the regular, day-to-day management of a Crown corporation, correct?

DR. HOLBURN: This is one of the reasons why a Crown corporation is set up, to provide some distance and arms length and create an arms-length relationship between the corporation and the government.

MR. HEWITT: Right.

So regardless of what communication policies and procedures are put in place, there's always a possibility, for any number of reasons, that certain commercial decisions taken by a Crown corporation may not be communicated to a shareholder. Is that correct?

DR. HOLBURN: That's – with any specific action that's taken then – if it's a detailed, sort of, day-to-day operation, then that would fall within the purview of the Crown corporation.

MR. HEWITT: Okay. Thank you.

Madam Clerk, if we could turn to page 8, please, of the report? And if we could just scroll down to the bottom section, 3.2.3?

Okay, so here in your first line you say: “Directors should be compensated for their services at a level that attracts sufficiently qualified and experienced candidates.” Dr. Holburn, do you have any opinion as to what an appropriate level of compensation would be for the board members of Nalcor Energy?

DR. HOLBURN: I wouldn’t want to make any particular comments about the Nalcor board; I would stick to the general principle that a corporation or a board needs to be able to attract qualified candidates who are going to be able to provide the necessary level of expertise and oversight and be able to effectively provide that challenge function, which is the duty of the board.

MR. HEWITT: Madam Clerk, could we please pull up P-00379?

So just while we’re waiting, this is a report that was prepared for Nalcor Energy by the executive human resources consulting firm known as Knightsbridge Robertson Surette. And this was prepared in 2015. And this is – there’s – this has already been subject to some discussion here at the Inquiry.

So if we could just turn to page 3, please?

So you can see here that this consulting firm has outlined a number of various corporations, private and public, some of which are provincial power utilities, as you can see here, and has listed the compensation that is paid to the directors of those various boards.

Would you be prepared to provide an opinion as to where Nalcor might fit in here?

DR. HOLBURN: So these types of studies rest on providing a comparable set of organizations that may be looking for similar types of directors who can provide that expertise. So one would want to understand the extent to which a set of companies that’s provided as being comparable is in fact comparable: are they in the same sector; are they of a similar size; do they have similar types of needs from a board? So from looking at the sort of list here, I can see that there are a number of different sectors that are represented. There is an aviation company, a holding company, a consumer goods company,

in addition to a provincial power utility and a health care company. So I think one would want to understand what’s the basis for choosing these comparable companies.

MR. HEWITT: So you’re not prepared to say where Nalcor would fit?

DR. HOLBURN: It would require further examination of this type of analysis in order to be able to make an opinion on that.

MR. HEWITT: Okay. Thank you, Dr. Holburn. Those are my questions.

THE COMMISSIONER: Former Provincial Government Officials ’03-’15?

MR. T. WILLIAMS: Good morning, Dr. Holburn.

DR. HOLBURN: Good morning.

MR. T. WILLIAMS: My name is Tom Williams. I represent elected government officials for the period of 2003 through to 2015, with the exception of former premier Dunderdale.

My question this morning is – and I have just one area that I’d like to get your opinion on. Towards the close of your direct testimony with Ms. O’Brien yesterday you had referenced – and I apologize I haven’t been able to locate the exact page reference – but one of the quotes in your report was that, “**Boards of directors are a central element of governance for Crown corporations since other oversight mechanisms are often not available.**”

And my question is, can you elaborate a little bit for us with respect to the similarities or the distinguishing qualifications as between governance and oversight? Because it seems that, you know, when you review your paper – and it may be that they’re interchangeable – so I was just wondering if you might be able to elaborate a little bit for me on what you see as the distinguishing characteristics of governance as opposed to oversight or whether or not they are, in fact, similar in nature.

DR. HOLBURN: Yes, maybe we could turn to page 7. I’m not sure if this going to help, but

why – page 7 of my presentation. So this is Exhibit 02020.

I don't know whether this will help, but I provided this as an example of different institutional oversight mechanisms whereby the alignment between managerial interest and shareholder interest can be more closely aligned. And I offered this as one example where boards are one component of governance and oversight. So this is a governance mechanism that is a way for shareholders to provide oversight of the corporation.

And the point I was making on this slide is that many of the mechanisms – or many of the government's mechanisms to align shareholder and managerial interests are not available to Crown corporations in the same way that they are for private corporations. So for example, for – through stock options and through the market for corporate control.

So an effective governance mechanism can provide that oversight of managerial actions.

MR. T. WILLIAMS: Okay. So in the example of Nalcor as it pertains to this project, there were a number of different structures within the organization as it pertained to the project itself. For example, there would have been a project management team established for which – would have had direct involvement with contractors, and would that be seen – in terms of identifying an element of oversight – would a project management team, which was comprised of senior officials within the organization, be seen an element of – as an element of oversight?

DR. HOLBURN: Yes.

So perhaps we could turn to the slide where I provide that example of internal oversight for the Darlington Refurbishment committee, because I think that is a straight – exactly that point. So this would be slide 17 in this presentation.

MR. T. WILLIAMS: Okay.

DR. HOLBURN: So this shows – this is an excerpt from the report by the Auditor General of Ontario and this is showing the internal oversight governance mechanisms. So a

governance mechanism provides that oversight and the bottom where it says OPG's Project Senior Management Team, that would be the internal – one internal governance mechanism to oversee the project.

MR. T. WILLIAMS: Okay.

And so I guess some of these may be readily – or obvious from their names, but obviously the corporate executive structure which – for which the project management team would be responsible to reporting would also be seen as an element of oversight.

DR. HOLBURN: That's right. And that would – that would be equivalent to the second bar here in this slide, which is the refurbishment construction review board.

This is an executive level committee within the organization that's overseeing the project. And the top one is the oversight mechanism within the board of directors.

MR. T. WILLIAMS: Okay. And if we could continue –

DR. HOLBURN: Mm-hmm.

MR. T. WILLIAMS: – along that lines, the – obviously, the corporate executive team would be responsible then to a board of directors which, again, would be another level of oversight.

DR. HOLBURN: That's correct.

MR. T. WILLIAMS: Okay.

And in terms of auditors, we have three examples of an audit function: We have an internal audit function –

DR. HOLBURN: Mm-hmm.

MR. T. WILLIAMS: – we have an external audit function and then we have – as you reference in a number of provinces – an AG unit, Auditor General function that has – so each of those three auditor functions would also provide a level of oversight?

DR. HOLBURN: That's correct.

MR. T. WILLIAMS: Then the corporate – the Crown corporation is responsible for answering while to government as the shareholder as a whole, it answers to a department. In this particular instance, it would be the Department of Natural Resources and its minister, who in turn, you know, responds to – answers to government.

That, too, would be seen as a level of oversight?

DR. HOLBURN: This is a component of the external oversight.

The minister is responsible to the legislature, and the legislature typically would have a committee that is able to exert oversight over the corporation as well.

MR. T. WILLIAMS: Okay.

And the final aspect I'd like to identify would be – in this particular instance, due to financing obligations, there was an independent engineer that had been assigned to the project who was involved with respect to the financial package for the federal government, but on a continual basis in terms of monitoring the project as it moved along.

Would that also be seen as an element of oversight?

DR. HOLBURN: If there is external expertise being brought in to explicitly evaluate the project, then that is one element of oversight. And one of the questions would be to whom is that individual reporting?

MR. T. WILLIAMS: Okay, fine. Thank you.

That's all the questions I have.

DR. HOLBURN: Thank you.

THE COMMISSIONER: Julia Mullaley, Charles Bown?

MR. FITZGERALD: Good morning, Dr. Holburn.

DR. HOLBURN: Good morning.

MR. FITZGERALD: My name is Andy Fitzgerald and I represent Julia Mullaley and Charles Bown.

I've gone over your report, and thank you for that. I do have some questions, similar to Mr. Budden, with respect to best practices and whatnot. Before I get into that, though, I have some general questions about your research.

Have you done any research regarding the reliance of volunteer boards placed on their chief executive officers versus boards who receive compensation? I'm asking you that question because, in essence, what we have here is a board of directors at Nalcor that were working for virtually nothing. And I was just wondering if you've done any research in that area as a volunteer board versus a compensation board and how much reliance they may place on their CEO and if there's any difference?

DR. HOLBURN: I haven't specifically researched and looked at the role of volunteer boards or the operations of volunteer boards. My research and reports have been focused, very much, on corporate boards.

MR. FITZGERALD: Have you done any research on the problems that may arise when a board places undue reliance on their chief executive officer or senior management?

DR. HOLBURN: I haven't done any research, specifically, on that area but I think some of the basic principles of corporate governance might be used to look at that – look at those types of issues.

MR. FITZGERALD: Okay.

So what principles of corporate governance could you put in place to ensure that you're getting adequate information, in a timely fashion, from your CEO and/or your senior management?

DR. HOLBURN: One of the principles would be to try and ascertain whether the information that a board is receiving is going to be reliable, sufficient, independent – so boards need to be satisfied the quality of the information they're receiving is sufficient for them to make an assessment of their corporation's performance.

MR. FITZGERALD: Would you agree with me that any corporate structure that you have, it's only going to be effective if you have clear, correct and timely communication from your senior management and CEO to your board?

DR. HOLBURN: Yes. The board is reliant to a significant extent on the board that's – on the information that's provided by the management to it.

MR. FITZGERALD: So in circumstances where you have individuals who are not forthcoming with information and are not keeping a board fully informed, really the board is at the mercy of those individuals. Isn't that true?

DR. HOLBURN: It would be incumbent on the board if it is unsure about the quality of information, the board should make further requests for information that it deems – that it needs in order to be able to execute its function.

MR. FITZGERALD: Okay. And I appreciate you haven't been here for all the evidence of this Inquiry, but the evidence from the board at Nalcor was that they were receiving binders and binders and stacks of information, and that there was a lot of information coming to the board. So, I don't think it's an information provision issue. My question is more directed on accuracy. If you have individuals within your corporate structure that are not providing accurate, timely and complete information to a board, there's really nothing the board can do if that's going to happen, is there?

DR. HOLBURN: It's going to be challenging. There's the possibility, as you say, of having information overload and that can be as challenging as having not enough information. So it's a matter of presenting the information in a way that's going to be succinct and digestible, it's going to be accurately reflective of the corporation's status.

If the board is not still – still does not feel satisfied, it has the opportunity to ask for external advice as well.

MR. FITZGERALD: Okay.

What remedy would a board have in a situation where it was provided with inadequate advice or information, but was not accurate – vis-à-vis the CEO or the senior management?

DR. HOLBURN: It could go back to management and be very specific about the types of information that it would need in order to understand what's happening within the corporation. So, it can always make an information request. It could also rely on external auditors to provide information. And external auditors are hired by the board and report right directly to the board.

The board also has the opportunity to hire external experts, lawyers, consultants and so forth, who can then investigate and provide some information on specific issues.

MR. FITZGERALD: I appreciate your answer, but the evidence in this Inquiry will be that all of that existed and there was still a problem with information flow and the accuracy of information. So even in those circumstances, would you agree with me it's possible you could have all that oversight and all that due diligence, but if you have individuals that are not providing accurate and correct information, the board is really at its mercy. Isn't it?

DR. HOLBURN: It's going to be a challenge for the board if information it receives is not reflective of the corporation's status. But still, there is a responsibility of the board to ensure the information that it receives is, in fact, the information it's going to find useful.

MR. FITZGERALD: And I guess no system is perfect, is it?

DR. HOLBURN: Any corporate government system is likely to have some weaknesses and some strengths.

MR. FITZGERALD: Thank you, that's very general.

Have you – you've sat on boards, I believe – in your CV – I believe, you sit on a board in London?

DR. HOLBURN: I do. I sit on the board of London Hydro.

MR. FITZGERALD: Any other board experience?

DR. HOLBURN: No, that's it.

MR. FITZGERALD: And how long were you on that board?

DR. HOLBURN: I've been on that board for about a year and a half now.

MR. FITZGERALD: If I could direct the Commission to P-02020 – I believe that's the slideshow Dr. Holburn has provided – page 19. According to this bullet number 2, "The Board should communicate regularly with government." So in your – I was – I take it, your position is that would be a best practice?

DR. HOLBURN: It would be a best practice for the board chair, to be specific, in terms of communicating regularly with government.

MR. FITZGERALD: Are you aware that, in this case, there – the evidence before the tribunal is that the CEO would regularly meet with the Premier's office?

DR. HOLBURN: I think I've heard that so far.

MR. FITZGERALD: And that would correspond to your best practices, wouldn't it?

DR. HOLBURN: Normally, it's – the best practice would be for there to be regular communications between the chair of the board and the minister responsible, and between the deputy minister and the CEO, and occasionally between the CEO and also the minister. So the point here is to ensure there are, sort of, multiple flows of information, but also the primary relationship with the minister – its best practice would be with the chair of the board.

MR. FITZGERALD: Okay.

So the evidence in this Inquiry is that the CEO was regularly meeting with the premier, the Premier's office. The evidence is also that the deputy minister was regularly meeting with Gilbert Bennett, the Lower Churchill Project manager, I believe is the vice-president, Lower Churchill Project. So those are the type of information flows and mechanisms, the levels

that you're just talking about, that should work in a system of communication and oversight.

DR. HOLBURN: I'm trying to – just be clear here. Were there regular communications between the chair of the board and the minister responsible?

MR. FITZGERALD: No. There was regular – I'm just going back to your evidence. The deputy minister would regularly meet with the vice-president of the Lower Churchill Project, Gilbert Bennett. That was one level of communication.

Are you aware of that?

DR. HOLBURN: I'm hearing that now.

MR. FITZGERALD: Yup.

That would be consistent with a practice of communication going between government and a Crown corporation.

DR. HOLBURN: So meetings between the vice-presidents, for instance –

MR. FITZGERALD: Vice-president of the Lower Churchill Project, Gilbert Bennett – he's a major player here – would regularly meet with the deputy minister of Natural Resources.

DR. HOLBURN: That would – in terms of best practice, it would normally be the vice-presidents will be meeting with the staff below the deputy minister, and that primary relationship with the deputy minister would be with the CEO.

MR. FITZGERALD: Okay, but our facts are a little bit different. I guess what's important with respect to the communication is that it's going between the Crown corporation and government, senior officials at the Crown corporation and senior officials at government. Would you agree with me there?

DR. HOLBURN: That's an important consideration, yes.

MR. FITZGERALD: And even in this situation, would you agree with me that a deputy minister or a premier could be limited in the

decisions that he or she could make if the information that was being provided by the Crown corporation was not accurate, timely or forthcoming?

DR. HOLBURN: The government is reliant on information being provided by the Crown corporation in order to make its decision-making. So if that information is in some sense not correct, then that could have an impact on ultimate policy decisions.

MR. FITZGERALD: And this goes back to the theme of my questioning. No matter what structure you have in place, it's only going to be as strong as the individuals that are taking part in that structure. Would you agree with me?

DR. HOLBURN: One would also want to look at the – whether there are multiple communication flows between the corporation sort of generally – and I'm going to include the board in that – and also the government. So, hence, the best practice is setting up several lines of communication between the board chair and the minister than between the bureaucracy – for example the deputy minister – and the CEO and the corporation's executive.

MR. FITZGERALD: Yeah.

And even with all those lines of communication, which we did have in this case – a number of those examples are there and I will be dealing with that in my submission at the end of this Inquiry – the information still was not coming in a timely fashion, was held back and was inaccurate. So it is only as strong – your system is only going to be as strong as the individuals who are involved in it.

DR. HOLBURN: It's – I would say that it's reliant on the individuals but also the structure that's in place.

MR. FITZGERALD: Okay.

DR. HOLBURN: If you have – if you are reliant on communication flows between two individuals primarily, and you don't have multiple channels, then that's going to be a weaker system than if you've got multiple channels of oversight –

MR. FITZGERALD: Okay.

DR. HOLBURN: – and communication flows.

MR. FITZGERALD: It would be my position that we've had multiple channels here.

With respect to – Mr. Budden asked a question with respect to a deputy minister formerly being on the board of Newfoundland and Labrador Hydro. I would just like to clarify that Mr. Bown never sat on any Nalcor boards; it's a different structure right now.

I believe you asked – you addressed the issue of it's not always appropriate to have a politician or a deputy minister of government sitting on a board, is it?

DR. HOLBURN: It can create a potential challenge for the remaining board members to determine whether that senior bureaucrat is speaking on behalf of government or is the bureaucrat speaking and making decisions on behalf of the interests of the organization.

MR. FITZGERALD: Even if Mr. Bown was on the board of Nalcor, I would suggest to you that if the board wasn't being properly briefed and fully briefed – even if he was on that board it wouldn't have made a difference here because he wasn't getting the information anyway because of the actors involved – that would be a problem, wouldn't it?

DR. HOLBURN: That's outside – I think that's outside the scope of my ability to make a comment on that without understanding the full context.

MR. FITZGERALD: Okay, I'll reframe the question.

If a deputy minister is on a board, and senior management is not providing the necessary complete disclosure to that board, the fact that you have a deputy minister on the board is not going to inform government any more, is it?

DR. HOLBURN: It would mean that the deputy minister would have a different sort of perspective from being on the board than the deputy minister would be receiving information

that may not be transmitted otherwise if he wasn't on the board.

MR. FITZGERALD: But my point is his perspective would only be the same as the rest of the board members who received the same information from the CEO and from senior management. Wouldn't you agree with me there?

DR. HOLBURN: Yes, he would be receiving the same information as the rest of the board. Correct.

MR. FITZGERALD: So the – so putting a deputy minister on a board is not a great remedy or it's not the be-all and end-all that would prevent something – prevent the failure of information flow.

DR. HOLBURN: There might still be a perceived conflict of interest from having a deputy minister on the board.

MR. FITZGERALD: Yeah.

But I guess you can only be as informed as the people below you are providing you the information. If they're not providing you the information, whether you're a deputy minister or a board member, there's not – there's very little you can do, is there?

DR. HOLBURN: One can request more information from –

MR. FITZGERALD: I know what one can do, Doctor.

DR. HOLBURN: – from the organization.

MR. FITZGERALD: But if you're not provided with it, there's not much you can do, is there?

DR. HOLBURN: Apart from ask for more information –

MR. FITZGERALD: That's right.

DR. HOLBURN: – if you aren't satisfied with it.

MR. FITZGERALD: Yeah.

But if you don't know you're unsatisfied, you're relying on your senior management, you're relying on your CEO, your options are pretty limited, aren't they?

DR. HOLBURN: There are challenges in that you might have a sense for what you don't know, and that provides opportunity to formulate a request. The challenge is what you don't know that you don't know.

MR. FITZGERALD: Exactly.

Sometimes you don't know what you don't know. In order to know what you don't know, you do rely on these professionals, don't you?

DR. HOLBURN: You do, and this is why it's important to have experts on the board who understand what they don't know and then can formulate a request to fill in those gaps.

MR. FITZGERALD: Thank you, Dr. Holburn.

Those are all my questions.

DR. HOLBURN: Thank you.

THE COMMISSIONER: All right. Thank you.

Robert Thompson?

MR. COFFEY: Morning, Dr. Holburn. My name is Bernard Coffey. I represent Robert Thompson, who is a former clerk.

DR. HOLBURN: Morning.

MR. COFFEY: I have some questions, and some of this will be following on and further exploring some issues that Mr. Fitzgerald just raised with you.

But first of all, I'd like to get some sense of what in your reports, and in your presentation, the word strategic means? 'Cause you use it repeatedly.

DR. HOLBURN: Mm-hmm.

MR. COFFEY: And what does that mean in this context?

DR. HOLBURN: So, in the report, when I use the word strategic, it's typically around the development of a corporation strategic plan, which would be how the – which, essentially, is defining how the organization is going to allocate its resources and develop activities in order to achieve its long-term objectives.

MR. COFFEY: Okay.

In the context of electricity generation and distribution – transmission and distribution, I take it that the overall goal would be to create electricity and deliver it?

DR. HOLBURN: That might be one of the goals. In general, within the sector, then the goals would be to provide a sufficient amount of electricity with some mind towards the costs and operating at an efficient level, maintaining reliability. Often there are some objectives around the environmental impact, and the need to provide a clean electricity supply. And I could go on –

MR. COFFEY: Sure.

DR. HOLBURN: – in terms of developing other objectives around community engagement, Indigenous relations and so forth.

MR. COFFEY: So, how does strategy, then, figure into that?

DR. HOLBURN: So, a strategy will essentially define: How is an organization going to achieve these objectives, given its resources – given some of the constraints that it may be operating under? So, it essentially defines how to allocate resources efficiently in order to achieve these objectives.

MR. COFFEY: And it is the underlying thesis of your message, I'm going to suggest, in your report and in your presentation, that the way that the organization – in this case the Crown corporation – is to go about doing that, is to be left to the Crown corporation.

DR. HOLBURN: So –

MR. COFFEY: They develop the strategy.

DR. HOLBURN: The strategy is developed by the corporation, broadly. So I'm including the management and the board.

MR. COFFEY: Yes.

DR. HOLBURN: So, the board has a responsibility to approve the strategic plan. Now, this is typically developed in conjunction between management and the board members. The objectives are set by the government, but the corporation needs to figure out what strategy is going to allow the corporation to achieve those objectives.

MR. COFFEY: So what, if any, involvement should the government – in this context it's the shareholder – have in relation to the strategy – developing the strategy and then implementing the strategy?

DR. HOLBURN: So, the government wouldn't have any responsibility for implementing the strategy. That is –

MR. COFFEY: I'm sorry; it would not?

DR. HOLBURN: That is a responsibility of the corporation to –

MR. COFFEY: Right.

DR. HOLBURN: – actually implement it. The board typically requires approval by the minister and the legislature for its corporate plan – an annual corporate plan, and a strategy. And that's going to reflect the corporation's strategy.

MR. COFFEY: So what – the minister who's speaking in this – or acting in this context for the shareholder gets to approve of the plan that contains the strategy.

DR. HOLBURN: Mm-hmm.

MR. COFFEY: What subsequent involvement would, under this model, the minister have? The minister says, or the strategy plan comes in from the Crown corporation – in this context it would be Nalcor – comes in, the minister reads it, presumably, and approves of it.

DR. HOLBURN: The –

MR. COFFEY: So that's it; it's done. So what then – what involvement would, under this model, would the – from your perspective, the minister then subsequently properly have in terms of the strategy?

DR. HOLBURN: So this comes back to the letters of expectations or memorandas of understanding or mandate letters that are issued by the minister to the corporation. And these may be done on an annual basis or regular basis whereby the minister provides direction on commercial and public policy aspects that will allow the corporation to make sure that it's aligned with the government's objectives.

MR. COFFEY: Well, okay, so the minister sends back a letter saying: Yeah, do that. I got your strategy; do it. (Inaudible) like, for example, you've provided us with an example; you provided the Commissioner with an example of a direction given by – to, I believe, BC Hydro –

DR. HOLBURN: Mm-hmm.

MR. COFFEY: – to bring in Site C effectively on time and on budget, given in March of 2016. And I gather that hasn't turned out so well.

So, it's one thing to say something in writing. But what I'm asking you here is, could you the Commissioner a concrete example of what you would see the ministry subsequently doing after it said: That's the strategy; we approve of it?

What would their proper involvement be in terms of best practices as the year goes on, while the – presumably, the corporation is, in the meantime, implementing the strategy?

DR. HOLBURN: Right. Okay, I think I understand your line of questioning now.

So, the government, on a periodic basis – say, each year – would approve that –

MR. COFFEY: Yeah.

DR. HOLBURN: – annual plan, which would be informed by the long-term strategy. That may be reflected in a mandate letter. And then during the course of the year, if something unexpected arises in terms of implementing that plan, then

that may then trigger ongoing communications between the board and the minister, or between the CEO and the bureaucracy, to understand to what extent the corporation is remaining aligned with government priorities.

MR. COFFEY: And how – in relation to the model that you've put forward, and in testifying yesterday, you described the board's role as providing sober second thought in relation to the CEO and senior management. Sober second thought was your phrase?

DR. HOLBURN: That's correct.

MR. COFFEY: Do you envisage a role of sober second thought for the shareholder?

DR. HOLBURN: This would be one of the benefits of having ongoing communication between a board and government. This is – if something unexpected arises, this provides the opportunity for both the shareholder and the board and the management to consider the best way forward.

MR. COFFEY: Okay, but say if it's unexpected, well, unexpected in what sense?

DR. HOLBURN: Unexpected in terms of, say, the impact of proceeding with a strategic direction that the government has set, for example, in a mandate letter.

MR. COFFEY: Could you give us, please, a sense of – in this context you would envisage – or the nature of the involvement of the shareholder, like, in the day-to-day operations and implementation of the strategy?

DR. HOLBURN: So –

MR. COFFEY: Bearing in mind that you've got this board in place.

DR. HOLBURN: So going back to one of my previous comments, then the role of the government is to set the policy direction. The role of the board is to approve a strategic plan that enables that direction to be achieved and then the role of the CEO is to – and the corporation is to implement, so the CEO's responsibilities on that day-to-day operational basis to actually implement what has been

approved and agreed by the board and the government.

MR. COFFEY: Yes, but how does that relate to the shareholder in a day-to-day, week-to-week, month-to-month? In this context the shareholder arguably, depending upon how you view it, is the minister and/or deputy minister. They represent the shareholder. So what would you envisage, then, their involvement?

And you've talked about communication, I understand that, but, like, to what level? Could you give us some concrete example of – I mean, it's one thing to talk about it in generalities, another thing to actually embody it in something. Could you give us an example?

DR. HOLBURN: So, normally – and this is the reason why to have – why there is an arm's-length relationship and why a Crown corporation is designed and structured to provide that distance from day-to-day government involvement. This is a difference between a Crown corporation and a department of government, so one normally wouldn't expect government day-to-day involvement in the operations in a Crown corporation.

MR. COFFEY: Now, Mr. Fitzgerald took you to the issue of communications. In your paper, I believe, could – in your paper, which is P-01770, on a number of occasions – if you could just give me a moment please, Commissioner.

And it begins, I believe, on page 10 is the first such reference, if we could bring that up, please? It's Exhibit P-01770, page 10? And in paragraph 3.3.2, the heading is: The Board should not involve itself in day-to-day management of the Crown corporation. And that's your heading there. And I take it from your comment to me just a moment ago you would also envisage extending that to: The shareholder should not involve itself in day-to-day management of the Crown corporation.

DR. HOLBURN: Yes, that would be correct.

MR. COFFEY: And then you go on to say: "An effective Board holds management accountable for organizational performance, while maintaining a respectful and trusting

relationship." And that's repeated in the – on page 31 of your report.

And it's repeated on page 39 of the report under the bullet: The Board should communicate regularly with government. And there you go on to say: "Establishing clear and consistent lines of communication is critical for developing strong relationships between Crown corporations and their respective ministries. In order to strengthen accountability and build trust, there should be regular interaction between Crown corporation CEOs and Deputy Ministers and, less frequently, between Crown corporation Chairs and Ministers (Public Policy Forum, 2016)."

So, Dr. Holburn, would it be fair to say or to characterize this model as involving the requirement that there be trust between the shareholder and the board, the shareholder and the senior management and the board and the senior management? There has to be trust.

DR. HOLBURN: That would be the goal of a well-functioning set of corporate governance arrangements. That would be the outcome. It's not something one can necessarily order, but that would be the desired outcome.

MR. COFFEY: And in terms of trust here, Mr. Fitzgerald took you through what he described as reflecting or reflective of the evidence that you probably haven't followed here, in terms of there was a lot of – a fair amount of communication between Nalcor and Nalcor's management and government officials.

There's also been evidence that I'm going to suggest, Commissioner, that in respect of certain types of information there was an understanding within Nalcor that it would be – if certain types of information were to be delivered to government or to the board, it was to go through one individual, the CEO, okay?

Does your model envisage that being the case? Because I'm going to suggest to you – and what you've suggested to Mr. Fitzgerald was – is there should be multiple means of communication between multiple individuals. So is there a problem whereby it's understood within the corporation that if any information is going to be communicated to government – key

information – it should only be done through the CEO?

DR. HOLBURN: In terms of communicating to government, is that your question?

MR. COFFEY: Yes.

DR. HOLBURN: Well, as the sort of best practice principles that come out from a variety of these studies suggest, there should be a line of communication between the chair of the board and the government in addition to the line of communication between the CEO and the government as well.

MR. COFFEY: And if the understanding within the corporation is if the board is to find out – if the chair of the board is to find out something, it should only go through the CEO?

DR. HOLBURN: Going through the CEO ...?

MR. COFFEY: To the board chair.

DR. HOLBURN: So, that's an interesting question. Let's take, for example, the Audit Committee. Normally, an audit committee would require reports; it would come from the CFO and, of course, coming from the external auditors as well. So it would be common practice for the Audit Committee to meet with the CFO and to obtain information from the CFO.

MR. COFFEY: Yes.

DR. HOLBURN: So that would be one example whereby information would come through members of a senior executive team rather than just through the CEO.

MR. COFFEY: And in this context, the audit committee – generally, auditors deal with past events. That's the nature of their business. In terms of future events such as budgeting, estimating for future expenditures, budgeting for future expenditures, that's not generally an audit function, is it?

DR. HOLBURN: Not an external auditor's function, no it's not. That would be within the purview of the CFO.

MR. COFFEY: So in this context, if we're talking about the projected cost of a project – of a large project – projected increases in cost, projected schedule for a project, the audit committee wouldn't pick that up at all, except in hindsight.

DR. HOLBURN: One of the responsibilities of the board as a whole is to have a risk management process in place and sometimes that falls to the responsibility of the audit committee. And one of the risks for any organization is going to be to understand the potential, sort of, financial scenarios and the impact, financially, of different risks. So this might be an error that the audit committee would be considering.

MR. COFFEY: Is it problematic, potentially, to have information flow concerning – what arguably in the context would be key information – limited to going through one individual?

DR. HOLBURN: As a board member, board members might expect, hear or receive information that comes from different parts of the organization, through different senior officers for the organization rather than just coming through one individual.

MR. COFFEY: Now as a final, more general discussion of corporate – of governance of Crown corporations, one of the exhibits that's been entered is Exhibit 01790 – 01790. It's entitled Guidelines for Governance of the Electricity Sector in Canada. In fact it's a paper that you authored.

DR. HOLBURN: Yes.

MR. COFFEY: And it's been reflected – or referred to – it was published, I gather, in January of 2011. And if we could go to page 3, please?

There, Dr. Holburn, you noted that – you described the document has having “been written to promote the development of best practices in governance of the electric utility sector in Canada. It results from a combination of academic research on electricity sector governance in Canada and abroad, and an assessment of governance best practices; and

from discussions amount industry leaders and experts at a conference on governance held in Toronto on 4 June, 2010” And it goes on to talk about there were more than a 100 people there.

So I take it, Doctor, that the university with which you were associated organized this conference, because it was perceived to be a need to be addressed?

DR. HOLBURN: So, this conference arose from a combination of my academic interests –

MR. COFFEY: Mmm.

DR. HOLBURN: – and my interest of colleagues, as well, University of Waterloo, and the interest of the – of a policy institute, the Council for Clean and Reliable Electricity. And this has been an area governance and regulation of the electric utilities sector that’s been one that we’ve been looking at for a number of years.

MR. COFFEY: Yeah. And, in fact, you, yourself, have – but I’m going to suggest to you others have, too – there’s a widespread interest in Canada in this, isn’t there?

DR. HOLBURN: There is, indeed.

MR. COFFEY: And that’s because, I’m going to suggest to you, because it’s perceived, or it was perceived as of 2010, anyway, to be problematic; depending on what province you’re in, problematic.

DR. HOLBURN: Electricity issues are often of concern in many different jurisdictions. Electricity has a central role within the operation of a modern economy. And trying to find ways to run it efficiently is always a topic of concern for most governments.

MR. COFFEY: My point being, Doctor, that there’s nothing – I’m going to suggesting to you, and based upon your observations of even this Inquiry and your paper for the Inquiry – there’s nothing unique, in particular, about there being a problem or cost overruns, schedule problems with large hydro projects, is there, in this country?

DR. HOLBURN: I’m not sure I want to make a comment on that, specifically, without looking at a wide range of hydro projects within the country to understand how they’ve performed.

MR. COFFEY: I would suggest to you, though, that two of them are topical and you can google them right now, if you like. The C. D. Howe Institute, last month, published a paper suggesting that the BC Hydro’s Site C be discontinued and Manitoba’s Keeyask.

So my point being that two very high profile projects in this country have had problems and they date back to 2010 and perhaps even before. So despite the government’s suggestions – and I’m not suggesting they’re not good – there’s always room for improvement – electricity generation in a large scale in recent times at – in certain instances has been problematic, hasn’t it?

DR. HOLBURN: So let me just say, this conference that –

MR. COFFEY: Yes.

DR. HOLBURN: – you’re referencing here, this was largely focused on electricity distribution companies –

MR. COFFEY: Mm-hmm.

DR. HOLBURN: – within the province of Ontario. This wasn’t specifically looking –

MR. COFFEY: Oh yes.

DR. HOLBURN: – at the generation component.

MR. COFFEY: But it – your paper itself, that 2010 paper – or 2011, published in 2011 – does – purports to provide – it’s not limited to distribution at all.

DR. HOLBURN: That’s correct, yes. It’s – it applies generally to state-owned enterprises.

MR. COFFEY: One final question, if I might, Commissioner.

Dr. Holburn, are you in a position – bearing in mind that you spend a fair amount of time thinking about this and involved in it – are you

in a position to suggest to the Commissioner who or what province in this country, or what organization in this country, has got it best? In the sense of – has arrived at the best governance model? Not the best of all possible worlds, but the best in this country? In terms of electricity governance.

DR. HOLBURN: In terms of looking at governance structures of corporations.

MR. COFFEY: Yes, Crown corporations – in those provinces, where there is a Crown corporation involved.

DR. HOLBURN: There is one electric utility organization which, I think, is well-governed. It's not a Crown corporation, but it's a government-owned corporation. And that's EPCOR. So EPCOR is the electric utility that is owned by the City of Edmonton. And this is, I think, broadly recognized as being a very good example of a well-governed, government-owned utility that is well-managed, that is profitable, that has grown significantly over an extended period of time and that has delivered substantial dividends to its shareholder – its sole shareholder, the Municipality of Edmonton. It's a large corporation with over 3,000 employees.

MR. COFFEY: One final supplemental on that. Has – EPCOR is it called?

DR. HOLBURN: EPCOR, yes.

MR. COFFEY: To your knowledge, has EPCOR ever been involved in a megaproject, like building its own megaproject?

DR. HOLBURN: I'm not deeply familiar with the details of EPCOR's history. It has had a history of ownership of power generation, though it has largely exited that business over last 10 years. That it is primarily a distribution utility and water operations utility as well, both in Canada and the United States.

MR. COFFEY: So, it hasn't been in a territory where, to your knowledge, it was facing potential overruns of billions of dollars?

DR. HOLBURN: I'm not aware of it having –

MR. COFFEY: No.

DR. HOLBURN: – participated in a megaproject, but it is known for providing, sort of, best practice example of governance arrangements for a government-owned utility.

MR. COFFEY: Yeah.

And you have referred to, if I could, the Darlington nuclear refurbishment.

DR. HOLBURN: Yes, that's right.

MR. COFFEY: Yes.

Is it true – and that's at least a 10 year project, I gather, the budget just shy of \$13 billion – is it true that in 2017, it became publically known in Ontario that there was significant cost overruns in relation to – at least in an initial part of that project?

DR. HOLBURN: There was some claims of that, I'm not sure that they were verified.

MR. COFFEY: Oh.

DR. HOLBURN: The Ontario Energy Board has approved costs – cost requests on a regular basis –

MR. COFFEY: Oh, has it now.

DR. HOLBURN: – as it's being developed. And I'm not aware of the latest Auditor General report in terms of identifying any issues on the cost situation. And the latest report was from December of last year, so it's actually quite recent. I had a quick look through that and didn't notice anything in terms of there being red flags on the costs.

MR. COFFEY: It's not – I won't pursue it any further.

Thank you very much, Commissioner.

THE COMMISSIONER: All right.

Consumer Advocate.

MR. HOGAN: Morning, Dr. Holburn.

DR. HOLBURN: Morning.

MR. HOGAN: My name is John Hogan. I'm counsel for the Consumer Advocate.

First question I have for you is you did talk in your presentation and in your paper that there's different challenges for private and public boards. My question is: Is there any difference in the roles of public directors versus the role of private board directors in terms of any extra oversight because it's a public function or any extra duties because they're members of a public board?

DR. HOLBURN: So, I think that one of the distinctions between sort of private and public boards and directors is on the policy side and understanding the government's objectives on policy. And the reason for this is that public policy objectives can conflict with the commercial objectives, which is to be profitable and to earn a reasonable rate of return on the assets of the corporation.

So one of the challenges for board directors is to ensure that the corporation is pursuing that, sort of, right mix of activities that satisfies both the policy objectives and the commercial objectives. And it's not always obvious what that mix should be. So, one of the challenges for public sector board directors is to understand on an ongoing basis whether that mix is being achieved satisfactorily and hence, the need to communicate with government if there's uncertainty about that.

MR. HOGAN: So how does a board member ensure that they're aware of what the policies are and how they're supposed to be implemented?

DR. HOLBURN: So I think having a broad awareness of the, sort of, policy environments the corporation's operating in, being aware of the government's priorities broadly – and these might be specified, for instance, in a mandate letter – and then, as events unfold, then ensuring that there is some communication or liaising with the government.

MR. HOGAN: We heard evidence that some premiers involved and/or ministers involved in the Muskrat Falls Project and the Nalcor board viewed Nalcor as a separate government department as opposed to a Crown corporation.

And I know you mentioned that as something that shouldn't be done by boards or by anyone.

So can you tell me what the difficulties that this creates and what problems this creates, when the Crown corporation is viewed as a department as opposed to a Crown corporation?

DR. HOLBURN: So Crown corporations are expected to operate in a relatively autonomous manner, and to design their own operating practices and principles that will allow them to achieve their objectives, and to operate in an efficient manner.

The risk is that if they are operating as a department, then, sort of, department policies and practices may then inform the operations.

MR. HOGAN: Okay, so those are the risks involved. Anything further on that?

DR. HOLBURN: Anything you can – anything you have in mind particularly?

MR. HOGAN: No, that's okay.

Now, I just want to clarify some answers and questions, I guess, you were – that were put to you by Mr. Fitzgerald and Mr. Coffey in terms of communication and lines of communication. I want to make sure I have this right. The best practice is for the CEO to communicate with the deputy minister?

DR. HOLBURN: That's right (inaudible).

MR. HOGAN: And on occasion the minister.

DR. HOLBURN: Okay, correct.

MR. HOGAN: And the best practice is for the chair to communicate with the minister?

DR. HOLBURN: The minister – the minister responsible.

MR. HOGAN: There's no best practice for anyone to communicate directly with the premier, is that correct?

DR. HOLBURN: (Inaudible) –

MR. HOGAN: Now, keep in mind that the premier is the chair of Cabinet –

DR. HOLBURN: Mm-hmm.

MR. HOGAN: – I mean, there's no special role –

DR. HOLBURN: Mm-hmm.

MR. HOGAN: – of the premier –

DR. HOLBURN: Mm-hmm.

MR. HOGAN: – here that he's – he or she is a member of Cabinet, you know, and we're focused on one ministry here to which this Crown corporation is reporting.

So, is there any obligation for anyone to communicate – is there a best practice for anyone to communicate directly with the premier?

DR. HOLBURN: This would be the responsibility of the minister to communicate to the premier and to the Cabinet.

MR. HOGAN: The minister reports to the premier and the Cabinet.

DR. HOLBURN: Yeah, correct.

MR. HOGAN: So, if – and we heard evidence of this, so this – you can take this to be true – that it was the CEO going directly to the premier's office on numerous occasions to communicate, which now, to be clear – that's bad practice.

DR. HOLBURN: I would want to understand what was the rationale for that and why was it not the minister responsible who has that understanding of the mandate of the Crown corporation?

MR. HOGAN: Okay, now –

DR. HOLBURN: My question would be what would be the rationale for the CEO to be liaising with the premier rather than the minister.

MR. HOGAN: And not knowing what the meetings were about, I mean, is there a risk that

your minister and the chair is being undermined, if that communication is happening?

DR. HOLBURN: It's hard to say what's (inaudible) –

MR. HOGAN: Is it possible?

DR. HOLBURN: – policy –

MR. HOGAN: I mean, you're saying it's not a best practice –

DR. HOLBURN: – yeah.

MR. HOGAN: – so there's a reason –

DR. HOLBURN: Yeah.

MR. HOGAN: – it's not a best practice –

DR. HOLBURN: Mm-hmm.

MR. HOGAN: – so I'm putting to you: Is one of the reasons that the ministry who is responsible for the Crown corporation is being undermined, potentially?

DR. HOLBURN: I would hesitate to say undermined because that's making assumptions about the intent of the CEO in having these meetings, but it would be unusual to have that level of direct access.

MR. HOGAN: Okay.

And can you explain why the deputy minister is important in this structure?

DR. HOLBURN: The deputy minister often has that delegated responsibility to oversee or to form that relationship with the senior management and with the CEO. And so, if unexpected issues arise, then (inaudible) – then the first port of call would be with the deputy minister to provide some feedback and to get some input on that.

The minister obviously has a broad range of responsibilities and at an operational level, then, the deputy minister can take responsibility.

MR. HOGAN: So, needless to say, if communication is not being directed to the

deputy minister, that's undermining the structure as well.

DR. HOLBURN: That would be –

MR. HOGAN: Maybe you don't want to use the word undermine.

DR. HOLBURN: Yeah.

MR. HOGAN: But it's not a best practice.

DR. HOLBURN: I'm reluctant to use that word – undermine – because that implies a certain intent. But it means that information is not flowing to the deputy minister.

MR. HOGAN: It wouldn't be the proper line of authority for information to flow.

DR. HOLBURN: The deputy minister would not be receiving that information and wouldn't have the complete picture.

MR. HOGAN: Thank you.

In terms of the CEO – I guess I'm not going to give a direct example here – but if, you know, negotiations are ongoing with other entities, you know, if Nalcor will be doing negotiations with – is it appropriate for the CEO to be doing certain negotiations himself?

DR. HOLBURN: Can you give an example? If there are –

MR. HOGAN: (Inaudible) –

DR. HOLBURN: – large transactions –

MR. HOGAN: Yeah, if it was a large – if it's a large transaction, is it appropriate for the CEO to have authority to do those negotiations and if so, should he have written instructions, such as a mandate, in terms of: This is what you are instructed to do. This is how far you can go in terms of your authority.

DR. HOLBURN: In terms – you're talking about commercial types of transactions and commercial –

MR. HOGAN: Yes.

DR. HOLBURN: – negotiations.

MR. HOGAN: Commercial arrangements, yes.

DR. HOLBURN: Right.

Major transactions or major changes within a corporation or a corporate structure would typically require approval of the board.

MR. HOGAN: Before or after the negotiations take place, though?

DR. HOLBURN: This would normally be before negotiations would commence.

MR. HOGAN: And they would – the instructions would come from the board, not from government.

DR. HOLBURN: That would be correct.

MR. HOGAN: Okay.

And it would be written instructions to say: This is what the board is mandating you, as CEO, to do.

DR. HOLBURN: I think it's hard to say whether there needs to be a written instruction –

MR. HOGAN: Okay.

DR. HOLBURN: – providing authority, but the board would need to consent to a major transaction that could have a material impact. These types of transactions would normally be discussed during board meetings and would be approved by the board.

MR. HOGAN: Okay.

I just want to ask some questions about the generation – the commissioning of expert reports. I heard a lot of evidence about reports that were commissioned by – sometimes by Nalcor and sometimes by the premier's office and sometimes by the Department of Natural Resources.

So, my first question is: Is it okay for the ministry or the premier's office to commission reports that are going to be used by Nalcor or by the board?

DR. HOLBURN: I – so, it will depend on what the purpose of the reports is and what type of information is being needed.

So, if reports are providing information on policy types of issues, then it would be normal for the government to commission those types of reports.

MR. HOGAN: What about reports that would review work done by the entity, by Nalcor? External, cold eyes review reports is what they were called sometimes.

DR. HOLBURN: Right. So if the purpose is to have an independent review of actions undertaken by a Crown corporation, then one would look to a body other than the corporation to commission those reports. So then the consultants are reporting independently of management. So they – so these reports could be commissioned by a board or it could be commissioned by the government as well, looking for that independent perspective.

MR. HOGAN: And regardless of who a report might be commissioned by, should there be a protocol for the flow of information for reports, such as this, to ensure that, for example, someone in the ministry has seen it and read it and acted on it – someone on the board level has done that and someone at the executive level has done that?

DR. HOLBURN: I think that would depend on the nature of the specific issue that's the focus of the report.

MR. HOGAN: Well, let's just say it's a very important issue.

DR. HOLBURN: I think it's hard to make a blanket statement that any report that's commissioned by the government should be necessarily shared with the board. For instance, around board compensation, that's something where the board is going to have a self-interest in and the government may wish to have an independent view on that.

MR. HOGAN: Just a quick question. In your report you talk about it's important to ensure merit-based appointments.

DR. HOLBURN: Mm-hmm.

MR. HOGAN: How do you do that?

DR. HOLBURN: By providing an objective assessment of the fit between an individual's qualifications, experience, competencies and skills and so forth, and the position description that's been developed for a director position, for instance.

MR. HOGAN: So that responsibility would still lie within government to make that appointment. So they're self-assessing whether that person has – is a merit-based appointment or not.

DR. HOLBURN: There might be a public appointments board that solicits applications for publicized positions and then is able to provide an evaluation of the candidates and then make recommendations for appointment. Normally, it would be best practice as well for boards to have an involvement in that process as well. Boards may take a role in terms of identifying candidates, proposing candidates for consideration.

MR. HOGAN: Okay. That would be best practice?

DR. HOLBURN: Yes.

MR. HOGAN: I just want to turn, if we can, to P-02020, please, page 19.

And Mr. Fitzgerald was asking you questions on – around number 3 and number 4, which says: **“The Board should ensure that it receives sufficient performance information on a timely basis”** – and – **“The Board should ensure that it receives appropriate financial and accounting information.”**

And what Mr. Fitzgerald was questioning you on, or suggesting, is that how can the board ensure this? I mean, if they're not being told something, I guess the unknown unknowns –

DR. HOLBURN: Mm-hmm.

MR. HOGAN: – is the way he finally put it. So, you know, do you have anything to add to that? How can they be sure? How can a board

member be sure: Look, I am satisfied that nothing is being withheld?

DR. HOLBURN: This is difficult and this is why having experienced board members who understand the particular situation, understand organizational dynamics, understand the specific issues is important, because then they are more likely to understand what the unknowns are. If you have less experienced board members, they are more likely to be unknowing of the unknowns and therefore will find it difficult to formulate or think about what additional information they would need.

MR. HOGAN: So the answer really lies in the composition of the board.

DR. HOLBURN: Composition, skills, the time commitment that the board members are able to provide. But this is a fundamental challenge.

MR. HOGAN: So is it an excuse for a board member to say, we weren't told?

DR. HOLBURN: One might ask what information – what additional information did you request, or how did you determine whether you were – whether you assessed the information as being satisfactory for your decision-making.

MR. HOGAN: In terms of public relations, I think you did say yesterday it's okay or satisfactory for the CEO and the chair of the board to communicate with the media and with the public. Is that correct?

DR. HOLBURN: I think there needs to be an agreement between the CEO and the board chair in terms of who's going to take that lead. Normally the CEO is the spokesperson for organization and the chair is the spokesperson for the board. So, in normal circumstances, one might expect that the CEO would be the public spokesperson for the corporation.

MR. HOGAN: So in terms of – I'm gonna ask a specific question. In terms of being an advocate for the project, the Muskrat Falls Project, that specific issue that needs to be communicated to the public, who would be responsible for that? The CEO, the chair, or the politicians who are elected?

DR. HOLBURN: This is a project. So if I just step back from this particular project, but in terms of discussing, sort of, publicly the status of a firm's investments, projects, dealing with the public and the media, this would fall to the responsibility of the CEO.

MR. HOGAN: The status of the project?

DR. HOLBURN: Yes.

MR. HOGAN: We're on budget; we're on schedule. We're not on budget; we're not on schedule, et cetera.

What about selling the merits of it, though, to the public? That's different than talking about the status.

DR. HOLBURN: The project is proposed by the corporation. It's the proponent who is moving this along and looking for authorizations and permits. So, again, the CEO would, as the project proponent spokesperson, would undertake that responsibility.

MR. HOGAN: I just have a couple of questions on oversight.

Is there a role, an oversight role, for the rates that are – in this case, in Newfoundland and Labrador, it would be our Public Utilities Board. Does that have a role in oversight?

DR. HOLBURN: This was the topic of my prior report and presentation. Normally, then a – for an electric utility, if they are proposing a project, then it would normally go through an approvals process with the Public Utility Board or the utility regulator in the province.

MR. HOGAN: So when you say normally, what do you mean by that? Do you mean the rest of country does that?

DR. HOLBURN: In many other provinces there – new generation projects that are being proposed by local utilities would go through an approval process by the utility regulator.

MR. HOGAN: Okay. In terms of an oversight committee, which has – there is an Oversight Committee in place post-sanction dealing with

the construction of the project. Are you aware of that?

DR. HOLBURN: Yes, I am.

MR. HOGAN: Just wondering the terms of the makeup of the Oversight Committee. I know that the clerk is on it and the deputy minister is on it. Are they appropriate members of an oversight committee?

DR. HOLBURN: I think this is getting a little but beyond the scope of the report and what I've prepared for today, so I'm hesitant to start delving into areas where I haven't recently looked at that particular information.

MR. HOGAN: Okay, I'll just try it a different way.

I'm just – let's look at it this way. I – the – a lot of questions – not a lot of questions – but there was questions in Phase 1 about the government's role to oversee Nalcor and, I guess, oversee the board.

So can you comment on, generally, what's the government's role is in terms of reviewing or checking on what work Nalcor has done or does the oversight end at the board level?

DR. HOLBURN: So, I presented that, sort of, very high-level architecture which shows the structure of governance arrangements. The board is accountable to the government, ultimately, as the shareholder. The board is the government's representative and is delegated the task of providing that oversight of the corporation's activities. So it's a responsibility of the government to hold the board to account. The board reports to the minister and the minister reports to the legislature. So there are multiple levels within government to hold the board to account for the corporation's activities.

MR. HOGAN: Okay. So the government has to be satisfied with the – what the board is doing.

DR. HOLBURN: That's correct.

MR. HOGAN: That's the way the –

DR. HOLBURN: Yes.

MR. HOGAN: – that's the way the line of authority works.

DR. HOLBURN: That's right.

MR. HOGAN: And the board needs to be satisfied with what the executive are doing.

DR. HOLBURN: That's correct.

MR. HOGAN: Okay. That's all the questions I have. Thank you.

DR. HOLBURN: Thank you.

THE COMMISSIONER: All right.

The Innu Nation is not present.

Former Nalcor board members?

MS. BUIS: Good morning, Dr. Holburn.

My name is Amanda Buis and I represent the former Nalcor board of directors.

DR. HOLBURN: Good morning.

MS. BUIS: So at the beginning of your presentation yesterday, you noted that your report summarizes insights from more than 30 reports and studies on corporate governance and government-owned corporations.

In the process of completing your report, did you look specifically at the Nalcor board of directors?

DR. HOLBURN: No. I was looking for reports that had been written by, for example, Auditors General, public policy think tanks, academics, I draw on my own work and so forth. So I wasn't looking at specific case studies of Crown corporations.

MS. BUIS: Okay.

And, I believe, in your evidence to Mr. Fitzgerald, you said that you've never done a specific case study analysis of a specific corporation.

Is that accurate?

DR. HOLBURN: Perhaps with the – I haven't developed an extensive report, like the one that I presented here to the Commission. I have looked at corporate governance arrangements for EPCOR and also for a couple of electric utilities within Ontario.

MS. BUIS: Okay. Thank you.

In your experience, is it common or is it more novel for a government-owned corporation to exhibit and follow each and every one of these best practices?

DR. HOLBURN: Most corporations have some weaknesses and I'm not aware of a broad array of organizations in terms of matching up with, sort of, very poor or very, sort of, strong practices – it's not the level of detail that I've looked at with the exception of a few utilities where I have looked at that specific sort of match up with the best practices. And EPCOR would be one, which aligns very closely with a best-practice set of principles.

MS. BUIS: Have you looked, specifically, at ones that do not align at all with the best practices as set out in your report?

DR. HOLBURN: I haven't made, sort of, detailed and case studies of these types of organizations.

MS. BUIS: And based on your research, can you comment on whether or not these best practices are fluid? Did they change over time? Or have they been static for quite a long period of time?

DR. HOLBURN: I – there's a reasonable degree of consistency over time. So, some of the material that I've looked at and considered in the report goes back to the early 1990s. And there's a fairly strong degree of consistency with more recent reports and recommendations around best practice. There has been some movement on one area and that's around the appointment of CEOs. And generally, I think, it's now considered best practice for boards to appoint CEOs of the corporations rather than the government and the minister.

MS. BUIS: And following that line would it be common for boards to hire external experts to help with that hiring of a CEO?

DR. HOLBURN: I think it's common practice for recruitment processes to involve an executive search firm. And, I think that governments may also – may also look to professional executive search agencies as well as boards.

MS. BUIS: I'm going to ask Madam Clerk to bring up Exhibit 01770, which is your report, and page 8 please, Madam Clerk. I'm looking at section 3.2.2. Wonderful.

So, it's noted there that "Crown corporation Boards should prepare a skills matrix outlining the experience and competencies required of individual directors and the Board as a whole."

You note below that "The profile should be used to identify gaps on the Board and assist in the search for ... qualified candidates."

So if this matrix is completed and then communicated up the line to government, can you comment on what the best practice dictates the steps should be after that?

DR. HOLBURN: So this would be developed by the board. It would be then submitted to the minister's office, and the board may be involved in helping to screen candidates or maybe to nominate candidates as well. So having the board involved in the identification and selection process can assist in bringing in the appropriately qualified members or, sort of, candidates to the board to complete that overall skills profile that the board is looking for.

MS. BUIS: Okay.

And so if that is done and communicated up the line and there's no response from government or anybody to this matrix and this request, where would that leave a board?

DR. HOLBURN: If there's no response and the board is not being involved in that selection and appointment process, then the power and authority then is resting with the minister.

MS. BUIS: Okay, and if we could just go to page 9 and 3.2.7, down at the bottom of the page.

So you note there with respect to board vacancies and that they should be filled on a timely basis, and I'm just going to read a little section of that out. "Appointments to the Board of Directors at Crown corporations should be completed in a timely manner. Deficiencies or delays in appointments may have significant consequences for governance of the organization and for the public shareholder."

Can you comment and explain what you mean by "significant consequences"?

DR. HOLBURN: If there's a gap in board appointments then the size of the board is going to shrink. And it's not just the size of the board but it's the size of the committees, that that person who would be a member of, is also going to shrink. So this is effectively going to reduce the oversight capacity of the board to execute its functions and to provide that, sort of, challenge function for management. Depending on the size of the board – if you've got a very large board then a gap will not have as significant a consequence as if you have a smaller board.

MS. BUIS: So we did touch on the size of the board yesterday when Mr. Budden was asking you questions. So he pointed you to the varying sizes of the Nalcor board throughout the years. And I believe your comment at one point, when it was noted that the board was down to three independent members, was that you felt sorry for that board. I'd like you to comment on the difficulties that can arise when you do have an understaffed board of directors for a government corporation.

DR. HOLBURN: It increases the demands on the remaining board members. I did check – and I wanted to mention this yesterday, but I wasn't sure of the numbers. There was a survey done by the Auditor General in Manitoba, which has 50 Crown corporations, and they implemented a very nice survey of all the directors of Crown corporations to understand the time commitment that board directors provide.

On average, board directors in Manitoba – and there was a large response to this survey – they

found that directors were, on average, providing 15 hours of time per month to discharge their duties. That involved both attending board meetings during the month and also time spent preparing materials in advance of meetings.

So that would be the sort of expectation for an average board member. Of course, as with a smaller board, one might expect that board members would be spending more time because they got sort of a broader range of responsibilities, particularly through being on more committees: if you got a small board, then you're going to be on more committees. So it significantly increases the burden on board members when you have a small board.

MS. BUIS: Okay.

And so this – you just mentioned the survey and – in Manitoba – and found that 15 hours of time was on average for a board member. You heard – I guess Mr. Budden explained to you yesterday – there was evidence that some board members on the Nalcor board gave between 80 and 100 hours per month. Is there any concerns with that type of time expenditure as compared to the average from the survey that you just mentioned?

DR. HOLBURN: So the question I would have is, is this sustainable? Board members typically have a range of other responsibilities. Being a board member would be sort of one share of their time. So if they're devoting a significant amount of time to their duties for that specific position, then is that sustainable over time? It may be for a short period of time; it may be more difficult for a longer period of time to have that commitment level from the board of directors.

MS. BUIS: Madam Clerk, if you could bring up Exhibit 00431, and that's page 11.

So this is the *Energy Corporation Act* you have been directed to it several times during your testimony. And I'm specifically looking at Section 6 that relates to the board of directors of Nalcor.

Section 6. (2) states that: "The directors shall be appointed by the Lieutenant-Governor in

Council, shall hold office during pleasure only and are eligible for reappointment.”

Given the fact that the Commissioner will have the opportunity to make recommendations to government in its final report, can you comment on the select – on government selecting board members versus an independent committee selecting board members? Which, I believe, you were mentioning earlier today.

DR. HOLBURN: So, this doesn’t – so from what I can see, this doesn’t exclude having a separate committee that can make recommendations to Cabinet for appointments. So ultimately, they may be made by Cabinet. But what’s the process that’s used to select and identify candidates who would be recommended? So that’s – I – so it – that part of the process I think is important.

The other part revolves around the terms of appointments too. And normally terms would be set at an appointment time. So, if someone is being appointed through order-in-council, that is – that would typically be for a specified period of time, say, two or three years. And there maybe some eligibility for reappointment as well.

But in general, the goal is to develop – provide some predictability for individual board members and to develop a board where you’ve got deep expertise. If you’ve got a board where the average tenure is only a couple of years, that’s going to be more of a lightweight board compared to one where you’ve got a bank of board members, who have served for a number of years and who really understand deeply the organization. And that’s really an important benefit of having a bank of board members, who’ve been in position for a period of time.

So for example, if I look at EPCOR, which, I think, is a very good example of a well-governed, government-owned enterprise, you have – when I looked at it, the average board tenure was around eight or 10 years, which is high. And this is a well-functioning board. I’ve looked at other boards in the electric utility sector, where the average tenure has been two or three years. This is much more problematic in terms of enabling boards to be an effective oversight mechanism.

MS. BUIS: With respect to selecting board members, have you seen a best practice on having this independent appointment committee as opposed to just having government select members?

DR. HOLBURN: Best practice would be to have an independent committee that’s involved in publicizing the positions and identifying candidates, in making that evaluation and providing development of a skills matrix and so forth and who can then make some recommendations to government.

MS. BUIS: Now, if there are some situations occurring in a board of directors that aren’t in line with the best practices that you mentioned in your report – for example, a board size may be smaller than the eight to 12 that you recommend in your report – is it still possible for directors to effectively fulfill their responsibilities?

DR. HOLBURN: Hiring external experts might be one way to augment capacity. So, with the example of the Darlington Refurbishment Project, this is a larger board; this is a board of 14 members overall, but they still thought it would be worthwhile to engage external experts to provide that independent, focused oversight and to provide some recommendations and advice to the committee.

This might be one way for a project-specific type of purpose, but a small size is a real constraint on a board in terms of ongoing oversight. So, one option would be to ask governments to increase the size of the board.

MS. BUIS: And so if the board asks the government to increase the size of the board, that’s incumbent on the government, correct?

DR. HOLBURN: Government would have to make that decision, yes, to appoint more members.

MS. BUIS: I’d also like you to comment further on remuneration.

So, in your report that you – you note that remuneration should be structured in a way that both attracts quality applicants and to also recognize the nature of the public appointment.

Again, given that the Commissioner will have the ability to make recommendations, have you seen a remuneration structure, maybe perhaps in EPCOR or another organization, that best achieves this balance?

DR. HOLBURN: So, in – with EPCOR – and a lot of these figures are publicly available – it's possible to conduct a survey to look at what other comparable organizations are providing in terms of that level of compensation, and that provides a range, some type of range. And then, I think, the goal of the government is to work out – well, where in that range would be reasonable given the specific circumstances of the organization and of the province – the needs of the corporation and so forth. So, I think the starting point is to take undertake that type of survey of comparable organizations.

MS. BUIS: Have you seen any examples of, like, legislated remuneration schemes in your research?

DR. HOLBURN: Can you just specify what you mean by legislated remuneration?

MS. BUIS: So the amount being fixed in legislation so that it could be the same across the board. So in Newfoundland, all government Crown corporation board members would receive X amount of dollars, X amount for a meeting, X amount for travel.

DR. HOLBURN: What I have seen are some bands, so sometimes, appointment boards will recommend, sort of, bands depending on the nature of the organization, then remuneration with fall into a different type of band. So normally, it's the government to – has to approve the remuneration levels. I'm not sure if that's specified in legislation, but normally, it's the government that sets the remuneration. But I'm not aware of that being necessarily being done in legislation.

MS. BUIS: Yeah. Okay.

Those are all my questions.

DR. HOLBURN: Thank you.

MS. BUIS: Thank you.

THE COMMISSIONER: All right. Thank you very much.

All right, redirect.

Ms. O'Brien?

MS. O'BRIEN: Nothing on redirect.

THE COMMISSIONER: Okay.

So I have some questions, Dr. Holburn, for you and let me first of all, sort of, say this to you: I don't want you getting in over what it was that we actually are paying you to talk about, but there's obviously been a lot of questions here that, I think, I would like to follow up on, because notwithstanding, this is Phase 2, and we're dealing with the issue of cost overruns. This is definitely an area where I am looking to make some recommendations after hearing some evidence in Phase 3.

So I want to talk first about the composition of the board. And I asked you last evening – or I asked Commission counsel last evening to provide to you two documents that I'm not certain as to whether or not you've had an opportunity to review fully or not. One of them has been referred to P-00379 and the other was P-02113. One is – the first one is the Knightsbridge Robertson Surette report that was conducted for Nalcor, and the report is dated March 3, 2015. And this is a report that deals with assisting Nalcor's board to – with regards to the issue of comparables for compensation to board members and also to establish some sort of matrix with regards to expertise and requirements and needs on the board.

The Wood Mackenzie report was actually done a year earlier by the Department of Natural Resources, and it was titled *Government Corporation Governance Review*. And what it did, it did a review of eight corporations, four of which are in Newfoundland – or in Canada, rather – and four international: one in the US, I believe there's one in France, one in Denmark and Statoil in Norway. And that one was more or less focused on size of boards, composition of members, remuneration issues, role of the CEO, part of the board or whatever.

So have you had an opportunity to actually have a quick look at those?

DR. HOLBURN: Yes, I did. Yes, I looked at these last night.

THE COMMISSIONER: Okay.

So getting back now to the issue of the composition of the board. You talked earlier about the issue of the board's – the best practice now being that boards do not include government employees or, alternatively, elected government representatives.

One of the issues that I'm concerned about is actually creating a bridge, or looking at the need to create a bridge, for communication purposes between the board and, as well, to government. I think what I've heard from you – first of all – is that these board – the problem with having government people on a board, whether it's an elected person or alternatively a bureaucrat, is that they may be seen as having some form of extra expertise or some form of authority that somehow impinges the other board's ability to do their job.

And I'm not quite sure I'm understanding exactly what that is, and I think I need a little bit more of an explanation as to why that's – why that happens.

DR. HOLBURN: I think the concern might be that – so the board members are broadly trying to develop a strategy that enables the corporation to achieve its commercial and policy objectives. And, I think, the concern may be with having a government official on there that the government official may provide more of a, sort of, political perspective in terms of views on what the corporation should be pursuing and may not fully account for the commercial goals of the organization as well.

THE COMMISSIONER: I would have thought that if a government was to create a Crown corporation, that they – that policy and commercial objectives would likely be within the purview of the government. They would obviously want their Crown corporation to follow policy, but also to ensure that it's commercially viable.

DR. HOLBURN: Mm-hmm.

Yes, I think that's right. But also there's a political, sort of, aspect are short-term, sort of, political considerations coming into play within a government official's calculus as well.

THE COMMISSIONER: Would – could that in any way be obviated by having them on the board as non-voting members? Or even as observers?

DR. HOLBURN: Potentially, yes.

THE COMMISSIONER: Have you ever seen that?

DR. HOLBURN: I haven't seen that, no. One of the benefits is acting as that communication device, so I don't think it's a clear – sort of, one-way, sort of, street here. One of the benefits that is recognized is that it can facilitate communication between the board and the government.

THE COMMISSIONER: Okay.

I wonder if I could ask you to go to your report, P-01770, page 25. This is the – or page 23.

This is the Darlington Refurbishment Committee of the Board. And when I went through this, so this – as I understand it and maybe you can correct me if I'm wrong – this is a situation where the board itself established a special committee to manage this – or oversee the management of this particular project. This is a specific – this committee was specific to the project.

DR. HOLBURN: That's correct.

THE COMMISSIONER: Right.

DR. HOLBURN: Yes.

THE COMMISSIONER: Can you tell me whether or not on that committee, when they did it for Darlington, was it only – and it seems to be based upon what I am reading here – was it only membership from the board and/or the executive of the corporation and not membership from, say – I don't even know if Ontario Hydro works the same way as Nalcor does, but from a

government-owned – the government ownership or whatever.

DR. HOLBURN: So, sorry, the question is in terms of who is a member of this –

THE COMMISSIONER: Correct.

DR. HOLBURN: – committee? These were independent directors who are members. So there are six members (inaudible).

THE COMMISSIONER: So these would have been directors on the board. So six –

DR. HOLBURN: Yes.

THE COMMISSIONER: – of the board directors were on it.

DR. HOLBURN: That’s right.

THE COMMISSIONER: Was there – were there any executive members on it? Like, for instance, the CEO, the project management team people, the vice-president in charge of the project, that sort of thing?

DR. HOLBURN: I don’t think the CEO was a member of this board. So there are six members. My recollection is that all six were independent members of this committee.

THE COMMISSIONER: Right, and on page 25, it does say: “The OPG Board Chair and OPG President and CEO will attend all meetings ...”

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: So they’re not on it, but they’re required to attend the meetings.

DR. HOLBURN: Yes. Yes.

THE COMMISSIONER: Okay. All right.

I’m just wondering, again, to obviate this issue of political interference in a board, if you were to have a government member or alternatively a bureaucrat present, would this – would the presence of government individuals, government bureaucrats on this particular board in any way be seen as problematic?

DR. HOLBURN: So, one of the consequences – so, for a committee it may be slightly different. If a government official takes a position on a board, that means that it – the board foregoes the opportunity to bring in someone with a different type of expertise. So that would be, I think, one of the consequences of allocating a board position to a government official.

So, for example – so there’s a range of competencies that are needed, typically, on a board, and would having a government official there mean that some of those competencies are foregone?

THE COMMISSIONER: All right.

But you could have your committee size – well, you – for instance, you could even have the government person there the same as the CEO or the chair of the board in the sense they attend all meetings but they don’t –

DR. HOLBURN: Correct.

THE COMMISSIONER: Right.

DR. HOLBURN: Yes.

THE COMMISSIONER: Right.

DR. HOLBURN: Yeah. Yeah.

THE COMMISSIONER: Okay.

I’d like to talk a little bit, too, about this issue of the independent appointments committee.

So these committees, as I understand it, they vet – if I can utilize that terminology – they vet applications for board positions. Correct? And they have criteria upon which they vet those positions?

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: Where does – in your research or if you’re aware of this – where does the inventory come from, so to speak, of persons? Is it – does the inventory come from people who actually apply, or are these independent boards able to also go out and look for people with expertise?

DR. HOLBURN: The latter is seen as being a best practice for – the board may have a nomination committee whose responsibility is to identify potential qualified candidates for future vacancies on the board. Board members will have some ability to propose individuals and also the nominations committee may undertake a broader search process. In addition, then, the government typically will make these types of positions publicly available; they'll notify the public through websites and so forth to encourage applications.

THE COMMISSIONER: I'd like to talk to you a little bit about terms of office. So I'm gathering from what you've said in your testimony that the terms of office can't be too short because then you lose the benefit of experience and knowledge, and yet they can't be too long because then you don't get new blood in, new thinking in.

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: For most public utilities, are you able to say what, generally, the time frame is for appointments to a board?

DR. HOLBURN: From what I've seen the, sort of, average tenure – and I've done a fairly extensive research into the government-owned utilities in Ontario – the average tenure would be around eight years, and appointments would typically be for three years. So then you've got renewal after that.

THE COMMISSIONER: Okay.

DR. HOLBURN: Multiple years of renewal.

THE COMMISSIONER: And the renewal then would normally be for the same time frame or a lesser time frame.

DR. HOLBURN: That's right. Yeah.

THE COMMISSIONER: Okay.

DR. HOLBURN: For a three period.

THE COMMISSIONER: Okay. And do – and is there a limit on the number of renewals that a board member can have – generally speaking?

DR. HOLBURN: I think that varies. I'm not aware of any sort of hard limits that have been specified. So then it's really up to the discretion of the government as to whether there needs to be, sort of, more turnover.

THE COMMISSIONER: Right. What's your thinking on that?

DR. HOLBURN: Developing some automatic levels of turnover and some expectations that there's gonna be a, sort of, hard stop, say, after 12 years, I think that would be good practice because then it forces some renewal, and providing new perspectives and fresh thinking, and also guards against too cozy a relationship, perhaps, developing between the board and the senior executive team, as well.

THE COMMISSIONER: Right. You've suggested 12 years. Is that what your thinking is? Is that that would be the maximum that a person should be on a board?

DR. HOLBURN: So OPG – Ontario Power Generation – targets board tenure of around 10 to 15 years. And so, if you've got – if you're appointing for, say, three- or four-year periods, then you've got the opportunity for a couple of renewals in order to reach that limit, or it could be 10 years or so.

THE COMMISSIONER: Okay.

What about the term of the chair of the board?

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: What is the general practice with regards to setting a term for the chair of the board?

DR. HOLBURN: Mm-hmm. It's not an issue that I've looked at specifically in terms of looking at terms of chairs, but one might look for a lengthy – a slightly lengthier term for the chair given that the chair is the sort of pivotal person for the board in terms of developing that relationship with the organization and also with government, as well. So having someone who can develop that deep expertise and knowledge is particularly crucial.

THE COMMISSIONER: So what – in your research, how long are generally – how long, generally, are board chairs appointed for?

DR. HOLBURN: I haven't looked at that specifically, but my observation has been they've got a similar sort of term period as directors, but they will be, sort of, reappointed as chair for lengthy periods of times.

THE COMMISSIONER: Okay. So up to 10 years?

DR. HOLBURN: Yes.

THE COMMISSIONER: Okay. All right.

I'd like to talk a little bit now about the issue of the CEO's presence on the board. What do you see – or do you see any trends with regards to the issue of the CEO actually being a member of a board?

DR. HOLBURN: So the trends in the private sector are for the CEO to be a member of the board but not necessarily a voting member of the board. And for Crown corporations or government-owned enterprises, then the trend is for the CEO not to be a voting member of the board.

THE COMMISSIONER: Not to be a member of the board?

DR. HOLBURN: Not to be a voting member of the board.

THE COMMISSIONER: Okay, and I assume, then, if they're a non-voting member, are they – for instance, could they act as a vice-chair to the board? So, for instance, to chair a meeting when the board chair is not present?

DR. HOLBURN: I don't think that would be considered best practice. That would put them into quite a position of authority on the board, if they're acting as a vice-chair.

THE COMMISSIONER: Okay.

So what you just told me, I think, is consistent, for instance, with the practice of Manitoba Hydro. This is referred to in the Wood Mackenzie report. And I think New Brunswick

hydro has a – according to that report – would have a person – the CEO is a member of the board but is a non-voting member.

So that's – you're aware of that?

DR. HOLBURN: Right.

THE COMMISSIONER: Okay.

One of the things that I'm looking at is the issue of the relationship between the CEO and the actual board.

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: And it strikes me that, based upon what you're saying, where they're – where they have an oversight function and a challenge function and sober second thought, that there needs to be some degree of separation between the board members and the CEO. How is that accomplished?

DR. HOLBURN: The primary relationship with the CEO would be with the board chair. One of the, I think, sort of trends that we've seen is for the board to appoint the CEO. And that creates a very strong accountability relationship, as opposed to having the minister appoint the CEO.

And that clearly – that creates a very clear, sort of, line of authority from the CEO to the board and then to the minister, whereas if the CEO is appointed by the minister, well then, that complicates that line of authority that the board has and the accountability of the CEO to the board.

THE COMMISSIONER: Okay.

I'd like to talk a little bit about the – what I would call the duty to document for a board. And I'm not – and you're a member of a board yourself, and I'm not sure how much detail you've actually looked at this, but how, generally, do boards document their work?

DR. HOLBURN: There would be a corporate secretary who takes minutes of meetings, which –

THE COMMISSIONER: So is the corporate secretary, for instance, an executive of the

corporation or is this secretary actually a board member?

DR. HOLBURN: So – or rather, the assistant to the board would be hired as reporting to the chair of the board. So this is a board-specific function and so this individual will be scheduling meetings, taking the minutes and liaising with the board chairs and creating that documented record of the meetings and the conversations.

THE COMMISSIONER: Okay.

And that documented record, is that – how does that normally look? Is it a sparse reference to the fact that this was discussed and it was agreed that we would do this? Or is there actually wording in that that actually talks about what is – what was being discussed, a little bit more detail?

DR. HOLBURN: It was more towards the latter in terms of what I've seen through my position. It's more of a discussion of what was discussed and, of course, any conclusions and decisions that were made.

THE COMMISSIONER: So fairly detailed board minutes then?

DR. HOLBURN: Yes.

THE COMMISSIONER: Okay.

And with regards to the somewhat related issue, the board's ability to access documents –

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: – of the corporation. Are there any limits that are on boards or board members to actually get access to documents that they feel they need?

DR. HOLBURN: My general understanding is that board members have the authority to request any information and documents they deem necessary for undertaking their activities. So they should have free access to documents.

THE COMMISSIONER: And would they have to – in order to access documents, is it normally the case that they would have to do

that through the board chair, the CEO, or can they go directly to a department or whatever?

DR. HOLBURN: Normally, the channel would be making requests through the board chair and the board chair would ask the CEO to provide that information.

THE COMMISSIONER: I next want to go to the issue of shareholder relations and the duty to disclose – what I'll call the duty to disclose. I think Mr. Simmons asked you some questions about the issue of disclosure of commercially sensitive information to the public.

What have you seen, with regards to Crown corporations, with regards to the disclosure of what could be considered to be commercially sensitive information to the shareholder, and I don't mean to everybody in the government, but to the – for instance, the minister or the deputy minister of the applicable department?

DR. HOLBURN: Mm-hmm.

It's not an area that I looked at very specifically, but one – I would expect that as the shareholder, then the shareholder has the ability or the authority to obtain that information as the owner of the corporation.

THE COMMISSIONER: So they have a right to that information?

DR. HOLBURN: As the owner.

THE COMMISSIONER: Okay.

DR. HOLBURN: (Inaudible.)

THE COMMISSIONER: In British – in BC Hydro – and this was referred to again in one of those documents that I asked you to review – they actually have a committee, a subcommittee, called the Shareholder Relations Committee.

Are you familiar with any corporations that actually have shareholders' relations committees other than BC Hydro?

DR. HOLBURN: I haven't seen that –

THE COMMISSIONER: Okay.

DR. HOLBURN: – before –

THE COMMISSIONER: Okay.

DR. HOLBURN: – but –

THE COMMISSIONER: So that's sort of a unique –

DR. HOLBURN: Yeah. Is this – sorry, is it shareholder or is it stakeholder relations?

THE COMMISSIONER: No, it's a Shareholder Relations Committee. It's with – BC Hydro have it.

DR. HOLBURN: Right.

THE COMMISSIONER: I don't have the page right now in the actual –

DR. HOLBURN: Yes.

THE COMMISSIONER: – document. So that's not something that you've seen as a regular feature –

DR. HOLBURN: No, the –

THE COMMISSIONER: – or a regular subcommittee –

DR. HOLBURN: Yeah.

THE COMMISSIONER: – for a board?

DR. HOLBURN: No, the ones that are very typical are audit and finance, compensation or human resources committee, corporate governance committee, sometimes health and safety or a special projects committee. This is the first time that I've seen a shareholder relations committee.

THE COMMISSIONER: Okay.

This may be a question that may be outside of your ambit, but is it generally appropriate for Crown corporations to follow the guidelines of the Canadian Securities Administrators committee – administration?

DR. HOLBURN: If they are issuing a debt, then there may be some obligations in terms of disclosure and governance practices.

This is one of the differences between a Crown corporation and a legal corporation. Some of the Ontario government-owned utilities are constituted not as Crown corporations but as legal corporations under the Ontario *Business Corporations Act*. That legal status, I think, is important because it brings with it legal obligations around governance.

So under that structure, then, the government does not have the authority to appoint the CEO that is the authority of the board of directors.

So, the legal status has implications for the types of governance structures and practices that are put in place.

THE COMMISSIONER: Just want to speak a little bit about compensation. I'm gonna ask you to go to 00379 for a moment, just to look at exactly where things stand on some of these utilities.

So, I understand your answer before – you don't know what the comparison criteria were for these corporations that are listed in this report. But I'd like to go through a few of them if I can, just to get a feel, and for the public to get a feel, for what is – what was being reported.

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: So, for instance, if you go to – after the letter, if you go to the first page, and number 2, you – if refers to a provincial power utility with a board of approximately 10 members.

And there, the board – (inaudible) it looks to me like the board receives a retainer, so each board member – it's – I think, this is the way it works – each board member would receive \$57,000 a year. There would be a board meeting fee of \$1,750. The board chair is actually – gets a retainer of \$130,000. And if you were a committee chair, you receive \$15,000 in addition to your \$57,000.

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: And I know you haven't researched the issue of compensation very much, but – and we don't know where this – what provincial utility we're talking about here, and I even tried to identify it by comparing it to the Wood Mackenzie report, and I can't.

Is this – does this seem like – would this be a larger provincial power utility with thousands of employees? Or is this a smaller one, from your perspective? Or do you have any idea?

DR. HOLBURN: My instinct would be that this is a larger provincial power utility. One of the questions, though, that I had as I was reviewing this was: How comparable are these utilities? And one of the questions I had was: Well, what is the size of this utility? What is the scope of the operations as well – in order to make a, sort of, more informed assessment of whether they are a good benchmark or not.

So, this board retainer of 57 – I did do some quick calculations and the average board retainer for all of the provincial power utilities – and there are seven in this list, out of 23 – was \$30,000 or just over \$30,000.

THE COMMISSIONER: And this one seems to be a bit of an outlier because –

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: – if you look at page 2 – page 4 – the red page 4, the next page over – there are three public provincial power utilities that are listed, again with various numbers of board members: 12, 14 and 14. The board retainer was \$25,000 and it was either \$750 to \$1,500 for a meeting fee. The board chair would have been getting \$150,000 retainer in two of those and the other would be \$40,000 –

DR. HOLBURN: Mm-hmm.

THE COMMISSIONER: – et cetera, and there would be a supplement for committees. So, this first one that we looked at here, if we were just looking at these public utility – seems to be much higher than those that are on page 2.

DR. HOLBURN: Yes, the range I noticed for board retainers, so not the chair retainer. The board retainer ranged from a minimum of

\$10,000 to a maximum of \$57,000 with an average of about \$30,000 in total.

THE COMMISSIONER: Right.

DR. HOLBURN: So, quite a wide range of variation. EPCOR, OPG, Hydro One – the information on their board compensation is all publicly available –

THE COMMISSIONER: Right.

DR. HOLBURN: – and is typically beyond these levels, but also these are much larger organizations.

THE COMMISSIONER: Right.

In P-02113, the Wood Mackenzie report – and you don't need to go to this – for Hydro-Québec, for instance, the chair of Hydro-Québec would receive, according to this report in 2014, received a retainer of \$125,000 plus an additional amount of about \$5,500. And the board members received an annual retainer of \$17,314 per year.

BC Hydro, as I understand, the chair has a retainer of \$30,000, or at least this was in 2014. Board members received a retainer of \$15,000 and the board chairs, if they were actually chairs of committees, received an additional \$3,000.

Manitoba Hydro – in this, they're not required to report the remuneration of their board members unless it goes over \$50,000 per board member, so there's nothing reported there. And the other one that was reported in the Wood Mackenzie report is New Brunswick Power, where the chair receives a retainer of \$30,000 and the board members receive \$12,000 per year and then their per diem is \$500 per day.

Anything unusual about those particular amounts, based upon your knowledge?

DR. HOLBURN: So, the – I notice that the average of the two that do report, Quebec hydro and BC Hydro, that's consistent with the average reported in the Surette report. So, the average is about 35 – so, close to that, sort of, \$30,000 amount in terms of the – a board retainer. From what I've seen for these publicly – for the large utilities, like OPG, Hydro One,

EPCOR – the board compensation is substantially greater than these amounts.

THE COMMISSIONER: And that includes, like, EPCOR?

DR. HOLBURN: Yes.

THE COMMISSIONER: Mm-hmm.

DR. HOLBURN: So I think it's – a more comprehensive analysis, I think, would look at regulated utilities across a range of provinces. And there's data available for that.

THE COMMISSIONER: Right.

DR. HOLBURN: These reports have a limited sample of comparable utilities.

THE COMMISSIONER: Right.

Just one other question related to that. In these other provinces where there are Crown-owned power utility corporations that you're aware of, is it necessarily correct to say that because you pay a certain amount for retainers for board members or board chairs, for say a utility corporation, that (inaudible) necessarily has to apply with regards to every other Crown agency or Crown corporation that you have?

DR. HOLBURN: Yes, I think that's correct. Crown corporations in the utility sector have very different types of business operations, sets of activities from other Crown corporations, which may be very small, which may not involve a large number of employees, may have a few assets. So there's an enormous variation in the type of Crown corporations or other government agencies, so on that basis, one would expect that a large Crown utility would have a different compensation schedule compared to another type of government agency or enterprise.

THE COMMISSIONER: Okay.

And I guess my last question is this, and it's more out of curiosity, and it may be too personal, and I'm not gonna require you answer this question. But you've indicated you are a member of the London power committee?

DR. HOLBURN: London Hydro, correct. Yes.

THE COMMISSIONER: Right. And just – and so that would service how many people?

DR. HOLBURN: Their – so London, overall, has a population of about 450,000 people.

THE COMMISSIONER: Right.

DR. HOLBURN: And there are about 150,000 customer accounts.

THE COMMISSIONER: And this relates mostly just to distribution?

DR. HOLBURN: Correct.

THE COMMISSIONER: And not generation?

DR. HOLBURN: Correct.

THE COMMISSIONER: Okay.

So without asking you exactly how much you make as a board member, can you give me an idea as to what a utility of that size, basically, would be – we generally look at, with regards to compensation, if any, to a board member?

DR. HOLBURN: Board members of electric utilities in Ontario are compensated. Often this is a source of contention with local municipalities or with provincial government for the provincial-level utilities. Let me say that – so the range that I identified in the Surette report for utilities was \$10,000 to \$57,000; compensation for directors in Ontario's utilities typically fall within this range.

THE COMMISSIONER: So between \$10,000 and \$50,000?

DR. HOLBURN: Yes, I would say the minimum for the overall level of compensation is going to be probably higher than that \$10,000.

THE COMMISSIONER: Okay.

DR. HOLBURN: I don't have any precise numbers there, but I'm pretty certain it's gonna be a higher – the average is probably gonna be close to that mid-range that's been identified.

THE COMMISSIONER: So around \$25,000.
All right.

Thank you, Dr. Holburn.

I appreciate your help with this, and it's – actually, the information that you provided is more extensive than I expected to get and I very much appreciate it.

DR. HOLBURN: Thank you.

THE COMMISSIONER: So we'll take a break at this stage. It's 10 to – it's quarter to 12, I think, and we haven't had our break.

So we'll take 10 minutes, and I guess we'll start with Mr. Davis next.

So is that okay, Mr. Learmonth?

MR. LEARMONTH: Yes.

THE COMMISSIONER: Okay.

All right, so we'll just adjourn for a few minutes.

CLERK: All rise.

Recess

THE COMMISSIONER: Mr. Learmonth?

MR. LEARMONTH: Thank you.

Next witness is the former Premier Paul Davis.

THE COMMISSIONER: Okay.

And, Mr. Davis, do you wish to be sworn or affirmed?

MR. DAVIS: Either. Affirmation is fine, Sir.

THE COMMISSIONER: Affirmation. Just stand, if you would, please.

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. DAVIS: I do.

CLERK: Please state your name.

MR. DAVIS: Paul Davis.

CLERK: Thank you.

MR. LEARMONTH: Yes.

Mr. Davis, what is your present occupation?

MR. DAVIS: Well, I – my last occupation was politics, but I retired in November.

MR. LEARMONTH: In November.

MR. DAVIS: Yes.

MR. LEARMONTH: All right.

I just wanna go through your background as a politician. I'll put some dates to you and see whether you can confirm them – whether I have them right.

Is it correct that you were elected to the House of Assembly on March 16, 2010, were sworn in on April 5, 2010?

MR. DAVIS: Yes. Both is correct, yes.

MR. LEARMONTH: And is it correct that you were minister of Service NL from October 28, 2011 to October 19, 2012?

MR. DAVIS: That sounds correct.

MR. LEARMONTH: And then minister of Transportation and Works from October 19, 2012 to October 9, 2013?

MR. DAVIS: That's correct.

MR. LEARMONTH: So you were the minister of Transportation and Works at the time of sanction of the Muskrat Falls Project in December 2012?

MR. DAVIS: No, I would have – in December – yes, in December 2012, yes.

MR. LEARMONTH: Yes.

MR. DAVIS: Yes.

MR. LEARMONTH: And then were you minister of Child, Youth and Family Services from October 9, 2013 to May 1, 2014?

MR. DAVIS: That sounds right as well.

MR. LEARMONTH: Yeah.

And I understand that – well, you then would have been minister of Child, Youth and Family Services at the date of financial close –

MR. DAVIS: Yes.

MR. LEARMONTH: – on November 29, 2013?

MR. DAVIS: Yes.

MR. LEARMONTH: And then you were minister of Health and Community Services May 1, 2014 to July 2, 2014?

MR. DAVIS: Yes.

MR. LEARMONTH: And is it correct that on or about July 2, 2014, you resigned to run for the leadership of the PC Party?

MR. DAVIS: That's correct.

MR. LEARMONTH: And you were successful in your –

MR. DAVIS: Yes.

MR. LEARMONTH: – in your bid?

And then you were premier continuously from September 26, 2014 to December 14, 2015?

MR. DAVIS: Yes, sounds right as well.

MR. LEARMONTH: Yeah, I think the election was November 30, 2015.

MR. DAVIS: Yeah, in a brief period in those kinds of things, but that's – those dates –

MR. LEARMONTH: Yeah.

MR. DAVIS: – seem right.

MR. LEARMONTH: And is it correct that you were – your predecessor, as premier, was Thomas Marshall, who served in that capacity from January 24, 2014 to September 26, 2014?

MR. DAVIS: Yes, Sir.

MR. LEARMONTH: All right.

So at the time that you became premier, is it correct that the budget, or the cost forecast for the Muskrat Falls Project, was \$6.99 billion plus interest?

MR. DAVIS: Yes.

MR. LEARMONTH: And that figure had been increased from \$6.2 billion at the time of sanction and then in June 2014, it had increased in – to 6.99?

MR. DAVIS: Yes, that's correct.

MR. LEARMONTH: Okay.

Now, I want – before I go any further, I want to enter into evidence some exhibits. And they are Exhibits P-01989 to P-02001, P-02003 to P-02019, P-02063, P-02080 and P-02114.

THE COMMISSIONER: All right. Those will be marked as numbered.

MR. LEARMONTH: Mr. Davis, have you read the Grant Thornton report, which is – which can be brought up; it's P-01677? This is the report for the construction phase, dated December 7, 2018.

MR. DAVIS: Yes, Sir.

MR. LEARMONTH: You're familiar with that report, are you?

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah.

I would like to turn to page 12 of that report. And just confirm again that your understanding was, as a Cabinet minister at the time of sanction, that the cost estimate for the total project was \$6.2 billion plus interest.

MR. DAVIS: Correct.

MR. LEARMONTH: That was the information that you relied on when you voted to sanction the project.

MR. DAVIS: Correct.

MR. LEARMONTH: Okay.

Page 12. I'm gonna read this into the record and ask for your comment on the time when you found that this information existed.

Line 1 down to line 18: "As indicated above, prior to financial close ..." – and that's November 29, 2013 – "... 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 the 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 (\$5.8 billion which is base plus escalation, less \$1.6 billion subtotal of DG3 budget at April 2013) after the consideration of CH0007 did not have any contingency remaining."

Now, bid – the CH0007 is the Astaldi package.

When did you first learn that information that I've just read to you?

MR. DAVIS: When I became aware of this report.

MR. LEARMONTH: So that would have been in – after December 2018?

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah.

What was your reaction when you learned of this information?

MR. DAVIS: I read it several times and I, you know, I wasn't – it's obviously different information than – than I'd known. And I was trying to reconcile it. I wasn't – I was surprised by it, I was trying to reconcile it. And it's the first I – the first I knew of it.

MR. LEARMONTH: Okay.

Well, were you able to reconcile it in any way?

MR. DAVIS: No, I haven't. No.

MR. LEARMONTH: You haven't been able to.

MR. DAVIS: No. I mean, it's obvious if – if the information is accurate, then it was certainly new information to me.

MR. LEARMONTH: Yeah.

Now, at the time of sanction, the government, of which you were a member, announced to the people of Newfoundland and Labrador that the cost of the project was \$6.2 billion. And, I take it, that at the time this announcement was made, that you believed that information was true?

MR. DAVIS: I believed the information; \$6.2 billion was the amount until an increase in June of 2014, when it was increased to 6.99.

MR. LEARMONTH: And what is the obligation on a politician when making an announcement of a project and stating its, you know, its capital budget, its estimate? What is the obligation in terms of accuracy and transparency?

MR. DAVIS: It's absolutely important and critical that information, especially of this magnitude, is stated and shared publicly, accurately and correctly.

MR. LEARMONTH: Yes, 'cause you have to tell the public the truth.

MR. DAVIS: Absolutely.

MR. LEARMONTH: It's their money.

MR. DAVIS: Mmm.

MR. LEARMONTH: And they're entitled to know. Is that correct?

MR. DAVIS: Absolutely. Yes.

MR. LEARMONTH: Yes.

So, how do you feel, as a former premier and former Cabinet minister, that this information was not provided to you by Nalcor prior to the announcement of financial close?

MR. DAVIS: I don't – I really don't know how to describe it, Mr. Learmonth. I was at – I was completely at a loss to understand it. And when I read further, even – I'm probably gonna get a little bit ahead of you – when I read the information on page 19, which is a chart showing –

MR. LEARMONTH: Yeah.

MR. DAVIS: – the approval for expenditure versus the forecast, I was shocked to see such differences.

MR. LEARMONTH: Yeah.

By the way, I think I made a mistake. I referred to this as being known before sanction. It wasn't known before sanction, it was made known before financial close.

MR. DAVIS: This information –

MR. LEARMONTH: This information I just read to you.

MR. DAVIS: Right.

MR. LEARMONTH: Yeah.

MR. DAVIS: And I became aware of it when I read this document.

MR. LEARMONTH: Yes.

And you were shocked, were you?

MR. DAVIS: Oh, absolutely.

MR. LEARMONTH: Yeah.

And in line 11 to 15 of that same page – I'm gonna read: "In an interview with Paul Harrington, LCP Project Director, we asked him if there was anything that precluded Nalcor from re-baselining, re-running the Cumulative Present Worth ('CPW') when they knew the contingency was exhausted in April of 2013. Mr. Harrington responded '*Not my call.*' To clarify, we asked whose call it was. He responded, '*Senior management*'" –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – "[Ed and Gilbert] ... *and Government.*"

But do you have any knowledge that anyone else in your government had this information at the time of financial close?

MR. DAVIS: No, Sir. I didn't.

MR. LEARMONTH: No.

MR. DAVIS: No.

I mean, Mr. Learmonth, it's a significant project; it's a significant amount of money. It would have been critically important that Cabinet have all of the right up-to-date information.

MR. LEARMONTH: Yes.

Now, on page 16 of the same Grant Thornton report, there's reference to a draft report dated November 15, 2013, an interim final report November 29, 2013 and a final report dated December 30, 2015. This is the – these are the reports of the independent engineer?

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: Do you recall the level of reliance, if any, that your government placed on the work of the independent engineer before financial close – up to the time of financial close?

MR. DAVIS: No.

MR. LEARMONTH: Don't have any information on that?

MR. DAVIS: No, I wasn't that intimately involved with the project at that –

MR. LEARMONTH: No.

MR. DAVIS: – point in time.

MR. LEARMONTH: So, would you know whether anyone in your government received a copy of the November 29 interim final report?

MR. DAVIS: No.

MR. LEARMONTH: At – before – or at the time of –

MR. DAVIS: Financial close.

MR. LEARMONTH: – financial close?

MR. DAVIS: No, I'm not.

MR. LEARMONTH: So you're not the right person for me to put that question to. Is that correct?

MR. DAVIS: Yes, I – it's not – it wasn't within my purview at that point in time.

MR. LEARMONTH: Yeah, okay.

Now, next turn to page 19 of the same Grant Thornton report, Exhibit P-01677. In the – at the bottom table, after line 13, you can see that on July 2013, which, of course, was prior to financial close – that the project management team had presented a final forecast cost deck and it was the amount of \$7 billion. So that's \$800 million over the 6.2 estimate that –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – you were told was valid at the time of sanction. Correct?

MR. DAVIS: Yes.

MR. LEARMONTH: And this information was communicated to the executive which would include, but not – maybe not limited to Gilbert Bennett and Ed Martin on July 22, 2013.

And then the – an excerpt from the presentation appears in the next box: “We are forecasting the

FFC” – final – forecast final cost – “to be ~\$7.0B which is 12% beyond the DG3 ... Exposure if mitigations are successful ... FFC would be reduced to \$6.8B.”

When is the first time that you learned of this information?

MR. DAVIS: When I read this report.

MR. LEARMONTH: Okay.

And once again I'm going to ask you: What was your reaction when you read this?

MR. DAVIS: Much the same, Mr. Learmonth. I expected to get complete and full information, and accurate information when being presented to us as Cabinet ministers or in a Cabinet meeting, or any time, for that matter, from a Crown corporation or a government official of any level.

And we did – it wasn't until June 2014 that I became aware of \$6.99 billion as being the construction cost number. This is referencing \$7 billion a year earlier. So it was 11 months later in June 2014 before I became aware.

MR. LEARMONTH: Yeah.

And I take it that in June 2014, when you found out about the increase to 6.99, you were not informed of this – that this estimate had gone back to July 2013?

MR. DAVIS: That's correct.

MR. LEARMONTH: Yeah.

MR. DAVIS: Yeah, first time I knew of this is when I saw this report.

MR. LEARMONTH: Yeah.

Now, hindsight is always a difficult exercise, but will you confirm or agree with me that if this information had been provided to your government in July 2013, that it would have been – it would have prompted you to reassess the situation?

MR. DAVIS: Yeah, absolutely. It would have been a – I’m sure it would have – I don’t know if the outcome would have been different, or –

MR. LEARMONTH: Yeah.

MR. DAVIS: – the decision would have been different but, certainly, knowing that we’ve – the estimated cost had gone from \$6.2 billion to \$7 billion before financial close, which was a critical point in the project progression, I’m sure – I’m quite confident it would’ve created a different conversation for sure.

MR. LEARMONTH: Yeah.

MR. DAVIS: And, again, I stress I don’t know if the outcome would’ve been different, if the decision would have been different, but it certainly would’ve been a conversation and a discussion.

MR. LEARMONTH: I realize it’s impossible to say what the outcome would have been –

MR. DAVIS: Mmm.

MR. LEARMONTH: – but I am suggesting that, as a minimum, it would’ve caused government to pause and reflect on the wisdom of proceeding with this project.

MR. DAVIS: I think that’s fair.

MR. LEARMONTH: Is that a fair way to put it?

MR. DAVIS: I think that’s fair.

MR. LEARMONTH: Okay.

And the – so the 6.2 figure was the figure that you used – that you believe existed not only at sanction, but at the time of financial close on November 29, 2013?

MR. DAVIS: Yes.

MR. LEARMONTH: I’d like to discuss with you or ask your view on the significance of financial close –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – as being a point in the development of the project.

Do you agree that given the consequences that the province would have to face, and the rights of the federal government if the project were cancelled after financial close, that although there’s a theoretical possibility that the government could cancel it, from a practical point of view that was a point of no return, the horse was out of the barn and project had to proceed?

MR. DAVIS: Yes.

MR. LEARMONTH: You agree with that, do you?

MR. DAVIS: Yes.

MR. LEARMONTH: But that same type of situation didn’t exist at the time of sanction. I mean, the project could have been cancelled between the sanction date and –

MR. DAVIS: Financial close.

MR. LEARMONTH: – financial close.

MR. DAVIS: Yes.

MR. LEARMONTH: But it was a completely different set of circumstances at the point of financial close. Correct?

MR. DAVIS: And I’m not certain if I knew that at the time of financial close, Mr. Learmonth, to be fair, that once that federal loan guarantee agreement was entered into, there was guarantee by the province; it was essentially going to complete the project. Or else, it left to federal government with the right to come in and finish the project. So I wasn’t sure – I don’t recall if I clearly knew that and understand it in 2013; I certainly understand that today.

MR. LEARMONTH: You do? Yeah.

MR. DAVIS: And I know that – I know today that existed at financial close in 2013.

MR. LEARMONTH: So you – the way I just described it to you is something that you agree with today, generally.

MR. DAVIS: Yes.

MR. LEARMONTH: But you're not sure whether you knew it back in – at the time of financial close.

MR. DAVIS: Correct.

MR. LEARMONTH: Because you were in a department that didn't really have direct oversight of this project. Is that correct?

MR. DAVIS: That's correct.

MR. LEARMONTH: Right.

Now, just turning to page 20 of the same Grant Thornton report, I'm not going to take you through every – you know, every box that appears on this page and following page 21. But as you can see, on August 2013 there was another estimate, which was 6.9 which, I guess, is the – was the same estimate that became apparent on June 1, 2014, when the AFE revision one was carried out.

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: That's the figure that was in existence at the time that you became premier, is that correct?

MR. DAVIS: That's correct.

MR. LEARMONTH: Yeah.

And then you can see in September there's another adjustment. And then carrying on page 21, March 2014, refers to an AFE revised \$7.517 million. And then May 2014, management outlook, which is pretty well the same as FFC, for project duration \$7.5 billion. And then February 2015, remaining three contract bids received, total \$682 million. Project cost at completion \$7.77 billion.

Now, this figure of \$7.77 billion was contained in a briefing deck prepared by the project management team on February 13, 2015. But – is it – am I correct in understanding that, even though this estimate was made in February 2015, that government was not made aware of it until September 2, 2015?

MR. DAVIS: I can't say specifically the exact date, Mr. Learmonth, but it was somewhere middle of end of August to into early September. I believe probably August when I – late August when I knew about it.

MR. LEARMONTH: Okay, and we'll just have a quick look at the other – at – on page 22, there's a table showing other estimates that – you've reviewed them prior to testifying, have you?

MR. DAVIS: Yes.

MR. LEARMONTH: Okay.

Now, before we leave that topic I want you to turn to Exhibit P-02114, which is found at tab 34 of your book, Mr. Davis.

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah, now this is a LCP Capital Cost & Material Contracts Update. It's dated Tuesday, November 19, 2013, and this email from James Meaney sent to Meghan Felt with copies to Auburn Warren and Jennifer Gray. It was sent at 9:24 p.m. on November 19, 2013, which is just 10 days before financial close. Do you agree with that?

MR. DAVIS: Yes.

MR. LEARMONTH: Now, if we just turn to page 2, we can see a document entitled, LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation dated November 19, 2013.

And you can see in the first column, DG3 – OCB, and the total is that \$6,202,489,666. That's the 6.2 figure at the DG3 estimate –

MR. DAVIS: Yes.

MR. LEARMONTH: – which was used at the time of sanction and understood to be accurate at the time of financial close on November 29, 2013? Correct?

MR. DAVIS: Yes.

MR. LEARMONTH: Okay.

Now, in the next table it says: Current FFC and then we have a figure of \$6,531,754,580 under the column entitled: Current FFC.

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: So this was – this table was prepared on November 19, 2013, as I said, 10 days before financial close. Were you aware of this figure of \$6,531,754,580 at the time of financial close?

MR. DAVIS: No.

MR. LEARMONTH: You weren't?

MR. DAVIS: No, Sir.

MR. LEARMONTH: And you were a Cabinet minister?

MR. DAVIS: I was, Sir. And I can tell you when I heard and saw some reference to a 6.5 number between the time of 6.2 and 6.9 – and I've spent some time trying to recollect any notion of it, any – sharing of any information of it – I have – I don't have any recollection of ever hearing a 6.5 number.

MR. LEARMONTH: In your mind it went from 6.2 to 6.99 and then on to 7.65? Is that correct?

MR. DAVIS: That's correct.

MR. LEARMONTH: Those are the only figures that you recall hearing of at the –

MR. DAVIS: And I've dug deep, Sir, because when I've heard this – these numbers and these changes and what I've seen in this report to make sure and my recollection is 6.2 to 6.99 to 7.65.

MR. LEARMONTH: Okay.

Now, is this information that you – since it existed on November 19, 2013, is this the type of information that you would've expected to receive before financial close?

MR. DAVIS: Yes, Sir. If it was available before financial close and known, I would've expected to receive it, yes.

MR. LEARMONTH: Okay.

Now, the covering email from James Meaney that I just referred to says: "Hi Meg; Please post the attached files to the data room this evening. I'm going to suggest the 'Material Contracts' folder in the 'Overview' subfolder."

And then I want to focus on the next paragraph. It says: "Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH" – that's the independent engineer – "Do not provide access to NL, BLG ..." – that's Borden Ladner Gervais law firm in Toronto – "...and Faskens at this time."

Now, so, you know, reading – assuming that NL means the Government of Newfoundland, which I think is a fair assumption, can you provide me with some help in understanding the circumstances under which Nalcor would conceal an estimate of this from the Government of Newfoundland? Can you give me any help on that?

MR. DAVIS: No, Sir –

MR. SIMMONS: Commissioner –

MR. DAVIS: – I can't. I –

MR. SIMMONS: – if I might –

THE COMMISSIONER: Sure

MR. SIMMONS: – I just have to comment that use of the word conceal applies much more than is stated in that message, and it casts a tone on the question which I don't think is appropriate.

MR. LEARMONTH: Well, denied access then. I'm happy with that.

THE COMMISSIONER: Just rephrase the question because –

MR. LEARMONTH: Okay.

THE COMMISSIONER: – I think you're coming to a conclusion that I'm going to ultimately have to consider. And I think what Mr. Simmons is doing is just asking you to more fairly ask the question of the witness.

MR. LEARMONTH: That's fine. I stand corrected on that.

Okay. Can you – the – here there is a request that this document – that the Government of Newfoundland be denied access to this document. Do you agree with that?

MR. DAVIS: That's –

MR. LEARMONTH: Okay. Can you –

MR. DAVIS: – certainly my interpretation.

MR. LEARMONTH: – provide me with any reason that comes to your mind of why Nalcor would want this document – or deny access of this document to the government on November 19, 2013?

MR. DAVIS: I can't, Mr. Learmonth. And I saw this last night for the very first time, and I can tell you I had a very long look at it, read the line several times – “Do not provide access to NL” – tried to understand if there was any – could there be other explanations for it. Of course, I can't speak for that. But when I read this, I read that it seemed – appears to me anyway to be some type of a intent or direction to not provide this information to the Government of Newfoundland and Labrador. I could be wrong, but when I read it, that's how it looks to me.

MR. LEARMONTH: Okay. And so what was your reaction when you saw this email?

MR. DAVIS: Well – like, during the course of the project – during my time in the premier's office – and I would meet with the clerk of the Executive Council, Julia Mullaley, on a regular basis, and we'd talk about any one of a thousand things that could be happening on any given day in government. And of course the Muskrat Falls Project was one. She was chair of the Oversight Committee, and the Oversight Committee reported to me and to Cabinet. And she had expressed to me, during my time, having challenges getting information, that it was difficult getting information.

MR. LEARMONTH: From whom?

MR. DAVIS: From Nalcor. But I always interpreted it to be that – she would have to explain what – exactly what she meant – but I interpreted her words to me to be – she would ask for something; she might have to ask for it two or three times or it would be labour-intensive to get the information from Nalcor, but thought that, eventually, the information would come to her.

But when I read this, I read this – interpret this or read this – differently from what Julia Mullaley was communicating with me.

MR. LEARMONTH: Can you explain that a little further, please?

MR. DAVIS: Well, again, I understood that – you know, from her – that she was challenged sometimes in trying to get information. She would ask for information in her work as – on the Oversight Committee, and she may have to go back to Nalcor and repeatedly say, look, I'm looking for this information to do our report. When they would do their quarterly reports, they were, quite often, you know, weeks behind or weeks after the end of the period, and I understood that and expected that it would take some to accumulate and compile the information from the previous quarter.

And so her being challenged is – or finding it labour-intensive to find certain specific information to compile an Oversight Committee report. That's one concern or one issue. But this, to me, appears to be a different item – different matter than that. I've never interpreted what she said as someone intentionally not giving or providing information. This appears, to me, direction to make sure that access to that information is not provided to the government.

MR. LEARMONTH: Okay. And you can't explain why that would be –?

MR. DAVIS: No, Sir.

MR. LEARMONTH: No.

Now, so, you, I guess, were indicating that you thought hard about this and, you know, went back and probably considered, like, am I forgetting something? But you came to the conclusion that you weren't forgetting

something, that this is just something that you didn't know about?

MR. DAVIS: You know, I can't speak for any other Cabinet minister or who knew what, but I don't recall any discussion or information about a 6.5 number.

MR. LEARMONTH: All right. At any time (inaudible)?

MR. DAVIS: Until preparing to come here and –

MR. LEARMONTH: Yeah. Well, if, on the assumption that someone else – you know, either the premier or some other Cabinet minister – knew about this figure –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – 6.5 plus – would it be your expectation that that person or persons – those persons would communicate it to the entire Cabinet once they came into possession of this information?

MR. DAVIS: Where this was a short time before financial close –

MR. LEARMONTH: Yes.

MR. DAVIS: – if the number was – construction cost number – was 6.5 at financial close, then that, in all likelihood, should've been the number communicated publicly when financial close occurred, if that's what was known.

MR. LEARMONTH: Correct. And there was no such an announcement –

MR. DAVIS: No –

MR. LEARMONTH: – correct?

MR. DAVIS: – 6.2 was the – was still the number at that point in time.

MR. LEARMONTH: All right.

Just to – there are two documents that are referred to in this email, and one of them have not been produced. It's an issue about

commercial sensitivities, so – but we'll – so we're just going with the first attachment to this email at this time and we'll deal with that other – the other document in terms of commercial sensitivity later.

Mr. Davis, while you were premier, did you have a flow of communications with Nalcor representatives?

MR. DAVIS: Somewhat.

MR. LEARMONTH: Yeah, can you – was there any pattern or was there any schedule for your contact with –

MR. DAVIS: No.

MR. LEARMONTH: – Nalcor representatives?

MR. DAVIS: No, my main communication would have been through Julia Mullaley when it came to the oversight committee. But for day-to-day activities, Derrick Dalley, who was Minister of Natural Resources at the time, he and I spoke regularly about not only matters under his purview and Natural Resources, but other matters besides. I probably spoke with him more frequently, more often than most all other Cabinet ministers. Maybe more than any other Cabinet minister.

But – so we would have that discussion and I know that he would have regular contact with Nalcor, and him and his officials would. I would from time to time, but he was the main contact.

MR. LEARMONTH: Were there occasions when you met with say Edmund Martin or Gilbert Bennett or other representatives of Nalcor?

MR. DAVIS: I don't remember ever meeting with Mr. Bennett. You know, I've met him, I remember at a public meeting in Holyrood at one time speaking with Mr. Bennett. And he may have been at Cabinet meetings. But primarily, I would speak to see Mr. Martin.

And routinely, in preparation of a Cabinet meeting, there'd be a briefing process before the Cabinet meeting for me, usually a day or two before the Cabinet meeting. And if we had a significant presentation or piece of information

coming in such as Mr. Martin coming in with a presentation to Cabinet, there were times that I'd have a briefing prior to that by Mr. Martin.

MR. LEARMONTH: Do you have any notes of the briefings that Mr. Martin gave you in addition to the slide decks which are contained in your book of documents?

MR. DAVIS: I don't, Sir.

MR. LEARMONTH: Yeah, so you didn't keep any – notes?

MR. DAVIS: If I had any notes, I might – general practice was to keep notes on the slide document itself or a briefing note. And they were returned to the control of the Clerk's Office through my staff or destroyed as required by policy in government when I left office.

MR. LEARMONTH: Okay.

Now what – can you give me any – I know you don't have anything in writing; we're going back some time. But can you give me any sense of the nature of the discussions that you would have typically with Mr. Martin?

MR. DAVIS: Well I –

MR. LEARMONTH: Either in meetings or during telephone conversations?

MR. DAVIS: I remember meeting with him early during my time in the premier's office. I can't specifically say when – it would've been in the fall of 2014, and we were having a discussion about, you know, the project. And there was pretty much constantly throughout my experience – there was always discussion about pressures, and schedule and on cost. And it wasn't as if I woke up and I – you know, we had this discussion before, but it wasn't as if I woke up one day and said all of a sudden: We have a problem with schedule and pressure that – or pressures on cost and schedule. That to me seemed to have always been a factor and a topic of discussion.

And I don't specifically recall the discussion early, when I became premier, with Mr. Martin because primarily he would be in touch with the minister or the deputy minister or – the

department would be his primary contact. But I do remember having a conversation with him about and issues with when Astaldi came on and how they started slow.

It was a theme – it was a constant theme or consistent theme of discussion for Mr. Martin in reference to Astaldi: starting slow and having trouble achieving the level of productivity that was expected to them. And I remember having a discussion with him, saying: Well, if your level of productivity is here, I know you can't get here, you know, to this level overnight, but you've got to have a plan and a way to get there. And that expectation was clear.

But primarily, Mr. Martin would come in for a – would brief me prior to a Cabinet meeting, but his regular contact would have been through the minister's office.

MR. LEARMONTH: Okay.

Did – do you recall – and you're speaking of the time when you were premier, correct?

MR. DAVIS: Yes.

MR. LEARMONTH: Yes.

Do you recall the – whether Mr. Martin, in these discussions, expressed confidence or lack of confidence? Or was he silent on the question of whether he thought the schedule could be maintained even though there were problems with Astaldi?

MR. DAVIS: Mr. Martin was always very confident in the work that they were doing, very confident in the project. He was – we had lots of discussions. This is something that – Cabinet had discussions on at length before I was premier and during my time as premier. And he always had an answer for the concerns that were raised by Cabinet ministers or the discussion that was happening. And he was – he knew about virtually any topic that was raised of concerns or issues. And he always had an explanation, spoke very confidently.

And I've stated before that I believed then and believe now that Nalcor, Mr. Martin and Nalcor honestly thought that even though they started slow and had issues with the productivity level

of Astaldi being the main contractor on the generation facility, that they believed they were going to – and he believed he was able to get that back on track. It never happened. But I believe that, through my discussions with him and my time there, that he believed they were going to be able to get Astaldi back on track.

MR. LEARMONTH: Yeah.

Were you aware that in September 2012, that's, you know, three or four months before sanction –

MR. DAVIS: Mmm.

MR. LEARMONTH: – that Nalcor had received a strategic risk report from Westney consultants that first said that – said that the schedule for first power – I believe at the time it was July or sometime July 2017 – that there was a 1 per cent chance only of meeting that schedule? That was later upgraded to a 3 per cent chance of meeting that schedule.

Were you – during the discussions that you had with Mr. Martin, were you aware of that?

MR. DAVIS: No.

MR. LEARMONTH: When you were premier, were you aware of that?

MR. DAVIS: When I was premier?

MR. LEARMONTH: Yes.

MR. DAVIS: No. No I don't – I didn't know. I don't have any recollection of that until preparing to come here.

MR. LEARMONTH: All right.

MR. DAVIS: And I certainly had no knowledge of it in 2012.

MR. LEARMONTH: Okay.

That would've – so he never mentioned that it was an aggressive schedule to begin with?

MR. DAVIS: You know, he may have used terms that – and acknowledged that there was pressure on the schedule and there were

challenges on the schedule, but I don't remember any numbers like 1 per cent or 3 per cent likelihood of achieving the schedule. I –

MR. LEARMONTH: Yeah.

MR. DAVIS: – I don't have any recollection of that.

MR. LEARMONTH: All right.

The point being that if that figure of 1 per cent or 3 per cent was correct or close to being correct, when you add on the fact that Astaldi stumbled badly in the first year –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – that would have – if you had known about the P1, P3, that would have probably changed your assessment of what Mr. Martin is telling you.

Is that a fair comment?

MR. DAVIS: I think it's in – would have been important information for us to have for sure.

MR. LEARMONTH: But he never mentioned it.

MR. DAVIS: No.

MR. LEARMONTH: No.

And the strategic risk report prepared by Westney in September of 2012 also recommended at P50 a strategic risk or management reserve of almost \$500 million. When did you – are you aware of that at this – today?

MR. DAVIS: A P50 terminology –

MR. LEARMONTH: Yes.

MR. DAVIS: – is not something that I had any knowledge of or heard of until this Inquiry was underway doing its work.

MR. LEARMONTH: Yeah.

But the strategic risk – the management reserve recommendation at P50 –

MR. DAVIS: Yeah.

MR. LEARMONTH: – prepared by Westney in September 2012 –

MR. DAVIS: Yeah.

MR. LEARMONTH: – was for an additional \$500 million, which was not included in the DG2 budget figure of 6.2.

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: Are you aware of that now?

MR. DAVIS: I know of it now –

MR. LEARMONTH: Yeah.

MR. DAVIS: – in preparing to come here –

MR. LEARMONTH: Yeah.

MR. DAVIS: – but there was no – there was – I knew nothing of it in 2012.

MR. LEARMONTH: Or while you were –

MR. DAVIS: Or '13, or '14 or '15.

MR. LEARMONTH: You had no information on it whatsoever.

MR. DAVIS: No.

MR. LEARMONTH: Okay.

Do you think that that information should have been provided to you, both before sanction or at least before financial close?

MR. DAVIS: Absolutely. And again – and to be clear, Mr. Learmonth, we knew that there was – and I knew, as I said earlier, there was – there's pressure on the project cost and schedule, but reference to, you know, 1 per cent or 3 per cent or P-ratings were – was foreign to me until preparing to come here.

MR. LEARMONTH: Okay.

Next, I want –

THE COMMISSIONER: Maybe what we should do is take our break here. I notice it's 25 to 1 now.

So is this a good spot to break?

MR. LEARMONTH: Yes.

THE COMMISSIONER: Okay.

So we'll break and come back at 2 o'clock then.

CLERK: All rise.

Recess

CLERK: All rise. This Commission of Inquiry is now in session. Please be seated.

THE COMMISSIONER: Mr. Learmonth.

MR. LEARMONTH: Thank you.

Mr. Davis, this morning – or early afternoon, before the break – you stated that any notes that you would have had of your meetings with Mr. Martin would have been written on the decks and then, when you left the office – when you left your government, you would have given them to the clerk and they would have been destroyed. Did I get that right?

MR. DAVIS: Well, they're returned as a – and I can't quote policy, Mr. Learmonth, but there's – any documents or official documents are – there's a policy they go towards or go – they're guided by –

MR. LEARMONTH: Yeah.

MR. DAVIS: – and so anything I had would have been returned to government or Executive Council for whatever they deemed appropriate.

MR. LEARMONTH: Yes. So you didn't take any documents with you when you –

MR. DAVIS: No.

MR. LEARMONTH: – left office.

MR. DAVIS: Pretty good cleaning out of the office, yeah.

MR. LEARMONTH: All right. Thank you.

I wanted to ask you, when you – did you ever meet with the chair of the board of directors of Nalcor while you were premier?

MR. DAVIS: Yes. Mr. Marshall, yes.

MR. LEARMONTH: Yes. Was that just you and Mr. Marshall, or were there other persons present?

MR. DAVIS: I don't recall a – I may have met with him once or twice, but – and I don't recall if – normally there would be someone from my staff with me.

MR. LEARMONTH: But would there be someone, for example, Mr. Martin or Mr. Bennett or some other representative of Nalcor, with the chair?

MR. DAVIS: I don't recall there someone else being with him. I think there was him and maybe someone from my staff, but I'm not certain, Mr. Learmonth.

MR. LEARMONTH: Okay, thanks.

MR. DAVIS: It may have been once or twice.

MR. LEARMONTH: Yeah. And while you were premier who was the – your – the clerk of the House – the clerk of the Executive Council?

MR. DAVIS: Julia Mullaley.

MR. LEARMONTH: Was that throughout your tenure –

MR. DAVIS: Yes.

MR. LEARMONTH: – as premier?

MR. DAVIS: Yes.

MR. LEARMONTH: All right. Right.

And would Ms. Mullaley, on occasion or regularly, be in attendance at meetings between you and Mr. Martin?

MR. DAVIS: Or me and other people. She would from time to time –

MR. LEARMONTH: Yeah.

MR. DAVIS: – depending on what it was.

MR. LEARMONTH: And would Charles Bown, of the – then the deputy minister of Natural Resources, be in attendance on some or all of those –

MR. DAVIS: Yes.

MR. LEARMONTH: – occasions when you met?

MR. DAVIS: Yes.

MR. LEARMONTH: All right. But there's no records of those meetings that you're aware of – you haven't –

MR. DAVIS: Correct

MR. LEARMONTH: – seen any?

MR. DAVIS: No.

MR. LEARMONTH: Okay.

Okay. I want to take you through some of the documents in the binder. The first is a – is at tab 3, and it's Exhibit P-01991.

MR. DAVIS: Yes.

MR. LEARMONTH: So this is the Muskrat Falls Project Oversight Committee report for the period September 2014 – is dated December 15, 2014. Now, what – can you explain the relationship between the Muskrat Falls Oversight Committee, which I believe was set up or established by Premier Tom Marshall in March 2014. Is that –

MR. DAVIS: That's correct.

MR. LEARMONTH: That's correct. And what were the reporting requirements for the Oversight Committee?

MR. DAVIS: Normally what would occur is the Oversight Committee would attend, or a representative – usually Julia Mullaley, as the chair of the Oversight Committee and clerk of

the Executive Council – would attend the meeting and do a presentation to Cabinet.

MR. LEARMONTH: All right. Now on this – the document I just referred to, P-01991 – I want you to turn to page 2 of that report.

MR. DAVIS: Yes.

MR. LEARMONTH: Now, as we’ve acknowledged earlier in your evidence, the increase from \$6.2 billion to 6.99 was done in June 2014.

MR. DAVIS: Yes.

MR. LEARMONTH: And so that’s what we’re talking about at this time, 6.99. Now, on page 2 the document says: “Mandate to provide reliable and transparent oversight of the following key issues: the Project cost and schedule are well-managed; The project is meeting the cost and schedule objectives.”

At this point – I guess for the period ended September 2014 – did you have anything definitive or anything concrete from Mr. Martin or anyone else at Nalcor on the schedule, and I just remind you that – I think it’s – I don’t think anyone would contest this – that Astaldi got off to a very slow start –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – and, you know, stumbled and that, during 2014, the progress on the – of Astaldi on their contract was much less than had been expected and contemplated.

MR. DAVIS: Yes.

MR. LEARMONTH: So at this point in September 2014, during – around this time, when you’re meeting with Mr. Martin, I mean, did he say anything definitive about, like, we have a big problem with schedule, that it’s gone, or was he confident that the first power date could be met?

MR. DAVIS: So what part is it – what is it you’re asking me?

MR. LEARMONTH: Well, what – at this point in, say in September 2014 –

MR. DAVIS: This would have been later. This would have been – this deck would have been presented December 15.

MR. LEARMONTH: December 15, but it’s for the period ended September –

MR. DAVIS: Yes.

MR. LEARMONTH: – 2014.

MR. DAVIS: Yes.

MR. LEARMONTH: Okay. During that period – say September 2014 to December 15, 2014 –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – what was your understanding on the Astaldi contract, the – and whether it affected the schedule?

MR. DAVIS: Well, and I think the – not just the deck in tab 3 but also the report from the Oversight Committee in tab 4 –

MR. LEARMONTH: Yes.

MR. DAVIS: – outlines – what they’ve normally done is outline schedule and cost analysis for that – end of that quarter.

MR. LEARMONTH: Okay. So what is the – this is for ending – period ending September. Were there two different types of reports that were – that the Oversight Committee prepared?

MR. DAVIS: No, there was – generally the – tab 3 is a deck that –

MR. LEARMONTH: Yeah.

MR. DAVIS: – would have been used to present to Cabinet. Tab 4 is the Oversight Committee report itself for the period ending September 2014.

MR. LEARMONTH: Okay. So one is the deck, and the other one is the actual report?

MR. DAVIS: Yes.

MR. LEARMONTH: All right.

Now, if you turn to the document in tab 4, which is P-01992, and you go to page 12 of that document.

MR. DAVIS: Yes.

MR. LEARMONTH: The last sentence says, “Nalcor further advises that this change will have no impact on the critical path for completion of the river diversion in November 2016 and first power for Muskrat Falls in December 2017.” Was that consistent with the information you were getting from Mr. Martin around this time?

MR. DAVIS: Oh, I’m sorry, I think I’m on the wrong – okay, I’m on the wrong page. Sorry.

MR. LEARMONTH: Page 12.

MR. DAVIS: Yes, page – this – yeah, so you are going by your page number (inaudible) –

MR. LEARMONTH: No. I’m going by the number in the top –

MR. DAVIS: Yes, okay.

MR. LEARMONTH: – right-hand corner.

MR. DAVIS: That’s why I was on the wrong page.

MR. LEARMONTH: Yeah. You can just read that before you answer.

MR. DAVIS: Yeah, so “further advises” – the – “change will have no impact on the critical path for completion of the river diversion in November 2016” –

MR. LEARMONTH: Yes.

MR. DAVIS: – “and first power for Muskrat Falls in December 2017.”

MR. LEARMONTH: And so was that consistent with the information, verbal information, that Mr. Martin was giving you around this time?

MR. DAVIS: Yes.

MR. LEARMONTH: That there was no –

MR. DAVIS: Mr. – there – I don’t think there’s – there’s nowhere in the – with the Oversight Committee reports that there’s anything inconsistent with what Mr. Martin had been advising.

MR. LEARMONTH: Okay. So it’s all consistent, is it? I just note on –

MR. DAVIS: As far as I can recall, yes.

MR. LEARMONTH: – page 22 of that document, P-01992, page 22, under the heading – paragraph 2: Contractor performance impact on Project schedule.

MR. DAVIS: Yes.

MR. LEARMONTH: “The Committee asked Nalcor what actions the company is undertaking to mitigate against schedule delays due to contractor performance.

“Nalcor advises ... they are confident in the contractors and suppliers selected and their proven track records of completing contracts on time.”

MR. DAVIS: Yes.

MR. LEARMONTH: Was that something Mr. Martin was telling you at this time?

MR. DAVIS: Mr. Martin was always very confident that schedules would be back on track if they were off track and the project would be on track.

MR. LEARMONTH: Yeah. Would it ever occur to you that with the aggressive schedule at the beginning and the fact that Astaldi was not performing as had been expected that, you know, that it would be difficult to understand how the schedule could be – for first power – could be maintained? Did that ever cross your mind?

MR. DAVIS: There were many discussions about pressures on cost and schedule. And there was always an explanation and a reassurance of where the project was.

MR. LEARMONTH: So you'd question and you'd always end up with an assurance from Mr. Martin?

MR. DAVIS: I am quite safe in saying, in a general way, it was a topic of discussion during our time, like between Cabinet and Mr. Martin, but the – we knew and I knew there were pressures on schedule and there was pressures on cost. But we were reassured, either through these reporting and Mr. Martin himself, that the project was under control.

MR. LEARMONTH: And you believed the information you were getting from Mr. Martin was accurate?

MR. DAVIS: I did. Yes.

MR. LEARMONTH: Yeah.

And did you – would you be – have a practice of questioning him or just listening to what he said?

MR. DAVIS: Well, there's a lot – there was a lot of listening to him, but there was never any lack of questions and seeking clarity and so on.

MR. LEARMONTH: Okay. 'Cause it was a concern for you, was it?

MR. DAVIS: Always a concern for me, Mr. Learmonth. The cost and schedule were always a concern.

MR. LEARMONTH: Okay.

MR. DAVIS: It was concern for the project; it was a concern for the impact on the province; it was a concern for the impact on ratepayers and taxpayers of the province as well.

MR. LEARMONTH: All right.

Next document I want you to turn to is Exhibit P-02000, which is found in your tab 12.

MR. DAVIS: Yes.

MR. LEARMONTH: Now, this is a Cabinet Update, Lower Churchill Project. I think if you go through it, you'll see that there's nothing on any details on cost or schedule. Do you – can

you confirm that? There's a lot of photographs but –

MR. DAVIS: (Inaudible.)

MR. LEARMONTH: – nothing on cost or any changes to schedule.

MR. DAVIS: I think you're correct on that.

MR. LEARMONTH: Yeah.

So what would be the purpose of a document like this? And before you answer that, I should refer you to – so you'll get a better sense of what I'm looking – questioning. If you go to page 8 of this document, 02000 – and once again, we're talking about June 25, 2015, so we're way past sanction; we're way past financial close.

So do you know why Nalcor is giving you all this background stuff that's dated and historical?

MR. DAVIS: It wasn't uncommon for presentations from Mr. Martin to include that type of data.

MR. LEARMONTH: Yeah, but do you know what I mean? Like, the project is well underway, and –

MR. DAVIS: Yeah.

MR. LEARMONTH: – he – whoever prepared this – says: "NL needs more power overall," "Replaces Holyrood." I just wonder what the usefulness of this information would be at that point.

MR. DAVIS: And as I said, it's not – it wasn't unusual for us to be informed or reminded of certain historical facts on the project.

MR. LEARMONTH: Okay.

MR. DAVIS: But you see –

MR. LEARMONTH: But you don't know –

MR. DAVIS: I think you'll see the similar kinds of things in other decks from Nalcor.

MR. LEARMONTH: Yeah. Okay.

The next document I'd like you to turn to is at your tab 14; it's Exhibit P-02003.

MR. DAVIS: Yes.

MR. LEARMONTH: And the – there's a reference in this at page 6, where it says, schedule pressures are being experienced which may – this is the – one, two, three – fifth bullet down under the heading Long-term Cost and Schedule.

MR. DAVIS: Yes.

MR. LEARMONTH: "Schedule pressures are being experienced which may impact Project cost and schedule: Critical path to first power remains for December 2017; however, risk levels for some key activities have increased"

So did you interpret that as meaning that some – there's – risk levels for some key activities have increased but, nevertheless, the critical path for first power was still at – in December 2017?

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah. And do you recall any discussion about the contents of this report with Mr. Martin or any other representatives of either the Oversight Committee or Nalcor?

MR. DAVIS: Not specifically. And I think this one was actually presented in June – around the middle of June in 2015. And I do recall in – my memory is being refreshed as I go through documents here. There was a work and a plan being developed for increase of productivity on the site. And I'm not sure if it's in this particular document or another one.

MR. LEARMONTH: There were efforts that Nalcor was initiating to hopefully improve the schedule.

MR. DAVIS: Yes.

MR. LEARMONTH: That's – right, okay.

And, once again, on page 10 of that Exhibit 02003, at tab 14, under the heading Long-term Schedule: "There have been no changes reported for the planned Milestone Schedule or the

forecast Milestone Dates since the December" – 14, 2004 committee date [sp. December 2014 Committee Report].

So up to this point – well, the next paragraph says: "The Committee has observed that the schedule performance measures for the Muskrat Falls Generating Facility continue to show schedule slippage for the facility, primarily with respect to progress on the Powerhouse & Intake. Nalcor has advised that Spillway progress, while behind the original contract ... is on target to achieve River Diversion in 2016."

So this would be, to your understanding, information that Nalcor was providing to the Oversight Committee and that the Oversight Committee was accepting. Would that be a general way to ...?

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah.

MR. DAVIS: But there was – you know, I'm also aware that the Oversight Committee was also utilizing services of the independent engineer, was utilizing some of the work they've done, did site visits with the independent engineer, like, tagged along with the independent engineer – is the work they were doing as well. So it wasn't just a matter of the Oversight Committee was accepting information from Nalcor and doing nothing else, there's other aspects. They had EY supporting them as well in some of the work and audit functions that EY did, they had their capital projects, major capital projects practice – I think they refer to it as – working with the Oversight Committee as well.

MR. LEARMONTH: Yeah.

MR. DAVIS: So I just wanna – I'd just clarify that because I don't want you to think that they just simply accepted information from Nalcor and did nothing else.

MR. LEARMONTH: Okay, that's fine.

Thank you for clarifying that.

Now, you mentioned at the beginning of your evidence, or close to it, that you had no

involvement with the work of the independent engineer up until financial close on November 29, 2013.

MR. DAVIS: I don't think I ever had any involvement with the independent engineer myself.

MR. LEARMONTH: Yeah.

MR. DAVIS: But –

MR. LEARMONTH: After you became premier I take it that you received and reviewed the reports of the independent –?

MR. DAVIS: Well, the Oversight Committee did.

MR. LEARMONTH: The Oversight Committee, yes.

MR. DAVIS: Yes.

MR. LEARMONTH: And you would've looked at them too, or not?

MR. DAVIS: No, the – no. The Oversight Committee would – they would be a source or a – yet another source for information which would form parts of their reports.

MR. LEARMONTH: Okay.

Please turn to tab 16 in your book of documents; it's Exhibit P-02005.

MR. DAVIS: Yes.

MR. LEARMONTH: Now, this is a – this is – I don't see you on this email but perhaps – and perhaps Mr. Dalley can provide us more information on it. But this is a – if you turn to page 2 – a Draft Communications Plan. It's a draft prepared by Karen O'Neill of Nalcor. And I take it this was a joint effort, was it, of the government and Nalcor?

MR. DAVIS: I'm – I can't say one way or the other.

MR. LEARMONTH: You don't know.

MR. DAVIS: I don't know.

MR. LEARMONTH: Okay.

Would you know why there would be a communications plan to update the – to provide an update for the Muskrat Falls Project in August 2015?

MR. DAVIS: Well –

MR. LEARMONTH: Does that ring a bell at all?

MR. DAVIS: Absolutely, because in August – and this is – was first drafted August 6 and then revised August 19. But we knew, sometime in August, that there was a re-baseline process happening and that a formal providing of information to the public was going to occur, and I would gather this was in preparation of that.

MR. LEARMONTH: All right.

That would be the bump from \$6.99 billion to \$7.65 billion?

MR. DAVIS: Yes.

MR. LEARMONTH: All right.

So then if we turn to – so that would be a reason to – for a government to prepare a joint communications package with Nalcor?

MR. DAVIS: Well, I don't know if this communications package was done jointly with government and Nalcor. Nalcor would lead the release of information on a change in cost and schedule on the project; however, it's not unusual to coordinate when and how these types of significant announcements would take place. If it's a Crown corporation, they would still have interaction with government in coordinating that. So there's a lot of factors go into timing and schedule of when an announcement such as this would take place.

MR. LEARMONTH: All right.

Now, the – tab 17, Exhibit P-02006, this is a document – a slide presentation from Nalcor: "Lower Churchill Phase 1, August 2015 Project Update."

Did you indicate that it was around this time that it was being communicated to you by Nalcor that there was going to be a bump in the cost estimate?

MR. DAVIS: Yes.

MR. LEARMONTH: Okay. And how was that first communicated to you?

MR. DAVIS: I'm not certain exactly when I first knew it or how it was communicated with me, but this deck here, I believe, would've been a briefing with me, according to the notes on it, in my office by Nalcor prior to a Cabinet meeting.

MR. LEARMONTH: Okay.

And I think if you just turn to page 42, that's where you'll see the increase in the estimate from –

MR. DAVIS: Yes.

MR. LEARMONTH: – to \$7.650 million. But you would've known about that before you got this slide deck, is that right?

MR. DAVIS: I think I knew it. I don't know how much detail I knew, I don't recall exactly, but I certainly knew it on this day.

MR. LEARMONTH: All right. The – so that was dated August – that document was August 2015 and –

MR. DAVIS: But the note – and bear in mind the notes indicates it was a September meeting.

MR. LEARMONTH: Yes.

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah.

MR. DAVIS: Okay.

MR. LEARMONTH: And if you turn to page 54, you'll notice the second-last bullet: "The Powerhouse is behind due to Astaldi slow start, and first power from Muskrat Falls will be delayed from 2017, with the revised timeframe under review."

MR. DAVIS: Yes.

MR. LEARMONTH: So, obviously, you knew at that point that the first power date would be pushed back.

MR. DAVIS: Yes.

MR. LEARMONTH: Did you have any sense as to how long the delay would be?

MR. DAVIS: I don't recall – I don't recall, I don't think so. And I think the Oversight Committee report that came out, it was available a couple of weeks after this, maybe a week or 10 days after this. Also, the change in schedule was still pending –

MR. LEARMONTH: Yes.

MR. DAVIS: – was still under review.

MR. LEARMONTH: Okay. Now, if we turn to that – I think the document that you were referring to, it's at tab 20 of your documents. It's P-02009, "Muskrat Falls Project, Oversight Committee – Update to Cabinet, September 21, 2015."

MR. DAVIS: Yes.

MR. LEARMONTH: You see that?

MR. DAVIS: Yes.

MR. LEARMONTH: Now, if you turn to page 2 – excuse me, yes, page 2, it says that, okay: "Monitoring ongoing. June report not released."

Do you know why the June report – I presume that was from the Oversight Committee. Do you know why it wasn't released?

MR. DAVIS: Yes and it's referred to in the Oversight Committee that's dated, I think it's the 28th of September.

MR. LEARMONTH: Is it the –?

MR. DAVIS: Is it the one here – it's referenced – this – that actual question is referenced in the Oversight Committee report.

MR. LEARMONTH: Yes.

MR. DAVIS: Which is P-02014.

MR. LEARMONTH: And what tab is that?

MR. DAVIS: That's tab 25.

MR. LEARMONTH: All right.

The – but it seems, if I look at page 2 of the document I just referred to, P-02009 –

MR. DAVIS: Yes.

MR. LEARMONTH: – says: “June report not released ... Premier, Ministers of Finance and Natural Resources briefed.”

MR. DAVIS: Yes.

MR. LEARMONTH: “Nalcor directed to provide update to Cabinet.” Is –

MR. DAVIS: Right.

MR. LEARMONTH: Am I correct in sensing a little bit of focus and concern at this point?

MR. DAVIS: Oh absolutely. And, again, there was concern, you know, throughout and focus throughout, but this – so what you're reading from under P-02009 is a presentation to Cabinet.

MR. LEARMONTH: Yes.

MR. DAVIS: And it indicates that myself as premier and the minister of Finance and Natural Resources have been briefed and then we were – we had directed the Oversight Committee to – or Nalcor, sorry, to provide an update to Cabinet, which is here as well.

MR. LEARMONTH: Yeah and that was because of the – your – the information you received about the cost increase – estimate increase to 7.65?

MR. DAVIS: Yes, Nalcor was about to make an announcement and – to provide information to the public on the re-baseline process that had taken place.

MR. LEARMONTH: All right.

MR. DAVIS: So the increase to 7.65.

MR. LEARMONTH: Now, on this same document, P-02009, if you turn to page 8 – and this is the work of EY. This is the report of EY.

MR. DAVIS: Yes.

MR. LEARMONTH: Okay, if we look under – on page 8 under the heading, “Key cost management process and control risks and issues ... The conditions and processes for rebaselining cost and schedule are not defined in the Project's control processes and procedures. The Oversight Committee's understanding of such conditions and processes is an important foundation, as it conducts its oversight activities.”

“2. Nalcor uses a relatively basic approach to contingency forecasting which in our experience is not consistent with the expected practice for a project of this scale and complexity. It is not clear whether the cost contingency forecasts for the Project are adequate.”

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: So this was after the 7.65 figure was identified, is that right?

MR. DAVIS: Just a second. I'm – I can't say. I'm not – I don't know, Mr. Learmonth. The document you're reading is dated August 31. I –

MR. LEARMONTH: Yes.

MR. DAVIS: I know that the change in cost was known. If it was actually known to be 7.65 or somewhere thereabouts, I don't know when the 7.65 number was actually finalized, but –

MR. LEARMONTH: Well, it – if we look at – if we go back to the Grant Thornton report –

MR. DAVIS: Yeah.

MR. LEARMONTH: – we know that the AFE revision 2 was dated September 2015; however, in earlier estimates for March – May 2014, March 2014 and then going back even as far as July –

MR. DAVIS: Yes.

MR. LEARMONTH: – we know that the project management team was, you know, expressing on a consistent basis increases.

MR. DAVIS: Right.

MR. LEARMONTH: You agree with that?

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah.

MR. DAVIS: But to answer your question, so this would have been around the same time as the increase was about to be announced so, I mean, it's – I think, you know, it's conceivable Nalcor knew what the increase was, obviously.

MR. LEARMONTH: Yeah.

MR. DAVIS: Yeah.

MR. LEARMONTH: But I'm just wondering, like, is this – it may be important to know whether these comments were made after there had been an up – an increase to 7.65 or before.

MR. DAVIS: So I would – I think the increase was known, but had not been announced.

MR. LEARMONTH: All right.

MR. DAVIS: 'Cause it was like September 23, I believe, that the – a couple of days after this deck –

MR. LEARMONTH: Yeah.

MR. DAVIS: – was presented and a couple weeks after the report was written –

MR. LEARMONTH: Yeah.

MR. DAVIS: – when it was announced publicly.

MR. LEARMONTH: Yeah.

But I think the point is that, even with the increase to 7.65, if E&Y knew that at the time, then they're still saying – putting out flashing lights that there are gonna be problems 'cause the contingency may not be adequate.

MR. DAVIS: Yes.

MR. LEARMONTH: So that was a forewarning of further increases beyond the 7.65, is that correct?

MR. DAVIS: Yes, but I – in – but I don't know. You'd have to ask them what information they had, Mr. Learmonth, but they may not have had the details of what level of contingency was built into that 7.65 –

MR. LEARMONTH: Okay.

MR. DAVIS: – when they developed that report.

MR. LEARMONTH: Okay.

Well we will –

MR. DAVIS: They may or may not have. I can't say.

MR. LEARMONTH: Yeah.

Okay, now the next document is at tab – I want you to refer to – is at tab 21. This is Muskrat Falls Project Cabinet Update, September 21, 2015. This would just be the slide deck, is that right?

MR. DAVIS: Yes.

So this would be essentially the same information that's contained in tab 17, 02006, except it's condensed.

MR. LEARMONTH: Yes.

And once again, if you look at page 4 – well, I won't repeat that, but it's still talking about historical information, but you said that that was what –

MS. O'BRIEN: (Inaudible.)

MR. LEARMONTH: – that's what they – Nalcor had –

MR. DAVIS: It was quite normal.

MR. LEARMONTH: – practiced (inaudible) –

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah.

MS. O'BRIEN: (Inaudible) give the exhibit number.

MR. LEARMONTH: Oh, that exhibit number is P-02010.

MR. DAVIS: Yes.

MR. LEARMONTH: Okay.

So that's just a condensed version of the –

MR. DAVIS: Briefing that had been –

MR. LEARMONTH: – briefing that you received.

MR. DAVIS: – provided to me.

MR. LEARMONTH: Yeah.

MR. DAVIS: Yes.

MR. LEARMONTH: Now, on page 17 of this document, P-02010, under – the title is Cost Challenges?

MR. DAVIS: Yes.

MR. LEARMONTH: See at the bottom. It says: "With all major contracts now awarded or bids in hand, significant work completed/underway and majority of materials and supplies procured, remaining cost risk is becoming more and more limited."

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: So, do you remember discussing that with any representatives of Nalcor? Seems to be an assurance that we're sort of at the end of these increases?

MR. DAVIS: That's correct.

So at – as engineering was complete, contracts were let, procurement had taken place, then there was a higher level of reliability on forecast.

MR. LEARMONTH: All right.

And that was consistent with what Mr. Martin had been telling you –

MR. DAVIS: Yes.

MR. LEARMONTH: – at the time?

MR. DAVIS: Yes.

MR. LEARMONTH: Yes.

The next document is Exhibit P-020 – no, P-02012, and that is tab 23 of your documents.

MR. DAVIS: Yes.

MR. LEARMONTH: So I think this is – you left the premiership after the November 30, 2015 election, so this would be the last report that you received before you left the Office of the Premier?

MR. DAVIS: Yes.

MR. LEARMONTH: Is that right?

MR. DAVIS: Yes.

MR. LEARMONTH: And what was your understanding at this time? I mean, we've still got, if we turn to page 2 of that document, P-02012, we're still at seven point – well, you know, 7.65?

MR. DAVIS: Yes.

MR. LEARMONTH: And when you left office – the Office of the Premier, the premier's office – following the November 30, 2015 election, was – had there been any further increase?

MR. DAVIS: No.

MR. LEARMONTH: No.

And when you left the Office of the Premier, did you have any sense as to the schedule – whether the first power would be delayed? Did you – do you have any recollection as to your knowledge on that point?

MR. DAVIS: I'd have to look.

MR. LEARMONTH: – (inaudible) on November 30.

MR. DAVIS: I have to think but I'd have to look –

MR. LEARMONTH: Yeah.

MR. DAVIS: – to be specific, but I think the first power and the –

MR. LEARMONTH: Yeah.

There is a reference to that on page 14 of that document: Risk of Project –

MR. DAVIS: Oh, thank you.

MR. LEARMONTH: – Schedule Delays.

Do you see that at the top?

MR. DAVIS: Yes.

MR. LEARMONTH: Okay.

So, was it – at the time of this report, was it becoming clearer to you that the first power date of 2017 was not achievable?

MR. DAVIS: Yes, I think – I think it may have – I can't recall if it was changed at that point in time or not, but there's reference to it, I believe, in the actual –

MR. LEARMONTH: Yeah.

MR. DAVIS: – Oversight Committee report.

MR. LEARMONTH: Well, in the – the next document is tab 25, *Muskrat Falls Project Oversight Committee; Committee Report – August 2015*.

MR. DAVIS: Yes.

MR. LEARMONTH: And let's see what they have to say. I think there is a reference – 13, page 13 of that document. If you could –

MR. DAVIS: 02014 –

MR. LEARMONTH: Yeah.

MR. DAVIS: – Commissioner.

THE COMMISSIONER: 02014.

MR. LEARMONTH: Do you see that page 13?

MR. DAVIS: Oh, page 13, okay. Yes.

MR. LEARMONTH: It says: “Risk of schedule,” the second bullet down – well, I'll just read it, “Schedule pressures continue to be experienced at the Muskrat Falls Generating Facility's Powerhouse & Intake.”

MR. DAVIS: Yes.

MR. LEARMONTH: “Critical Path for River Diversion in 2016 remains on track. Risk of schedule delays remain high due to powerhouse concrete placement. Critical Path to first power for December 2017 is under review.”

So once again, when you left office, had there been another date, projected –

MR. DAVIS: No, not –

MR. LEARMONTH: – date, or was it just left that it was under review?

MR. DAVIS: It was – my recollection – it was under review, but that essentially tells us it was going to change.

MR. LEARMONTH: All right.

But did you press Mr. Martin for more particulars on that? I mean, it's under review, but presumably, at that point, he would have had some information as to how long the delay would be.

MR. DAVIS: Yeah, I don't think they did and I think there was a number of schedule items that were being reviewed that are highlighted in this report. So if I go to page 25 –

MR. LEARMONTH: Yes.

MR. DAVIS: – on that exhibit, on 02014 –

MR. LEARMONTH: Yes.

MR. DAVIS: – page 25.

MR. LEARMONTH: Yes.

MR. DAVIS: If you look at the right, you'll see a number of Muskrat Falls Generating Facility activities that were all under review.

MR. LEARMONTH: Okay.

MR. DAVIS: Some revised, some not changed and several there that were under review.

MR. LEARMONTH: All right.

There's just some other documents I'm going to refer you to. The – at tab 1 we have Exhibit P-01989. And we already – you already confirmed that Premier Marshall established the Oversight Committee. And so this was just an authorization for an expenditure for the work of Grant – of –

MR. DAVIS: EY.

MR. LEARMONTH: – E&Y.

MR. DAVIS: Yes.

MR. LEARMONTH: And just turn to page 8. And that's Exhibit P-01996, and that's another authorization, is that correct?

MR. DAVIS: 1996? Do you know what tab that is, Sir?

MR. LEARMONTH: Yeah, that's tab 8.

MR. DAVIS: You said page 6?

MR. LEARMONTH: No, tab 8, page 1 of that Exhibit –

MR. DAVIS: Oh, sorry.

MR. LEARMONTH: – P-01996.

MR. DAVIS: Yes.

MR. LEARMONTH: That's a similar document authorizing further expenditures, is that correct?

MR. DAVIS: That's correct, yes.

MR. LEARMONTH: Yeah.

MR. DAVIS: (Inaudible) –

MR. LEARMONTH: Do you know why the Oversight Committee was established?

MR. DAVIS: Well, it was established by Minister Marshall. He can answer that probably better than I can, but I can tell you my perception of it was –

MR. LEARMONTH: Yes.

MR. DAVIS: – in the spring of 2014, we had just come through a period, a significant period in January of loss of power to major parts of the province –

MR. LEARMONTH: Yes.

MR. DAVIS: – known as DarkNL. There was a significant amount of public pressure on power assets, power generation and supply in the province. There was discussion about the project and cost associated to it – behind schedule and – considerable amount of discussion. And also there was public discussions about oversight. And I know Minister Marshall wanted to have a layer of oversight besides what already existed.

So we had the project management team, who were managing the project; you had the board of directors. Nalcor had an internal auditor; Nalcor had their own external auditor. Through the loan guarantee, there was the independent engineer, as well, and he wanted to establish an oversight committee to report – to achieve or find out exactly what the activities were on a regular basis and report directly to government.

And part of that, then, was retaining – so they utilized some of the work, as I mentioned, of the independent engineer and they also retained EY for that function as well. So there were several layers, and he wanted to have a layer of oversight that reported to the premier and to government.

MR. LEARMONTH: Okay.

But – and I know this is – recalls – it requires some hindsight – but in retrospect, would it not have been wise to have an oversight committee before sanction?

MR. DAVIS: You know, you're right. It requires – you know, it's hindsight.

MR. LEARMONTH: Yeah.

MR. DAVIS: But at the time, in the circumstances we faced, you know, we – we're – we operate, too, and government operates in a political world, as well, Mr. Learmonth. And the – and minister – or Premier Marshall, at the day, wanted to make sure that oversight was – there was a level of oversight that provided accurate information to government so they – we were ensured to get the right and accurate information on a timely basis.

MR. LEARMONTH: Okay.

MR. DAVIS: If it should have been done before or after – that's not for me to say.

MR. LEARMONTH: Well, I'm suggesting that, if there had been an oversight committee and more detailed oversight in general, whether it was from a committee or not, then some of the problems that you spoke of – that we spoke of earlier today might have been uncovered before financial close.

MR. DAVIS: Could have been.

MR. LEARMONTH: Yeah.

MR. DAVIS: But – and again, I just go back to the levels of oversight that existed other than the Oversight Committee. And we're still here having this discussion today.

MR. LEARMONTH: Yeah.

But the Oversight Committee was struck in March 2014 –

MR. DAVIS: Yes.

MR. LEARMONTH: – after financial close.

MR. DAVIS: But what –

MR. LEARMONTH: And I'm suggesting to you that the – it would have a good idea to have an Oversight Committee before sanction to – so that the government would be able to keep

informed on budgets and schedules and so on. Do you agree with that?

MR. DAVIS: It's really hard to say, Mr. Learmonth. We know from the Grant Thornton report that there's a reference here to forecast financial cost and the approval for expenditures –

MR. LEARMONTH: Yes.

MR. DAVIS: – that are inconsistent with each other.

MR. LEARMONTH: Yes.

MR. DAVIS: And some of that happened while the Oversight Committee was in place.

MR. LEARMONTH: Yes.

MR. DAVIS: So if the – if you're trying – if you're asking me if – this would have been different, if the Oversight Committee was there in the first place, maybe not. And was there some other level of oversight needed?

MR. LEARMONTH: Yeah.

MR. DAVIS: Well, that could be and I guess that's part of the work that the Commissioner has to do.

MR. LEARMONTH: Yeah.

MR. DAVIS: But as I said earlier, there was a – we had the project management team, there was a board of directors, there was internal auditors, there was external auditors –

MR. LEARMONTH: Right.

MR. DAVIS: – there was the independent engineers hired by Nalcor, but they were to look after – they'd be eyes and ears for the federal government. There was a review on the project done by the federal government before the loan guarantee was done. There's the Auditor General's office. There is – then Ernst & Young was brought in or EY was brought in as well with the Oversight Committee. So would that have changed what we knew earlier? I don't know if it would have.

MR. LEARMONTH: Well, I'll put it to you this way, that I think that in your earlier evidence you've acknowledged that there was a lot of information that government should have received from Nalcor but didn't.

MR. DAVIS: Right.

MR. LEARMONTH: Do you agree with that?

MR. DAVIS: Yes.

MR. LEARMONTH: Okay.

And I'm suggesting to you if there had been stronger oversight before sanction, that that may not have eliminated that problem, but it would have – it would be a good direction to take to reduce the chance of government being kept in the dark on very important points.

MR. DAVIS: I like to think that there's potential for an option there that could've helped –

MR. LEARMONTH: All right.

MR. DAVIS: – know more exactly what this – what the circumstances were at the time that they were.

MR. LEARMONTH: Yeah.

MR. DAVIS: But I don't know what that is. But is there potential something different could have been done? I suppose there is.

MR. LEARMONTH: Yes.

All right, tab 19 of your book of documents, that's Exhibit 02008.

MR. DAVIS: Yes.

MR. LEARMONTH: This is a – Diana Quinton is sending an item to Derrick Dalley, Charles Bown, Tracy English, Paul Morris and others. Do you – does this – this is in the book of documents you received. Does this ring a bell? Can you identify this document? And if so, can you explain – provide some explanation as to why there would be a media tour and site visit to ...?

MR. DAVIS: So this is when Mr. Martin and Nalcor were going to update – do an update on project cost and schedule. And that was scheduled for Wednesday, September, 23, so this is an itinerary for a visit with – looks like with media –

MR. LEARMONTH: Yes.

MR. DAVIS: – for the site visit and tour for the 22nd and 23rd of September. And if you look at the September 23, Mr. Martin was going to provide an update that afternoon.

MR. LEARMONTH: Yeah.

So why would you do – need a media tour at that time to – was it a public relations exercise to soften the blow of the cost increase announcement?

MR. DAVIS: You'd have to ask Mr. Martin why they chose that.

MR. LEARMONTH: Okay.

MR. DAVIS: I don't remember having any input in how –

MR. LEARMONTH: Okay.

MR. DAVIS: – they were going to explain the information or –

MR. LEARMONTH: All right.

MR. DAVIS: – give an update.

MR. LEARMONTH: Tab 30, which is Exhibit P-02010, this is – it's at tab 30 of your book of documents, Mr. Davis.

MR. DAVIS: Yes.

MR. LEARMONTH: It's a release from the Executive Council dated November 2, 2015, entitled: "Strong Governance for Crown Corporations; Premier Announces Changes to Nalcor Energy Governance." Can you – and this was – you were the premier at the time.

THE COMMISSIONER: So this is actually P-02019.

MR. LEARMONTH: Yes.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Did I misidentify it?

THE COMMISSIONER: Yeah, I think you made a mistake –

MR. LEARMONTH: Okay, fair enough. Sorry.

THE COMMISSIONER: – 02010.

MR. LEARMONTH: It is 02019.

So why – what – give us some background on this if you can recall, Mr. Davis.

MR. DAVIS: We had done some work – I gave some thought to this and tried to help reconstruct my memory on it. But we have done some – we had done some work on Nalcor Energy's governance and board of directors. I think it was Knightsbridge Robertson Surette who had been retained to do some work. And we're announcing here on November 2 that we were making changes.

MR. LEARMONTH: Yeah.

So if you turn to page 2 of that exhibit under the heading: Quick facts, it says: "Today, Premier Davis announced changes to the current governance model for Nalcor Energy, the province's energy company including its subsidiary Newfoundland and Labrador Hydro."

Can I infer from that, that the existing governance model was found to be lacking or was inadequate?

MR. DAVIS: My comments are not reflective of the individuals who sat on the board, but I believe that the board needed more resources.

MR. LEARMONTH: Sorry, I missed that.

MR. DAVIS: The board needed more resources and –

MR. LEARMONTH: All right, so this had to do with increasing the member – number of members of the boards of directors?

MR. DAVIS: And also making sure they had the expertise on the board that would benefit their functions.

MR. LEARMONTH: Yeah.

Well, this came up when Professor Guy Holburn was speaking and it has come up through other witnesses that –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – one problem that has been identified is that the Nalcor board did not have any people with, you know, relevant hydroelectric, construction, or management skills and that perhaps – and that that was a deficiency because it would mean that they wouldn't be able to challenge, perhaps, the presentations by management. It would also mean that they wouldn't be able to ask the right questions because they wouldn't know enough about the subject. Do you have any comment on that?

MR. DAVIS: Well, only –

MR. LEARMONTH: I suggest that's a deficiency. I'll put that to you as a suggestion –

MR. DAVIS: Yes. I –

MR. LEARMONTH: – of a deficiency. Do you agree with that?

MR. DAVIS: Well, I certainly understand your comment. And what we wanted to do was ensure that we had the broadest range possible, as you reference, of skills and expertise and knowledge of these types of projects that could benefit the functions of the board. So that could complement the people that were there –

MR. LEARMONTH: Yeah.

MR. DAVIS: – so they could – I think the professor earlier used the terms, test the CEO and the employees of the corporation –

MR. LEARMONTH: Yes.

MR. DAVIS: – and test the work that they were doing. So we wanted to make sure that we could

provide as many of those skills and expertise as possible.

MR. LEARMONTH: Yeah.

MR. DAVIS: So we were going through this process and we wanted to announce it – this is very in the last days, essentially, of our government even though we were – technically, the change didn't happen 'til December. But this was about to be the beginning of the writ period which, essentially, government processes come to a stop during the writ period.

MR. LEARMONTH: Yeah.

MR. DAVIS: But this was a piece of work we wanted to finish up before the –

MR. LEARMONTH: This was a statement of intention but was it ever followed up on? Even to –

MR. DAVIS: Well –

MR. LEARMONTH: – up to today, is there anyone on the board of directors, to your knowledge, with, you know, experience in hydroelectric developments, construction management and so on?

MR. DAVIS: I know the current Premier changed – there were changes to the board and there was some – there's changes to the board since change in government, so I can't speak to the skills and expertise that was there.

This was – this announcement was about the fact that we'd engaged a consultant to identify – which is written; I'm reading right from the document: "An external consultant has been engaged to identify the full suite of skills and experience needed at the board level to meet the current needs of the business and a process has been initiated to identify candidates with the skills required for board appointment."

So that process was not finished until after the election, or it wouldn't have been finished before the election, I should say.

MR. LEARMONTH: All right.

The next document I'd like you to look at is at tab 31, Exhibit P-01977. That's the – I'm sure you've heard about it, the SNC-Lavalin risk report –

MR. DAVIS: Yes.

MR. LEARMONTH: – dated April 2013.

MR. DAVIS: Yes.

MR. LEARMONTH: Well, there's different dates on it; there's April 23, May 11. It was signed off on different dates by different persons.

When did you first become aware of the existence of this report?

MR. DAVIS: On the day that Premier Ball publicly stated that it existed and he had it.

MR. LEARMONTH: Okay, so you had no inkling of it or –

MR. DAVIS: No.

MR. LEARMONTH: – it came as a surprise to you, then, when –

MR. DAVIS: Very much, yes.

MR. LEARMONTH: – it was released by –

MR. DAVIS: Yes.

MR. LEARMONTH: You never heard anything of it.

MR. DAVIS: No, Sir.

MR. LEARMONTH: Okay – up 'til that point.

MR. DAVIS: That's correct.

MR. LEARMONTH: Now, the – at tab 32, there's a document; it's P-02063: Muskrat Falls Rate Mitigation Considerations?

MR. DAVIS: Yes.

MR. LEARMONTH: So what – why at this point, September 20, 2015, was the issue of rate mitigation under consideration by government?

MR. DAVIS: Well, rate mitigation had been a – it’s not the first time it had been discussed. It had been discussed a number of times before this –

MR. LEARMONTH: Yes.

MR. DAVIS: – and with the – this is all around the same period of time when the increase was being announced, that the site tour with the media and disclosure of the re-baselining of the project – all of that happened around the same time.

MR. LEARMONTH: Yes.

MR. DAVIS: And this was a deck presented by the assistant deputy minister of Finance and taxation and fiscal policy to Cabinet regarding rate mitigation and rate smoothing, and it was presented to Cabinet to discuss exactly that.

MR. LEARMONTH: Yeah.

So, it wasn’t – when the project was sanctioned, or even at financial close, I take it there was no consideration given to this because if the project had stayed on budget, there wouldn’t have been any need for rate smoothing. Is that correct?

MR. DAVIS: Well, as the project went on, the price – the cost increased, of course, then rate mitigation became a more significant factor with higher levels.

So, Premier Dunderdale had said publicly that it would be a decision for the government of the day to make on rate mitigation and primarily use of revenue from excess sales, which was talked about a fair bit.

Premier – and she – so she had said we – her position was, it would be the government of the day that would make that decision. Premier Marshall had said that he would apply revenues from excess sales to mitigate rates. I had made a similar comment to him, as he did, as Premier Marshall had done. And, with the increase in costs, we had this presentation on opportunities for rate mitigation, and the direction was given to Department of Finance and Department of Natural Resources to come back to Cabinet with further considerations.

MR. LEARMONTH: Do you remember – well, let’s turn to a document at tab 9, which is Exhibit P-01997.

MR. DAVIS: Yes.

MR. LEARMONTH: And at the bottom of page 1, there’s a reference: “Paul Davis has committed to offset the cost of power bills with the surplus sale of Muskrat Falls power,” et cetera. This is dated May 19, 2015.

Was there any assessment done by government, or to your knowledge, Nalcor, as to how much power – how much in dollars would be generated from surplus sales that would – could be applied for rate mitigation? Did you ever do a calculation or were you aware of – as to whether Nalcor had done any such calculation?

MR. DAVIS: There had been some work done on it, but I can’t tell you what level of analysis had been done at what point in time.

MR. LEARMONTH: All right.

MR. DAVIS: But – so what had been done to that point in time I can’t tell you.

MR. LEARMONTH: All right.

We spoke earlier about problems or issues with the schedule and the first power date of December 2017 or whatever. When – and I understand that you spoke about this schedule issue on a regular basis with Mr. Ed Martin. Is that correct?

MR. DAVIS: Well, anytime Mr. Martin was in to Cabinet, there was – my recollection is that every time he was in there was a fulsome discussion about different aspects of the project.

MR. LEARMONTH: Including schedule?

MR. DAVIS: And schedule – knowing there’s pressures on schedule and cost would be a topic that would be in the forefront –

MR. LEARMONTH: All right.

MR. DAVIS: – (inaudible).

MR. LEARMONTH: Now, did you link problems with schedule, delays in schedule with increase in – increases in cost for the project?

MR. DAVIS: For the most part.

MR. LEARMONTH: You did?

MR. DAVIS: There was one – I think the North Spur discussion was – the delay or the change in schedule on the North Spur was to reduce cost, actually.

MR. LEARMONTH: Yeah.

MR. DAVIS: But, for the most part, if schedule is longer, cost could be higher.

MR. LEARMONTH: So you were aware of that at all times?

MR. DAVIS: Yes.

MR. LEARMONTH: All right.

Those are all the questions I have for you, Mr. Davis. Thank you very much.

MR. DAVIS: (Inaudible.)

THE COMMISSIONER: All right, Province of Newfoundland and Labrador?

UNIDENTIFIED MALE SPEAKER: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy?

MR. SIMMONS: Good afternoon, Mr. Davis. Dan Simmons for Nalcor Energy.

Now, I don't have all the dates when you occupied the different portfolios in my head but, you know, I want to make sure I understand this correctly. The project was sanctioned on December 17, 2012, and at that time, I think, you were Minister of Transportation and Works?

MR. DAVIS: Yes.

MR. SIMMONS: And Premier Dunderdale occupied the premier's office –

MR. DAVIS: (Inaudible.)

MR. SIMMONS: – and Minister Kennedy was minister of Natural Resources?

MR. DAVIS: Yes, I believe that's correct, yes.

MR. SIMMONS: Okay.

So, up until – at the time of sanction, then, as minister of Transportation and Works, did you – you or your department touch the Lower Churchill Project in any way or have any contact with information that was being generated and provided by Nalcor –

MR. DAVIS: I don't think so.

MR. SIMMONS: – concerning the project?

MR. DAVIS: I don't think so, no.

MR. SIMMONS: And in any of the portfolios you'd occupied before that, had you been in a portfolio where anything to do with the Lower Churchill Project fell under your jurisdiction?

MR. DAVIS: No, certainly not at – I don't have any recollection of it, Mr. Simmons.

MR. SIMMONS: Mmm.

MR. DAVIS: I was at Service NL before that. That's a regulatory department, so there may have been some regulatory requirements and permits and that type of thing –

MR. SIMMONS: Right.

MR. DAVIS: – but nothing that I'd be –

MR. SIMMONS: Right.

MR. DAVIS: – aware of, and same as with Transportation and Works.

MR. SIMMONS: Right.

So, at the time of sanction, then, would really your only exposure to information about the project be around the Cabinet table when presentations came up to the level where they were presented to Cabinet?

MR. DAVIS: Yes.

MR. SIMMONS: Right.

So you wouldn't have any – had any contact with anyone from Nalcor about the Lower Churchill Project, other than, say, Mr. Martin – when he presented to Cabinet or if anyone else from Nalcor presented to Cabinet?

MR. DAVIS: I don't think so. As I mentioned earlier, I remember I went to a public meeting in Holyrood one time that –

MR. SIMMONS: Mmm.

MR. DAVIS: – Mr. Bennett was chairing; it was close to my district and that's why I attended there but I –

MR. SIMMONS: Right.

MR. DAVIS: – I don't recall that (inaudible).

MR. SIMMONS: Right. Okay.

So, at the time of sanction, then, you wouldn't have been in a position to know the extent of information that was in the possession or known to officials in either Natural Resources or Finance?

MR. DAVIS: Correct.

MR. SIMMONS: Okay.

So then commercial close, I think, was November 29, 2013, and I believe then you were minister of Child, Youth and Family Services?

MR. DAVIS: Correct.

MR. SIMMONS: I think Ms. Dunderdale was still premier?

MR. DAVIS: Yes.

MR. SIMMONS: And Mr. Dalley was not long in the office of minister of Natural Resources –

MR. DAVIS: I think –

MR. SIMMONS: – at that point?

MR. DAVIS: – he went to Natural Resources the same time I went to Child, Youth and Family Services, which was a short time before then.

MR. SIMMONS: Short time before.

MR. DAVIS: Yes.

MR. SIMMONS: Okay.

So, similarly, at the time of commercial close, then, is it correct that the – your only source of information would have been information that was presented around the Cabinet table and available to you at that level?

MR. DAVIS: Yes.

MR. SIMMONS: Right.

And any knowledge, information, data, reports of any form that were available to and in the possession of people within the Departments of Finance and Natural Resources, unless it came up to the Cabinet level –

MR. DAVIS: Yeah.

MR. SIMMONS: – you wouldn't have been aware?

MR. DAVIS: I think that's fair to say, yes.

MR. SIMMONS: Okay. All right.

So when you became premier, then, which I think was September of 2014, not having had any experience in a portfolio directly related to the Lower Churchill Project, how much knowledge did you have about the project up to that point when you came into the office, and what did you do to inform yourself?

MR. DAVIS: Well, I'd been out of Cabinet – when I came into the premier's office –

MR. SIMMONS: Mmm.

MR. DAVIS: – I'd been out of Cabinet since the 1st of July or 2nd of July.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: So I had been out for a few months and –

MR. SIMMONS: This was during the leadership campaign, was it?

MR. DAVIS: Yes.

MR. SIMMONS: Yes.

MR. DAVIS: I left – I resigned from Cabinet –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – when I entered the leadership –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – and then went back into Cabinet after I became the leader and the premier.

So when we came – when I came into the premier’s office, we had been provided with briefing material by Cabinet Secretariat that – a set of briefing material, you’d have a job to put it on this table.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: So it was a lot of information and a tremendous amount of work to get our head around. And knowing that Minister Dalley had been in the office for some time, then almost a year; I certainly relied on his knowledge and experience much more than my predecessors likely did.

MR. SIMMONS: Thank you.

Now, one of the things you did when you became premier, I think, was you gave mandate letters –

MR. DAVIS: Yes.

MR. SIMMONS: – to your ministers, including to Mr. Dalley, as minister of Natural Resources. So was that something new? Or had that been a practice for some time?

MR. DAVIS: It’s been a practice for premiers to issue mandate letters.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: My mandate letters were made public, and from my knowledge, that’s the first time that was done in the province, so that was new.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: But it wasn’t unusual for premiers to issue mandate letters to ministers.

MR. SIMMONS: Okay.

Was it the practice of your government to issue mandate letters, or something equivalent to it, to either the board, chairs or CEOs of Crown corporations?

MR. DAVIS: No.

MR. SIMMONS: Was that something that had been considered at all?

MR. DAVIS: I don’t recall.

MR. SIMMONS: Okay.

So there was nothing equivalent to a mandate letter, to your knowledge, that had been issued to Nalcor Energy –

MR. DAVIS: Correct.

MR. SIMMONS: – when you were premier –

MR. DAVIS: Correct.

MR. SIMMONS: – or before?

MR. DAVIS: Yes.

MR. SIMMONS: To your knowledge. Okay.

So we’ve heard that – some evidence about the type of communication there was between senior officials in Nalcor Energy and government, and at the level of CEO and premier that there would be direct one-on-one communications meetings from time to time around that.

Were there any protocols, written protocols or any kind of written guidance in place to describe how Nalcor Energy and the people in it should be communicating information to the

government, and what the expectations were about that?

MR. DAVIS: Not that I know of.

MR. SIMMONS: Was there any consideration given, to your knowledge, to putting anything like that in place so that there would be some guidance and mutual understanding about what the expectations were?

MR. DAVIS: No, we didn't. Not that I recall at all, Mr. Simmons.

MR. SIMMONS: Right.

So when you became premier then, what was your expectation about what communication would come from Nalcor Energy and how – and what did you base that expectation on?

MR. DAVIS: Well, as I commented previously, my expectation was the main contact and regular contact with Nalcor would be through the Department of Natural Resources to the minister –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – or the deputy minister.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: And that's how that was conducted. It was primarily – the minister was a regular contact and I – and the deputy minister as well.

MR. SIMMONS: Okay.

So nothing more formal than that, it was really a continuation of the type of communication that had gone on previously, I presume?

MR. DAVIS: I think it might've been a little bit different because –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – both Premier Marshall and Premier Dunderdale both had experience as ministers of Natural Resources.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: So they would've had – I would expect they would've had a more in-depth knowledge of the project than I would've –

MR. SIMMONS: Right.

MR. DAVIS: – coming into the premier's office.

MR. SIMMONS: So much of what you've been asked about here today concerns what was known to you and to your government about changes in cost and changes in schedule on the project. And I'm interested in your comment, if you can provide it, on where we would look – or how we would figure out what the government's expectations were? If you were someone in Nalcor –

MR. DAVIS: Mm-hmm.

MR. SIMMONS: – and you wanted to know what is it we're supposed to be providing and when, what are the rules?

MR. DAVIS: Mm-hmm.

MR. SIMMONS: Can you give me any information about where someone within Nalcor would look to find that?

MR. DAVIS: Well, I don't know where you'd find – I don't know of the existence of rules –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – of communication. What I relied upon was the minister in the department –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – and also the Oversight Committee.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: And the Oversight Committee was engaged to provide regular updates to Cabinet, issue quarterly reports publicly –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – and I believe they also did monthly updates themselves, but they would

report quarterly. So they had communication with Nalcor and they would seek out information through Nalcor and the independent engineer and so on.

MR. SIMMONS: Mm-hmm. Okay.

There was one change in the official announced – publicly announced change in the project cost, in the budget while you were premier.

MR. DAVIS: Mm-hmm.

MR. SIMMONS: That's in September 2015 when it moved from \$6.99 billion, I think, to \$7.65 billion. And you've told us some information about that.

MR. DAVIS: Yes.

MR. SIMMONS: Was there any, even understanding, that you would've had about what the process for communicating information about a budget increase like that would have been? For example, would it, you know, start with Nalcor communicating with officials in the Department of Finance, because there was provincial budget implications if the project costs goes up –

MR. DAVIS: Mm-hmm.

MR. SIMMONS: – and find its way up to the minister, into Cabinet that way and then the premier? Or would you expect that it would have been a communication directly from Nalcor through Mr. Martin, the CEO, to you?

MR. DAVIS: Well, it would be a communication with Cabinet if –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – when the 7.65 was being announced.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: I would expect the department and the minister to have some knowledge of it as I did.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: But the facts and the circumstances would be presented by Nalcor to Cabinet and to the public.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: So it would be Nalcor who would do that.

MR. SIMMONS: Okay.

So there was not a clearly defined process or a channel of communication to follow, step by step, for communicating information about a budget increase through to government. Have I – do I understand that correctly?

MR. DAVIS: I think the process we followed in the fall of 2015 was similar to the process that was followed in June of 2014.

MR. SIMMONS: Okay.

So for communicating information about project costs to the public, whose responsibility was it to communicate to the public if there was going to be an increase in the publicly announced cost? Was that government's –

MR. DAVIS: My view –

MR. SIMMONS: – or Nalcor's?

MR. DAVIS: Nalcor.

MR. SIMMONS: That was Nalcor's.

Did you view that as being something Nalcor could do independently without consulting with government and obtaining government's authorization to do so?

MR. DAVIS: I don't think authorization to do so is probably the way I would look at it. There's responsibility to report the increase to government and also to the public, but the announcement, the process, would be coordinated with government.

MR. SIMMONS: Okay. And, in fact, we know that's what happened in September of 2015.

MR. DAVIS: Absolutely, yes.

MR. SIMMONS: Right, okay.

So I had a couple of questions for you about the commercial close in November of 2013, which was before you were premier, and at that time there were arrangements put in place including putting the original federal loan guarantee in place. So you would've known about that by virtue of being in Cabinet at the time, correct?

MR. DAVIS: Yes.

MR. SIMMONS: How much did you understand about the roles of the different parties at that time? The roles of Nalcor vis-à-vis the federal government and the Government of Newfoundland and Labrador in putting together the arrangements for commercial close and the federal loan guarantee?

MR. DAVIS: I'm not sure I understand what you're asking me.

MR. SIMMONS: Okay.

Did you have an understanding of what role the province played in that, whether the province was a party to negotiations, a party to agreements that were entered into, or purely a bystander to those arrangements?

MR. DAVIS: I know – well, my understanding is there would have been a three-way or a three-party discussion taking place. Now who was at the table and –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – who contributed, how – I can't tell you, but –

MR. SIMMONS: Right.

Do you know which departments of the government of the province would have been involved in and at the table during that process?

MR. DAVIS: I would imagine the Department of Finance, Department of Natural Resources.

MR. SIMMONS: Okay.

But you say, you imagine, so –

MR. DAVIS: But I don't –

MR. SIMMONS: – this is not –

MR. DAVIS: I can't say.

MR. SIMMONS: – something you would have been particularly familiar with at the time.

MR. DAVIS: Right.

MR. SIMMONS: Okay.

So what, if anything, do you know about the type of information that moved from Nalcor to the Department of Natural Resources and to the Department of Finance prior to commercial close?

MR. DAVIS: I can't – I don't any – have any information about that, Sir. And you're talking about 2013, right?

MR. SIMMONS: Right.

MR. DAVIS: Yeah.

MR. SIMMONS: Yeah.

Okay.

Okay, you were shown an email message, it's P-02114. Maybe if we could bring that up, please, Madam Clerk?

And if we can go to the second page first.

MR. DAVIS: 02114.

MR. SIMMONS: I'm sorry, I don't know which tab it is in your book.

MR. DAVIS: Yes, 34 now.

MR. SIMMONS: You may be familiar with it.

MR. DAVIS: 02114, I have it.

MR. SIMMONS: Okay. Yeah.

So this has been identified in your direct examination as a reconciliation of the project cost at the time of sanction, DG3, and what was the then-current FFC, which we understand to be

final forecast cost. And if you scroll up just a tiny bit, Madam Clerk, this is where we see that as of November 2013, there's a final forecast cost listed here of 6.53 billion instead of 6.2 billion.

MR. DAVIS: Yes.

MR. SIMMONS: And you've told us that this is not something that you learned about – so this could not have been something that was talked about around the Cabinet table, we can presume.

MR. DAVIS: I certainly have no recollection of it.

MR. SIMMONS: Right. Okay.

And you would not know whether this number had been disclosed or was known to anyone within Finance or Natural Resources.

MR. DAVIS: Correct.

MR. SIMMONS: Unless it rose to that Cabinet level.

MR. DAVIS: Correct.

MR. SIMMONS: Okay.

Can we go to the first page, please, which is the email message?

Now, Mr. Learmonth had asked you some questions about this.

So, first of all, the message starts out saying: "Please post the attached files to the data room this evening."

Do you know what the data room is?

MR. DAVIS: I don't. I imagine it's an electronic filing system.

MR. SIMMONS: Do you have any idea what the purpose of posting these files to the data room would have been?

MR. DAVIS: I can only imagine. I don't know for certain.

MR. SIMMONS: Okay.

It's addressed to Meg. You wouldn't know who Meg is –

MR. DAVIS: No.

MR. SIMMONS: – and what her role is?

MR. DAVIS: (Inaudible.)

MR. SIMMONS: Okay.

The second paragraph says: "Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH."

So when it says "access given to Canada," do you know who was getting access? Obviously, it's not just the country, it must be some people.

MR. DAVIS: Yes.

MR. SIMMONS: You don't know.

MR. DAVIS: Well, federal government, I would assume.

MR. SIMMONS: Federal government, you'd presume.

Cassels Brock, what was their role?

MR. DAVIS: I don't know, Sir.

MR. SIMMONS: What about Blair Franklin?

MR. DAVIS: I can't speak to their – I can't speak to any of them.

MR. SIMMONS: Okay.

MWH?

MR. DAVIS: MWH – I believe is the – referenced as the independent –

MR. SIMMONS: Okay.

MR. DAVIS: – engineer.

MR. SIMMONS: And then it says: "Do not provide access to NL, BLG and Faskens at this time."

So, NL is obvious.

BLG? Do you know what their role was?

MR. DAVIS: I believe they're a law firm.

MR. SIMMONS: Mm-hmm.

Do you know who they were acting for?

MR. DAVIS: No, I don't know.

MR. SIMMONS: What about Faskens?

MR. DAVIS: No.

MR. SIMMONS: Don't know – okay.

So then you don't know any of the context behind this message?

MR. DAVIS: I saw this last night for the first time.

MR. SIMMONS: All right.

So do you have any understanding of what the purpose of what's being discussed in this message is?

MR. DAVIS: No – do I understand the purpose of the message?

MR. SIMMONS: Yes. What was intended? What was happening here at this time? The context behind it?

MR. DAVIS: There's no way I could know that.

MR. SIMMONS: Okay.

The line that says: "Do not provide access to NL, BLG and Faskens" – continues and says – "at this time."

MR. DAVIS: Mm-hmm.

MR. SIMMONS: So does that indicate to you that there is any intention to not provide the information that's attached to this message to NL? Or may there be other explanations or reasons why it's not being done at this time by those means?

MR. DAVIS: Well, Sir, what I can tell you –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – is that until I prepared to come to this Inquiry –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – and heard or were provided with documents and materials and so on, I was not aware of the \$6.5 billion number –

MR. SIMMONS: Right.

MR. DAVIS: – which is indicated on page 2 of this document.

MR. SIMMONS: Mm-hmm.

MR. DAVIS: And on page 1 of the document, there's a line that says: "Do not provide access to NL...at this time."

MR. SIMMONS: At this time.

MR. DAVIS: It says other things as well.

MR. SIMMONS: Right.

MR. DAVIS: So what that tells me is – and I didn't know about it before now –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: So, to my knowledge – I can't speak for anybody else, but as far – this number has not been provided to me –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – at any point in time, other than preparing for this Inquiry.

MR. SIMMONS: Right.

Without knowing the context behind this message and the full story and who the people are and who the players are, though –

MR. DAVIS: Right.

MR. SIMMONS: – it's not possible for you to draw any conclusions about whether that

information was or was not provided to anyone within the Government of Newfoundland and Labrador. Correct?

MR. DAVIS: I don't know if it's been provided to anyone within the Government of Newfoundland and Labrador. If that's your question, no, I don't know.

MR. SIMMONS: Okay.

All you can say is that you were not aware of it at the time of commercial close, which was in 2013?

MR. DAVIS: Right.

MR. SIMMONS: Right. Okay.

Now, you also mentioned that Ms. Mullaley was the chair, I think, of the Oversight Committee?

MR. DAVIS: Yes.

MR. SIMMONS: And you described how she had reported to you, at times, concerning getting information from Nalcor, I guess, in her role as chair of the Oversight Committee. And if I recall correctly, you'd say that, at that time, you'd understood that it might've been timing issues, information not coming as quickly as you needed or not being in the form that they needed, and so on.

So, can you tell me a little bit more about that – about just exactly what concerns that were expressed by Ms. Mullaley?

MR. DAVIS: I – only what I've already said, Sir.

MR. SIMMONS: Mm-hmm. Yeah.

Did she ever indicate to you that Nalcor ever refused to provide information that Nalcor had and that the Oversight Committee wanted?

MR. DAVIS: No.

MR. SIMMONS: She did not?

MR. DAVIS: No.

MR. SIMMONS: Okay.

In your direct examination, you'd said that much – most of your communication had been with Mr. Martin as CEO, and that you had not had any communication from Mr. Bennett concerning cost or schedule issues or other issues concerning the project, aside from one the meeting you said you went to –

MR. DAVIS: I don't recall that, Sir.

MR. SIMMONS: – in CBS. Right.

MR. DAVIS: Yeah.

MR. SIMMONS: What about Mr. Sturge? Do you know who Derrick Sturge is?

MR. DAVIS: There was – I do, but I remember – there may've been a time when Mr. Martin was accompanied by others at a Cabinet meeting.

MR. SIMMONS: Yep.

MR. DAVIS: But my recollection is that Mr. Martin would lead the discussion.

MR. SIMMONS: Right.

MR. DAVIS: I don't remember who would've been there or what –

MR. SIMMONS: Mm-hmm.

MR. DAVIS: – the role would've been. But it's conceivable he may have had somebody else with him a Cabinet meeting. But he was the primary deliverer. And looking at some of the Cabinet notes on some of the presentations, it would indicate that the CEO presented them.

MR. SIMMONS: Good. Thank you very much.

MR. DAVIS: Okay.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: (Inaudible.)

THE COMMISSIONER: I'm sorry, I didn't hear what you said.

MR. BUDDEN: Sorry.

Are we going to take the afternoon break now?
It's about 10 after 3.

THE COMMISSIONER: It is. Okay. I guess I've been told.

So, we'll take 10 minutes now.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

MS. O'BRIEN: Good afternoon, Commissioner.

Before we begin – before Mr. Budden begins, I am seeking an order to enter a further exhibit. It's Exhibit P-02121. This is a paper that was just provided to me by Dr. Guy Holburn, following his testimony today, a paper he wrote examining the impact of having independent versus political directors on utility strategies. So he felt it may be of interest, and now it's been – well, if you order it so, it will be entered.

THE COMMISSIONER: (Inaudible.)

MS. O'BRIEN: Sorry.

THE COMMISSIONER: So that will be entered as marked. And, Mr. Budden, you're next.

MR. BUDDEN: Good afternoon, Mr. Davis. As you know, my name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition, which, as you probably know as well, is an organization of individuals who, for a number of years now, have been critics of the Muskrat Fall Project.

So I'm going to ask you – I don't have a whole lot to cover today, but I'm going to move around over two or three different areas. And the first is something that Mr. Learmonth has covered, but I want to go into it for a somewhat different purpose.

So I'm going to briefly review your ministerial career. And as I understand it, you were first

elected an MHA in the spring of 2010, served as a backbencher for a little more than a year, into the fall of 2011. And at that point, you were appointed – you entered the Cabinet as minister of Service NL in October of 2011. That's correct, is it?

MR. DAVIS: Yes.

MR. BUDDEN: Okay. Just – what is involved in – I guess, what's the learning curve for becoming a new minister? What does that involve?

MR. DAVIS: Everything. It's pretty steep. Brand new, if you had no previous at it, which I didn't, and – you know, it takes some time to get up to speed in a portfolio. And also, being a first time appointed to Cabinet, it takes some time to get used to the Cabinet process and the – how a department of government functions, and the relationship between the political person, the political lead of the department, versus the bureaucratic lead of the department and how my staff and their staff interact with each other; it takes some time to do.

MR. BUDDEN: Gotcha. So to, I guess, to get to know the key people in the department, to get a handle on the key issues, to get a sense of the material that you have to deal with on a daily basis, all that's going to take at least a matter of some weeks, I would think.

MR. DAVIS: And it would depend on the department and the experience that the minister brings.

MR. BUDDEN: Sure. And you were there for a year, and then you moved on to another department, and that was Transportation, I believe.

MR. DAVIS: Yes.

MR. BUDDEN: And so there would be, I guess, a similar learning curve other than you had already been a minister so you knew what that involved.

MR. DAVIS: Yes.

MR. BUDDEN: Okay.

You were there again for a year and then you moved to CYFS: Child, Youth and Family Services.

MR. DAVIS: Yes.

MR. BUDDEN: And you were there for about seven months, I believe.

MR. DAVIS: Yes.

MR. BUDDEN: And then you were in Health for two months, and then, of course, you resigned to run for the leadership.

MR. DAVIS: Yes.

MR. BUDDEN: Okay.

So by my math, you were in Cabinet for two years and nine months, during which time you served in four different portfolios.

MR. DAVIS: Could be, yes.

MR. BUDDEN: Yeah, that's a – so that's a bit of an extreme case, but we've heard from other of your Cabinet colleagues, and we'll hear from more, and it seems that in that era of the – say the 2010, 2011 to 2015 era – there were a lot of ministers who moved around a lot between portfolios. Would that be fair?

MR. DAVIS: Yes.

MR. BUDDEN: Okay.

And I know in particular, Mr. Kennedy served in, I think, Justice, Finance, Health, Natural Resources and one of those departments twice in less than six years. That would accord with your understanding, approximately.

MR. DAVIS: Yes. I hadn't really thought about it but it could be right, yes.

MR. BUDDEN: Sure.

MR. DAVIS: Sounds right, yeah.

MR. BUDDEN: And Mr. Dalley from a – he'll be testifying tomorrow, but we've seen his statement, and he appears to have served in four different portfolios in about four years.

MR. DAVIS: I thought three, but it could be four, yes.

MR. BUDDEN: Okay.

The a – and when we look at Natural Resources, in particular, from when Mrs. Dunderdale resigned – Ms. Dunderdale in 2010 – to become premier, we have Minister Skinner, Kennedy, Marshall and Dalley all through the next four years, I guess, or five years until the end of your premiership.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: So that key department in this five-year period had four ministers.

MR. DAVIS: Mm-hmm, yeah.

MR. BUDDEN: Okay. So I guess what I get from all that, surely at – if you have that much movement, that many ministers adjusting to key portfolios, and with the learning curve associated with that, I guess my question to you is, to what degree do you think that might have impacted the ability of ministers to master complicated portfolios, particularly Natural Resources.

MR. DAVIS: I think that would depend on the minister, their experience and background and how well they performed in the department. But sometimes those changes are unavoidable. And when you went through the years of 2011, 2015 when there was a lot of changes within the House of Assembly and that had the impact of changes in Cabinet.

MR. BUDDEN: Sure. And this is not so much a case of casting aspersions on anybody, but just as a matter of process or, really, I guess, even of common sense. Surely with that much movement, it must have had some impact on a Cabinet member's ability to exercise appropriate oversight over complex projects. Would you agree with me there?

MR. DAVIS: It would always take time to familiarize yourselves with a portfolio or a new responsibility.

MR. BUDDEN: Sure.

MR. DAVIS: No matter what your experience. It would take some time to do it.

MR. BUDDEN: Sure. Who, within government, would have appointed the directors of Nalcor Energy?

MR. DAVIS: Previous governments.

MR. BUDDEN: Pardon?

MR. DAVIS: Some – the ones that were there?

MR. BUDDEN: I guess (inaudible) –

MR. DAVIS: Well, previous government would have appointed them.

MR. BUDDEN: Perhaps I'll make the question a little better.

MR. DAVIS: Mmm.

MR. BUDDEN: Our understanding is that the premier, the premier's office, would have appointed the directors of Nalcor. Is that your understanding as well?

MR. DAVIS: No, I think it would go through committee of Cabinet. There was a committee of Cabinet known as routine Cabinet who met regularly on the Cabinet schedule who would review such appointments. There's numerous appointments made through government and through Cabinet.

MR. BUDDEN: Sure. So your understanding is that the appointments – okay, well, let's take it this way. You agree they would not have originated with the minister of Natural Resources? Would you agree with me there?

MR. DAVIS: That they would not have originated – I don't know if they did or not.

MR. BUDDEN: Okay. So you really don't know how the directors of Nalcor were appointed. Is that fair to say?

MR. DAVIS: No. You're talking about the directors that were on the board when – during my time? I don't know how they were appointed, if that's what you're asking me, no.

MR. BUDDEN: That is what I was asking.

MR. DAVIS: Yeah.

MR. BUDDEN: Okay, fair enough.

MR. DAVIS: I don't know how they were appointed.

MR. BUDDEN: And during your period as premier, what appointments to the board of Nalcor were you personally involved in?

MR. DAVIS: I didn't make any. The only change on the board was making Mr. Marshall the permanent chair instead of interim.

MR. BUDDEN: Okay. With respect to dealings with Mr. Martin, you have discussed how these briefings would occur. He would come into your office and meetings would happen with – Mr. Brown would be there sometimes, Ms. Mullaley other times and so forth. Would the minister of Natural Resources always be present at those meetings, sometimes be present or do you simply not recall?

MR. DAVIS: I'd say sometimes. I can't say he was always there but he was certainly there –

MR. BUDDEN: Okay.

MR. DAVIS: – at times.

MR. BUDDEN: Would it be fair to say that it was the premier's office that had the direct dealings with Mr. Martin rather than the minister of Natural Resources?

MR. DAVIS: No, I think his – in – during my time as premier, his contact with Mr. Martin would have been much more frequent and regular than mine.

MR. BUDDEN: Okay.

That's your understanding?

MR. DAVIS: Yes.

MR. BUDDEN: Okay.

And, again, during your 14 months or so as premier, how many of these meetings with Mr.

Martin would have occurred? The ones that you had in your office?

MR. DAVIS: Small number. Maybe three or four and I was contemplating that information coming here and I can't give you a specific number, but there was maybe three or four.

MR. BUDDEN: Okay.

MR. DAVIS: And, again, that included Mr. Martin briefing me – my staff – prior to a Cabinet meeting where he was presenting to Cabinet the same information.

MR. BUDDEN: Okay.

Were all your meetings with Mr. Martin meetings of that nature where he would come in and give you a bit of a pre-briefing?

MR. DAVIS: No, I think I had one where I had a general discussion with him –

MR. BUDDEN: Okay.

MR. DAVIS: – other than that. Yeah.

MR. BUDDEN: Otherwise they were all of this pre-briefing nature?

MR. DAVIS: And, again, I'm trying to reconstruct my memory, Sir, so I'm – but my recollection is, I think I've – other than Cabinet meeting preparation, there, you know, I think there was one; there might have been a couple.

MR. BUDDEN: Sure.

And your understanding, again, is that Mr. Dalley would have met with Mr. Martin on a more frequent basis.

MR. DAVIS: Absolutely.

MR. BUDDEN: Okay.

When the reports from Mr. Martin, or for that matter from the Oversight Committee, were presented to Cabinet, who would lead the discussion? Who would present the paper and so forth?

MR. DAVIS: I think, in reviewing these documents today, it refreshed me – my memory that it was the chair who was the clerk of the Executive Council.

MR. BUDDEN: Okay.

MR. DAVIS: I think she did all of them.

MR. BUDDEN: Okay.

Perhaps we could call up Exhibit 00395, Madam Clerk? What this is, Mr. Martin – I'm not sure if you have it in front of you in your book. You may because I know that similar documents were referred to by Mr. Learmonth.

UNIDENTIFIED MALE SPEAKER: I don't think he has that one.

MR. BUDDEN: Okay, sure.

What this is, is an email from Thomas Clift who, as you probably know, was one of the directors of Nalcor from around 2006 right through until 2016. So, he was there the whole time you were in government. He was chair, I believe, of the governance board of Nalcor.

And this is an email he sent in 2012 to Robert Thompson, who was clerk of the Privy Council, I believe, at that time. And the key part – if we can scroll down to the second page, Madam Clerk, I'll read you the part that I'm most interested in. And this would be somewhat familiar to you from some of Mr. Learmonth's questions.

So, this is Mr. Clift writing Mr. Thompson: "In spite of the numerous requests that we have made of the previous and current administration, we are still really short of Board members. If you include Ed Martin, we have 5 members, without him we are relying on 4 individuals (each of whom are quite busy in their professional lives), to fill the various Board committees and at the same time provide governance on what is arguably the most important file/project which this government has embarked upon for quite some time."

And this is the part that I wish to emphasize coming up, Mr. Davis: "Our Board would

benefit greatly from the addition of individuals with large-scale engineering project experience, international project experience, labour relations experience and additional finance or accounting experience. In addition, we would benefit greatly from the addition of an individual with connections to Labrador. At the present time (in all cases) our committees are minimally stocked – as is our Board. I recall a situation recently where I had to get up at 4:30 a.m., while travelling (in California) and attend a 5 hour meeting (via phone), so that the meeting could proceed. Others members can relay similar experiences.”

So, the first part of that about the low number of members – that was addressed not long after that with the appointment of additional members. It's the second part that I wish to focus your attention on, Mr. Davis, and that is the part about the board – through Mr. Clift – having for years, apparently at this point, been crying out for the additional – the addition of certain types of expertise.

At what point did you become aware that the board felt the need to be supplemented in this fashion?

MR. DAVIS: I don't recall when I first became aware of that.

MR. BUDDEN: Okay.

I take it from the exhibit – I believe it was 2019 – that Mr. Learmonth discussed with you, which was the press release that was dated just before the writ was dropped in 2015. As I read that exhibit, you're essentially – your government is announcing an intention to add this expertise to the board.

MR. DAVIS: Yes.

MR. BUDDEN: So, I take it, certainly by September 2015, your government, at least, was aware and had committed to addressing this shortfall. Do you know how long before that, perhaps, you would have become aware?

MR. DAVIS: No, I can't say how long before that, but I do know that firms like Knightsbridge

Robertson Surette, who I believe were the consultant who were retained on this, that I know the work they do can take a considerable amount of time. And when I say considerable amount of time, it could take months to do that.

So, I anticipate from reading this – and I don't recollect specifically – but I anticipate this would have been a piece of work that had been ongoing through my office and probably the department as well for some time.

MR. BUDDEN: Sure.

You would agree – and you can look at it again, if you wish – but I would suggest the tone of that email from 2012 is really quite urgent in that Mr. Clift, of the board, is really saying: Look, we really need this expertise. We're really stretched very thin.

If you had become aware of that, what would your reaction have been?

MR. DAVIS: I don't know if I can – if I had been aware of that in 2014 or 2015, or –

MR. BUDDEN: Well let's say the – you weren't the minister of Natural Resources, I concede that.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: But let's say at the moment you became premier you were made aware of that, I guess, that call for help, what would you have done? How would you have responded to that knowledge?

MR. DAVIS: I really wouldn't – I'd be trying to guess at – without considering the matter any further or how we would deal with it or having any discussions on it, it'd be hard for me to say at this point in time.

MR. BUDDEN: Okay.

But you do acknowledge that, certainly, government at the highest levels was aware from 2012 and apparently had been aware for some years that the board itself felt quite under-resourced.

MR. DAVIS: According to the contents of that –

MR. BUDDEN: Okay.

MR. DAVIS: – communication, yeah.

MR. BUDDEN: And you're not aware of any attempts before your own in September 2015 to address those specific needs that the board was asking to have filled?

MR. DAVIS: No, and I probably wouldn't have. Those types of appointments for boards occur in government. Like I said, there's a routine committee of Cabinet that is routinely approving these types of appointments or considering these types of appointments and options and processing them and so on. So, that's an ongoing function of government.

MR. BUDDEN: Sure.

Nalcor, however, is a bit of a special case, I would suggest. As Mr. Clift says, this is the largest project that Newfoundland is taking on and the consequences are such that here we are now in a public Inquiry.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: So I would suggest to you that perhaps Nalcor requires, perhaps, a little bit of extra attention when a need of this sort is brought forward. Would you agree with me?

MR. DAVIS: Yeah, the – obviously the project's of significant importance and to the province, the people of the province, the implications are significant. So, it's certainly an important project and it's important to have the right resources that are attached to it and associated to it, absolutely.

MR. BUDDEN: And the board, at least, clearly felt that as a board they did not have the right resources. I would suggest to you that's the only sensible reading of that email, is –

MR. DAVIS: Certainly – they certainly – that's certainly the message there, yes.

MR. BUDDEN: Okay.

Would you concede that at some level this is a failure of governance not to have responded as the board was requesting in that instance?

MR. DAVIS: I don't know what action – I can't speak to what action may have been taken in response to that email. So I don't know if I can appropriately – I'd be surmising to answer your question.

MR. BUDDEN: Okay.

Mr. Clift testified before this Inquiry on October 15, as did three other board members. And I'll read you a quote I read yesterday to another witness. This is on page 32. And Ms. O'Brien asked him a question: Did you ever get to the point where you were on the board of directors when you were getting appointments that fit the criteria that you were looking for? And Mr. Clift said: No.

So I would suggest to you that, at least from Mr. Clift's perspective – which wasn't challenged when he gave evidence – that those needs were never met, at least to –

MR. DAVIS: Mm-hmm.

MR. BUDDEN: – the point of his resignation in 2016.

So with that additional information, what concerns are you left with?

MR. DAVIS: With the information that they weren't addressed, you mean?

MR. BUDDEN: Yes.

MR. DAVIS: I'm just not sure what it is you're asking me to provide you.

MR. BUDDEN: I guess what I'm saying is that here you – again, you have the board, the board is saying: We need this expertise. Government simply doesn't respond until you do or at least attempt to do – as the, you know, in the last days of your government.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: And I would suggest to you that in the result, that left the board without some very important oversight skills.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: Would you agree with that?

MR. DAVIS: Well, I obviously believed that there was benefit to expanding on the skill and expertise on the board.

MR. BUDDEN: Okay.

But you cannot right now recall the process that led you to that belief and led you to act on it at the very end of your term?

MR. DAVIS: Yeah, I can't tell you what triggered it, but certainly we took steps to provide additions to the board.

MR. BUDDEN: Okay.

I would suggest, with respect, that you announced steps, but you didn't actually take any steps.

MR. DAVIS: We – we obtained the services of a consultant – that's referenced there in the November 2 announcement – who was engaged to identify the full suite of skills and experience – I'm reading right from the release – needed at the board level to meet the current needs. And that individuals will be identified by an independent group using best practice matrix approach identified by the consultant for assessing qualifications, making recommendations to the board of directors and the provincial government.

So we were taking those steps. And we had reached a point where we were reviewing and sought outside expertise to understand what skills we'd best benefit from on the board.

MR. BUDDEN: But your board members had been telling you this since 2008.

MR. DAVIS: Yes. But – well – yes, they were telling the government that – yes.

MR. BUDDEN: Not you obviously, but government.

MR. DAVIS: Yes. Is that – you're sure – that email was 2008? Is that what you're telling me?

MR. BUDDEN: No, but it – it's from 2012 but he refers that since 2008 –

MR. DAVIS: Okay.

MR. BUDDEN: – that they'd been making these requests.

MR. DAVIS: Okay.

MR. BUDDEN: Okay.

So just to sum up before I move into my next brief line of questioning.

So when you became premier, you essentially – you inherited the Muskrat Falls Project management team – the team of Mr. Martin and company – they're already in place when you stepped in.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: You inherited, for the most part, the board of directors other than Mr. Marshall perhaps being confirmed as chair. And you also inherited the Oversight Committee.

MR. DAVIS: Yes.

MR. BUDDEN: The Muskrat Falls Oversight Committee.

MR. DAVIS: Yes.

MR. BUDDEN: So all of that was in place, whether it was effective or not.

MR. DAVIS: Yes.

MR. BUDDEN: It was all in place, when you got into a position where you could change those functions if you chose to.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: Those agencies.

MR. DAVIS: Yes.

MR. BUDDEN: I guess what a – so we have the Oversight Committee, which says – we have heard Mr. Marshall set up – which was a committee, I would suggest, of government, of senior civil servants.

And were you aware that there was nobody on that committee who really had any kind of training or background or experience in a large scale engineering project management? Anything of the – anything remotely similar to Muskrat Falls?

MR. DAVIS: I don't – I don't necessarily agree with that from the perspective of EY and their major capital projects practice that we're supporting the efforts of the Oversight Committee. And also, the – they were working in concert with the independent engineer. So was there a person on the committee with those expertises? No, but, I would suggest, through the independent engineer and also EY's expertise, that some of those expertises were included or available to the committee.

MR. BUDDEN: Okay.

So let's put it this way. You obviously were aware – or at least I presume you are aware – there's nobody on the committee itself who had that kind of training or experience.

MR. DAVIS: Yes. So – I've heard discussed in recent days, yes.

MR. BUDDEN: Sure, were you aware at the time?

MR. DAVIS: I don't know if I actually reflected on it at the time that that particular expertise wasn't actually a member of the board.

MR. BUDDEN: Okay.

And you just made those comments about EY and so forth. Was that something that you now realize, I guess, with the benefit of preparing for this Inquiry? Or were – at the time, did you have a knowledge, where you're comforted by the fact that these other agencies were there supporting the Oversight Committee.

MR. DAVIS: Well, I knew then that the independent engineer had worked with them,

and they'd done site visits together, and they'd had utilized and shared information – those types of things were happening working together. And I knew then that EY was an important part of the work the Oversight Committee was doing.

MR. BUDDEN: Okay.

I guess I would put it this way: I would suggest to you that there's nobody directly answerable to government in the sense that nobody in the civil service, nobody in the board of directors, nobody on the Oversight Committee who had that kind of knowledge – the large-site project management knowledge or related fields of knowledge – to critically examine what Nalcor was telling you guys. That Nalcor's coming to you and saying: Look, this is what's happening with Astaldi and so forth. I'd suggest to you that there's nobody within government itself who really had the skill set to critically challenge Nalcor on those assertions.

Would you agree with me or would you disagree with that?

MR. DAVIS: I – if I – I can't disagree with you on it 'cause I don't – I don't offhand know of those skill sets within the public service.

MR. BUDDEN: Okay.

I would suggest to you that subsequent to your term of government, the Oversight Committee was supplemented by individuals with all that kind of experience.

Is that something that should have been done during your term as premier?

MR. DAVIS: I – you know, that's difficult for me to answer as well – new government takes a different approach. At the time, I was satisfied to that fact that the Oversight Committee was in place as developed by Minister Marshall. I had a level of comfort knowing they had the expertise of the independent engineer working in concert with them. They had EY with their major capital projects practice – I think that's how they refer to it – which, I think, speaks to the experience or expertise of those types of projects that were working with the Oversight Committee.

MR. BUDDEN: Okay. What –

MR. DAVIS: So – okay.

MR. BUDDEN: Sorry, I interrupted you.

MR. DAVIS: No – I was going to say – so, some of that skill set had existed there with the committee before that, but –

MR. BUDDEN: This was available to the committee – you’re suggesting.

MR. DAVIS: Yes.

MR. BUDDEN: Okay.

I’m going to ask you – I guess my last few questions are really about your dealings with Mr. Martin directly. And from reading your interview, there’s a couple of quotes here that, sort of, stood out for me and I’m looking at – and you don’t have it in front of you – but I can put it to you if you wish.

At page 15, there is a discussion around Astaldi and what Mr. Martin was telling you – and you said something – and this is actually a direct quote – you said: Mr. Learmonth, I honestly believed that Mr. Martin and Nalcor honestly believed that Astaldi was going to reach a level of production that would keep them on schedule.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: So, do you remember saying that?

MR. DAVIS: Yes.

MR. BUDDEN: So –

MR. DAVIS: I made the same comment here earlier today.

MR. BUDDEN: Pardon?

MR. DAVIS: I think I made the same comment here earlier today.

MR. BUDDEN: I believe you did. Yes.

And, I guess, what I suggest to you that, in retrospect and having read particularly that

quote from page 12 of the report, do you now believe that Mr. Martin had misled you in those meetings?

MR. DAVIS: If Mr. Martin, himself, knew everything that’s in this report, then we obviously didn’t know what Mr. Martin knew.

MR. BUDDEN: Okay.

So, what do you mean by that? If – let’s assume –

MR. DAVIS: Well –

MR. BUDDEN: – he was familiar as a member of the project management team with the material there on page 12 of the Grant Thornton Report. I’m asking you to assume that.

MR. DAVIS: Yeah. So what’s – sorry, what’s the question?

MR. BUDDEN: My question was: If Mr. Martin knew that information there on page 12, then –

MR. DAVIS: Right.

MR. BUDDEN: – I’d suggest to you – let’s assume – we’ll hear from him, but let’s assume he did.

MR. DAVIS: Yes.

MR. BUDDEN: I would suggest to you or I’m asking you: Do you believe Mr. Martin misled you?

MR. DAVIS: If Mr. Martin knew that – let me put it this way, if Mr. Martin knew – and maybe I might be better to go to page 18 or 19 –

MR. BUDDEN: Nineteen, I believe –

MR. DAVIS: Page 19?

MR. BUDDEN: – is probably the one you’re looking for.

MR. DAVIS: Page 19?

MR. BUDDEN: Carry on.

MR. DAVIS: (Inaudible.)

MR. BUDDEN: I believe. Yeah, page 12 is that long quote.

THE COMMISSIONER: Well, let's bring up the exhibit then –

MR. BUDDEN: Sure.

THE COMMISSIONER: – for the Grant Thornton report, which is ...?

MR. BUDDEN: 01971?

MS. O'BRIEN: 01677.

MR. BUDDEN: 01671.

THE COMMISSIONER: 01671 – P-01671?

UNIDENTIFIED FEMALE SPEAKER: 01677.

MR. BUDDEN: The particular quote I was thinking about was on page 12, Mr. Davis, but there's no –

MS. O'BRIEN: 01677.

MR. DAVIS: So, I guess, in – to answer your question, Sir, in the general sense, if there was critical information on the cost of the project that Mr. Martin or Nalcor had that wasn't shared with government, then it should've been.

MR. BUDDEN: Okay.

And Mr. Martin, certainly, would've had the opportunity to share that information with you had he chose to, I would suggest.

MR. DAVIS: I think so, yes.

MR. BUDDEN: Okay, you met with him. You asked him questions.

MR. DAVIS: He came to Cabinet.

MR. BUDDEN: Okay.

MR. DAVIS: Yeah.

MR. BUDDEN: I guess what I'm wondering if something –

MR. DAVIS: But this information now that you're referring to was before my time as premier. So he wouldn't have come met with me back then to share that information with me.

MR. BUDDEN: That's fair enough, but you were meeting with him, and, certainly, what you took away from those meetings, I would suggest, was that the project was, generally speaking, on time and – so it's, generally speaking, on schedule and, generally speaking, the costs were in line with what was being projected.

MR. DAVIS: Yes. We also knew there was pressure on schedule and cost.

MR. BUDDEN: Yes.

MR. DAVIS: But the numbers that I discussed earlier, 6.2 to 6.9 to 7.65, were the numbers we knew of them at that time.

MR. BUDDEN: Okay.

Again, at page 28 of your interview, I'll just read you a little brief excerpt – and I'll give it to you to look at it if you wish. But you say in response to Mr. Learmonth: If Nalcor had other numbers and new estimates different from what had been communicated to us they had a responsibility to share that with government. And later you say that it hadn't been shared by government, and you stand by that here today?

MR. DAVIS: Sorry, I got the quote. I'm sorry, I missed the second part of your – I got the quote on page 28.

MR. BUDDEN: Yes.

MR. DAVIS: Yeah, if Nalcor had other numbers and new estimates different from what had been communicated to us, they had a responsibility to share with government, yes.

MR. BUDDEN: Yes. And I guess my question to you was: Do you believe that there was that information that was not shared with government during your tenure as premier?

MR. DAVIS: According to the Grant Thornton report there was.

MR. BUDDEN: Okay.

I guess the last question, too, I have for you, you – obviously, before your political career you were a police officer for your career. At these meetings Joe Brown was also sitting in, another police officer.

MR. DAVIS: Mmm.

MR. BUDDEN: So you're – clearly, you have training and experience with questioning people, with getting information out of people, getting the truth out of people, discerning when you're being misled perhaps.

MR. DAVIS: Mm-hmm.

MR. BUDDEN: And you had no sense at all that perhaps Mr. Martin was holding information back, was not being totally forthright with you?

MR. DAVIS: Correct.

MR. BUDDEN: Okay, I'm – and you had no sense at all that that was the case?

MR. DAVIS: Correct.

MR. BUDDEN: Okay.

Do you believe that you should have pushed harder, perhaps, to ask more critical questions, questioned him longer? Do you think it was within your power to find this out, Mr. Davis?

MR. DAVIS: I don't think it's fair to try and draw a parallel between what interviews I would have done as a police officer in the course of an investigation or investigating an incident or circumstance, to meeting with the CEO of a Crown corporation. I'm not – I just want to point out I don't think it's a fair comparison or parallel to try to draw.

We met with Mr. Martin on several occasions. I sat in Cabinet with him while I was premier and before I was premier. I listened to his presentations, the information he had and heard the exchanges and he was very confident, very clear in his information. He was always able to provide assistance and responses to concerns and questions and he did it very well.

MR. BUDDEN: Okay.

There were red flags, however, you would agree? I would suggest there were certain red flags. You know what I mean by a red flag, I assume? A warning sign –

MR. DAVIS: I know what a red flag is, yes.

MR. BUDDEN: Okay, fair enough. In the metaphorical sense. What I'm suggesting to you, Ms. Mullaley was saying to you, look, you know, we're having delays getting this report out of Nalcor. As a consequence, the Oversight Committee reports were a bit late getting to you. There was the issues around the powerhouse delays and so forth. Did any of that perhaps – or should any of that perhaps triggered you that there was more to this than was being told to you?

MR. DAVIS: There was – you know, I was always concerned. I just didn't accept information and just be accepting of it without – and I don't think anyone in Cabinet did without – and Cabinet collectively, without asking questions and seeking more information and clarification, and those types of things you do when you're entered in the discussion and the information is being provided to you.

We asked lots of question, got lots of information and, as I said, Mr. Martin was always very good to respond to that. Ms. Mullaley's expression to me, as I recollect, was: How long before we get the oversight report? I'm waiting on information from Nalcor. It was never a refusal. It was never any information to me that they refused to provide it, but an indication that it was sometimes difficult or slow getting responses from them.

MR. BUDDEN: Sure.

I guess my last question is, you were premier for 14 months, a fairly crucial 14 months in the life of this project. What responsibility, if any, do you feel that you as an individual bear for the cost and scheduling overruns?

MR. DAVIS: Well, Sir, I can tell you, you know, the project was well underway when I became premier. I had an expectation from anybody providing information to government, especially a CEO of a Crown corporation, from anybody involved in a project that they be up

front and forthright and accurate and complete and honest in the information that was being provided. And I accepted that information, as we should.

They're leading a Crown corporation. We should be able to trust in the information that they're providing to government. And in knowing that they had their internal auditors, they had external auditors that were overseeing their operations and the work that they were doing, they had the – the federal government had reviewed the project. There was an independent engineer as a result of the partnership with the Government of Canada on it as well. And then with Minister Marshall adding an Oversight Committee, with Ernst & Young, with major capital projects experience and supporting them as well, you expect you're getting the right information.

And I'm not sure what else we should have been done. Did I sit around, you know, rubbing my hands or saying I think they're all – there's all – they're all in cahoots or there's something missing here? Then when you're operating and you're a government, there has to be a level of acceptance and trust that occurs as well. And, obviously, we never got the – according to the Grant Thornton, we never got information, or the information we had wasn't always the current information that Nalcor had so ...

MR. BUDDEN: But you would agree, however, that acceptance and trust has to be balanced with oversight? You don't take issue with that?

MR. DAVIS: Oh – that's why there was internal auditing and external auditing and the independent engineer and EY, the Auditor General. There was a board of directors, there was a project management team – more than one in a team as well. There was Department of Natural Resources; there was Department of Finance, all who had eyes and hands on the project to some extent.

MR. BUDDEN: Okay.

No further questions. Thank you.

MR. DAVIS: Thank you.

THE COMMISSIONER: Thank you.

Edmund Martin?

MR. SMITH: Good afternoon. Harold Smith for Ed Martin.

MR. DAVIS: Mr. Smith.

MR. SMITH: Do you know or do you recall why Muskrat Falls Project was entered upon or why they – why it was chosen as a project to create electricity? Do you recall why?

MR. DAVIS: Yes, and it's laid out in some of the documents we referred to earlier.

MR. SMITH: Okay.

And what was the reason?

MR. DAVIS: Well, there was a number of reasons. First of all, we needed power; we needed to deal with an aging piece of infrastructure, crucial piece of infrastructure in Holyrood, and we had an increasing demand for power.

MR. SMITH: Okay.

And do you know what the foundation of the decision was in respect of the legislation of least-cost option?

MR. DAVIS: I don't know what it is you're asking, Sir.

MR. SMITH: Under legislation, there is a requirement for the government, or effectively Nalcor –

MR. DAVIS: Yeah.

MR. SMITH: – to look for the least-cost option –

MR. DAVIS: Yes.

MR. SMITH: – for to produce the power that's required.

MR. DAVIS: Right.

MR. SMITH: And do you know how they went about determining least-cost option?

MR. DAVIS: How they landed on Muskrat Falls –

MR. SMITH: Yes.

MR. DAVIS: – as the least-cost option? There was –

MR. SMITH: Yes.

MR. DAVIS: – a number of things that took place. There was options that – there were other options that were considered; there was analysis done. My understanding is work on Muskrat Falls Project had gone on in some aspects for probably 30 years, and there was other options considered as well and Muskrat Falls was considered to be the least-cost option.

MR. SMITH: Do you understand what cumulative present value –

MR. DAVIS: Present worth.

MR. SMITH: – or present worth –

MR. DAVIS: Present worth. Yeah.

MR. SMITH: – is?

MR. DAVIS: Mmm.

MR. SMITH: Do you know what that is?

MR. DAVIS: Mm-hmm.

MR. SMITH: And do you know if that played any part in the decision-making to proceed with the Muskrat Falls option as opposed to other options that were on the table?

MR. DAVIS: Yeah, that's part of it. Yup.

MR. SMITH: That was part of it.

MR. DAVIS: Yes.

MR. SMITH: Do you know –

MR. DAVIS: Of course the difference in burning oil –

MR. SMITH: Yup.

MR. DAVIS: – and paying off your own asset is a – was a consideration –

MR. SMITH: Yeah, okay.

MR. DAVIS: – and the value of that asset.

MR. SMITH: So there were effectively some benefits over and above just the calculation of the cumulative present value?

MR. DAVIS: Absolutely, yes.

MR. SMITH: Or I think it's worth.

MR. DAVIS: Worth.

MR. SMITH: I keep saying –

MR. DAVIS: CPW.

MR. SMITH: – value, but it's worth.

MR. DAVIS: Yeah, cumulative present value – worth.

MR. SMITH: CPW.

MR. DAVIS: Yes.

MR. SMITH: Now, you indicated that, in relation to the Grant Thornton Report, which is P-01677, at page 12, you were not made aware of the conclusion of Grant Thornton – (inaudible) you know, realistically hadn't even been made yet, but the findings that the project had exhausted the contingent amount – tactical risk –

MR. DAVIS: Yeah.

MR. SMITH: – amount and exceeded that by, I think it was, 200 and –

MR. DAVIS: Thirty.

MR. SMITH: – 30 million. My question to you is that you felt that if that had been known, you would had re-evaluated – you would have re-evaluated the project.

But do you know what goes into the cumulative present worth –

MR. DAVIS: Mm-hmm.

MR. SMITH: – calculation? Do you know what

–

MR. DAVIS: I –

MR. SMITH: – what types of things go into that?

MR. DAVIS: I have some idea of the complexities of it.

MR. SMITH: Okay.

One – but I'll point out to you that one of the things that goes into it is the financing cost that goes into the cumulative present worth calculation, and at the time – this is April through November – it was known to Nalcor that they would save over \$300 million in interest charges.

MR. DAVIS: Yes.

MR. SMITH: Okay?

If you insert \$300-million present value into the equation against the \$230 million that's suggested as overage – and that would have a – also a current value as opposed to purely \$230 million – the cumulative present worth appears to be balanced. In other words, no real change over what was sanctioned in December of 2012. Would that alter your – if that set of circumstances is correct, would that alter your view as to whether or not the project had to be re-evaluated when it was still \$2.4-billion better than the other option?

MR. DAVIS: The only – my first thought on that, Mr. Smith, is that the \$300-million reduced cost on financing would have come with the loan guarantee in December 2013, I believe. So if I'm reading this properly, this was April 2013, so it may have been before –

MR. SMITH: Financial loan guarantee, I believe, was actually before December. The –

MR. DAVIS: (Inaudible.)

MR. SMITH: – closing was in December.

MR. DAVIS: Yeah, but if those – if that lines up, then there would've been a \$300 million – I think Mr. Martin referred to it as an offset is –

MR. SMITH: Right.

MR. DAVIS: – how he referred to it.

MR. SMITH: That's how we referred to it, didn't he?

MR. DAVIS: Yes.

MR. SMITH: Yeah. It was an offset.

MR. DAVIS: Yes.

MR. SMITH: So as far as the decision-making of governments up to sanction, based upon a cumulative present worth difference of \$2.4 billion, there really wasn't much difference by the time you got to April through November. There was an offset.

MR. DAVIS: The \$300 million is an offset, yes.

MR. SMITH: Right.

MR. DAVIS: Yeah.

MR. SMITH: Now, when I look at another aspect of the criticism that was levelled by Grant Thornton, they criticized the difference between the projected cost versus finding an AFE for it. And I'm curious as to whether or not you're familiar with whether there's a difference between the projected cost and what would necessarily go in an AFE.

MR. DAVIS: I've never heard or never referenced – don't recall referring to or assessing the AFE, the approval for expenditure, prior to reading this report.

MR. SMITH: Okay.

So government – and when you were given, I guess, the deck we've been talking about – which is August 15 deck, P-02006 – that that deck, as I understand it, was used to support a change in the AFE. And I understood your evidence to be that –

MR. DAVIS: Right.

MR. SMITH: – Nalcor would not go to the public and announce a different price for the project without having gone through government and the processes of getting government understanding of it. Whether they agreed with it or not, they would get the understanding that –

MR. DAVIS: Right.

MR. SMITH: – that would be the case, okay?

MR. DAVIS: Yes.

So when I look at – if I look at an AFE, my understanding is that – an approval for expenditure. Is that your understanding?

MR. DAVIS: Yes.

MR. SMITH: Okay. And a projected cost is just that, a projected cost.

MR. DAVIS: Mm-hmm.

MR. SMITH: It's not necessarily certain, is it?

MR. SMITH: It's not necessarily certain, is it?

MR. DAVIS: The projected cost is uncertain?

MR. SMITH: Yeah.

MR. DAVIS: That's correct.

MR. SMITH: They're not certain?

MR. DAVIS: I would say that's right, yeah.

MR. SMITH: Right.

So and also my understanding is that projected costs have a number of unknowns or uncertainties within them – within the projected costs. For example, they may be under negotiation for one of the contracts that's in the projected cost, but under negotiation so you don't know exactly what the actual cost might be of that particular contract.

MR. DAVIS: Right.

MR. SMITH: You would also have a situation where, it's my understanding, that you – there

might be a management reserve included in the projected costs.

MR. DAVIS: Yes.

MR. SMITH: Okay?

Also, a little unknown, because the very fact that it's a management reserve indicates that it's not necessarily certain, it's just projected.

MR. DAVIS: Yes.

MR. SMITH: So why would you match up your projected costs automatically to an AFE until you knew with some certainty that those were costs that are actually going to be expended?

MR. DAVIS: Well, I'd say, Mr. Smith, it's not a good place to be if you're communicating to the public that the project is going to cost X number of billions of dollars if there is a forecast expectation it's going to cost more.

MR. SMITH: I understand what you're suggesting but if you're saying it's going to cost more and you don't know whether those numbers are valid or accurate, okay, or not full of doubt, why would you tell the public it's going to cost a great deal more than what you're able to say is certain?

MR. DAVIS: Well if –

MR. SMITH: I thought the – excuse me, I thought the whole purpose of telling the public was to make sure you tell them the truth?

MR. DAVIS: Right. So what I'm – what I understand from the Grant Thornton report is that the forecast financial costs on – and I'm looking from the chart again back on page 19. During periods of time the forecast financial cost was higher than the approval for expenditure.

We were using the approval for expenditure as communicating to the public – to the people of the province – that this is what we anticipate the cost of the project is going to be when, according to this report, Nalcor or executives of Nalcor had a different expectation based on some information that it was going to be higher.

MR. SMITH: But it doesn't – I'm not sure I understand but –

MR. DAVIS: So if this report –

MR. SMITH: Yeah.

MR. DAVIS: – is telling us that Nalcor was aware that the financial costs were forecast to be higher than what we were communicating to the public, then that was – that creates a problem.

MR. SMITH: It creates a problem. Now, what about the problem that would be created by releasing the higher number during your negotiations for contracts to bring them more in line to the budget? The commercial sensitivity is what I'm getting at.

How would you rationalize that approach that was taken by Grant Thornton with disclosing commercial sensitive information through a number which everyone knows is not necessarily accurate because of the various uncertainties that exist within the number, versus an AFE which is a certainty? This is what the project people said were certainties.

MR. DAVIS: So if we were sanctioning and proceeding with a project based on an estimate of \$6.2 billion, and the project was completed for, say, \$5.8 billion, then that'd be a good problem to have.

MR. SMITH: No doubt, but it's not realistic, is it?

MR. DAVIS: Obviously not. No.

MR. SMITH: No. And it's not realistic with respect to megaprojects within Newfoundland?

MR. DAVIS: No, but I thought that was the question you asked me.

MR. SMITH: Yeah.

MR. DAVIS: If the price was less than what was anticipated (inaudible).

MR. SMITH: No, what I was saying is that if you disclose a higher cost of the project while you're in negotiations –

MR. DAVIS: Mm-hmm.

MR. SMITH: – you damage your ability to negotiate the price of the contracts.

MR. DAVIS: Yes, I understand your point.

MR. SMITH: Okay.

So it would be – it's wiser to announce the approved for expenditure amount because that's a certainty and truthful to the public. Whereas a number based upon the projection, which has uncertainties in it, plus a function of negotiation necessary before it becomes a certainty, you would effectively damage the ability of Nalcor to negotiate because you would release publicly a larger number than what the – Nalcor was prepared to say –

MR. DAVIS: Mmm.

MR. SMITH: – was the actual cost of the project.

MR. DAVIS: So I'm trying to follow what you're saying, Mr. Smith. And I think what you're saying is that announcing a larger number could damage the ability to seek the most effective and efficient contracts –

MR. SMITH: Yeah.

MR. DAVIS: – on major aspects of the project or partnership (inaudible).

MR. SMITH: And may mislead.

MR. DAVIS: I get that, but would that – Nalcor sharing that information with the Cabinet damage that as well?

MR. SMITH: I guess the interesting part is that I'm not here to answer the questions, you are. So I'll leave that hanging, subject to the Commissioner's approach which he took –

MR. DAVIS: Maybe I shouldn't have –

MR. SMITH: – with me another day.

MR. DAVIS: Maybe I shouldn't have responded in the form of a question, but I guess I made the point.

MR. SMITH: You also were asked to comment upon the schedule and the slippage in the schedule.

MR. DAVIS: Mmm.

MR. SMITH: And you indicated that Mr. Martin, all the way through, was – expressed confidence that the schedule could be met until much later on in the project.

MR. DAVIS: Yeah, so in the – and more to the point, as in the 2015 he communicated with us, I think, in the spring – it was communicated to us in June that in March the plan was to double month over month – to double the productivity at the generation site. So from March to April to May they would double. And later in a deck it refers that productivity had tripled later in the year but, however, the scheduled productivity still hadn't met the expected budget.

MR. SMITH: Okay. There was some slippage.

MR. DAVIS: There was still slippage, yes.

MR. SMITH: Right. But prior to that – during the course of 2014, 2015, you indicated in your direct testimony, I think, to one of the questioners since direct on cross – you indicated that Mr. Martin expressed a great deal of confidence –

MR. DAVIS: Mmm.

MR. SMITH: – in relation to the schedule. Notwithstanding the suggestion that it was a P1 or P3, et cetera, okay –

MR. DAVIS: Mm-hmm.

MR. SMITH: – which has a – it's a complicated history but he did express the confidence.

MR. DAVIS: That's certainly my interpretation of the information he always provided.

MR. SMITH: And did he express the foundation for his confidence?

MR. DAVIS: Well, I guess it would depend – when – we would ask details on schedule and problem and cost – or I remember discussing

increased cost on towers as an example and how they beefed up foundations in towers because of expanded or completion of engineering work. So that, you know, would add an additional cost, but this was a good thing to do because it increased reliability and it shored up the service. And so he would have – he would be able to very well articulate and explain many aspects of the project.

MR. SMITH: And did any – for any reason did he mention, in terms of the schedule, that the only people that had doubts of the schedule actually at the time was the Westney people, based upon four particular factors that they identified. Did he mention that SNC-Lavalin felt that the schedule was doable?

MR. DAVIS: I don't recall –

MR. SMITH: (Inaudible.)

MR. DAVIS: – referencing schedule for either one of them.

MR. SMITH: Did he mention that Astaldi had agreed to meet the schedule and put a parental guarantee in place to back that up?

MR. DAVIS: I knew that Mr. Martin was working with Astaldi in finding an agreement on the challenges that had been faced with the project. I knew he had worked with them earlier. Like, 2014, 2015 he was working, as I mentioned just a few minutes ago. And there was a plan in place with a number of aspects, which is included in some of the material that's in my binder here, on work that had been done in beefing up work fronts and crews on towers and those types of things that were taking place to – Nalcor was working with Astaldi to provide additional management and oversight of their particular operations which – it was pointed out in the deck – wasn't particularly their responsibility.

So there was a whole number of things that Nalcor was doing to help Astaldi, I suppose, do a better job and to put the project back on track. So he was very good at articulating all of that and providing that information to us.

MR. SMITH: So would you agree with me then that an individual like Mr. Martin who has got

assurances from SNC-Lavalin that the schedule is doable, that he has a guarantee – parental guarantee from Astaldi that the schedule is doable?

MR. LEARMONTH: I'm sorry, I think you should be putting (inaudible). I don't have any recollection of SNC providing any assurance to Nalcor –

MR. SMITH: Okay, well Mr. –

MR. LEARMONTH: – that the schedule was doable.

MR. SMITH: I will suggest to you that Mr. Martin will testify to that effect, okay? And – 'cause we're looking at whether Mr. Martin, in terms of this confidence, was confident because he had the background to be confident or was merely confident for the sake of being confident. And I suggest to you that there were a number of factors that provided him with the confidence that he needed to tell government that he felt the schedule was doable. Until it was clearly not doable.

MR. DAVIS: Yeah. And I think Mr. Martin would probably be the best one to answer that.

MR. SMITH: Yeah. Okay.

When did you become aware that the project had to be completed by Newfoundland, once it started?

MR. DAVIS: I can't specifically say.

MR. SMITH: Was it when you were reading the documents in preparation for the hearing today?

MR. DAVIS: No, I think I knew it before (inaudible) I've spent a considerable amount of time going through documents, so I began to struggle a little bit about what I knew, when.

MR. SMITH: Okay.

MR. DAVIS: But I believe I knew that before then.

MR. SMITH: Before the preparation for today?

MR. DAVIS: I think I did, yeah.

MR. SMITH: Before you left office?

MR. DAVIS: Yes.

MR. SMITH: And before you left office, did you come to any conclusion as to whether or not the AFE that you were being – that you were looking – they were looking to get from you or the government –

MR. DAVIS: Mm-hmm.

MR. SMITH: – approval of government was the last change in the AFE? Was it the final and absolute?

MR. DAVIS: So, the 7.65 billion –

MR. SMITH: Yes.

MR. DAVIS: – estimate in September 2015?

MR. SMITH: Yeah.

MR. DAVIS: When we were provided with the information, we were provided with a commentary that most of the contracts had been awarded. Engineering was 98 per cent complete and understanding that market pressures had been getting better that what – 'cause they were the three main themes that I – that we had heard about issues with the project would be Astaldi's, you know, performance with contract and market pressures. So – and engineering was one.

So, when we left office in the fall of 2015 and this most recent estimate was made, there seemed to be a much higher reliability on those estimates than there were in previous estimates.

MR. SMITH: Okay.

I want to draw your attention to Exhibit P-02006.

MR. DAVIS: 02006. 17?

MR. SMITH: Yes. And, in particular, we start with pages 3 and 4.

THE COMMISSIONER: Of 17?

MR. SMITH: Sorry?

THE COMMISSIONER: Tab 17?

MR. SMITH: Tab 17. I'm sorry; I don't know the tab numbers (inaudible).

MR. DAVIS: Yes, tab 17, Commissioner.

02006, you said?

MR. SMITH: Yeah.

In this background document, you said it's quite common for Nalcor to provide a background section –

MR. DAVIS: Mm-hmm.

MR. SMITH: – in their slide decks to government.

MR. DAVIS: And I'd say – just to that, Sir, I'd say it was useful to many Cabinet ministers who may have to comment on the project to be – have their memories refreshed of what got us to the project in the first place.

MR. SMITH: Right.

Now, there were – in the last bullet there on page 3, it says: "Significant construction benefits; jobs for NL's, and economic benefits for NL businesses."

What was your knowledge of the benefits of the project to Newfoundland on a go-forward basis after it was completed?

MR. DAVIS: After construction?

MR. SMITH: Yeah.

MR. DAVIS: Well, first of all, if I can just, well, comment on construction. There was thousands of direct jobs, thousands of indirect jobs, high-paying jobs to Newfoundlanders and Labradorians. I think around 85 per cent was the norm for having 85 per cent of construction workers on-site from Newfoundland and Labrador. And I also remember at one point 500 Newfoundland and Labrador businesses who had some engagement directly or indirectly with the project.

So, I knew that during construction, the economic benefits of bringing those paycheques home and those businesses operating in the province were significant. And for long-term – you wanna know about the long-term economic benefits –

MR. SMITH: Yeah.

MR. DAVIS: – of the project or the benefits for the province as well, and they were different than construction, but it'd allow for sales. It provided employment, obviously, for long-term on the operations of Lower Churchill and transmission and then, of course, there was sales of excess power and opportunity for future contracts and agreements, partnerships.

MR. SMITH: And was any dollar value ever assigned to some of these other benefits, do you recall?

MR. DAVIS: I don't recall if there was. I can – I don't recall, no.

MR. SMITH: Okay.

Could we look at page 42, please?

This is the key messages, apparently, that were brought forward. And in this particular slide, it talks about some of the additional monies that would have been – would be committed to the project, whether 8 per cent – "\$500M nominal lower than budgeted financing costs, and; 5% ... \$300M nominal higher than budgeted revenue ..."

That's effectively the discussion between offsetting, is that fair?

MR. DAVIS: Yes.

MR. SMITH: Okay.

Page 44. And this is a chart that outlines the changes from 6.2 to 6.9 and then ultimately what made up the change into \$7.65 billion.

MR. DAVIS: Right, and again that's the three areas: market conditions –

MR. SMITH: (Inaudible.)

MR. DAVIS: – construction design, which is engineering, and contractor performance. That’s the three I mentioned –

MR. SMITH: Okay.

MR. DAVIS: – previously.

MR. SMITH: And page 54. Looking at bullets three and four: “The Powerhouse is behind due to Astaldi slow start, and first power from Muskrat Falls will be delayed from 2017, with the revised timeframe under review.” And there’s: “Additional costs and potential cost offsets and reductions associated with the powerhouse delay are also under review.”

Does that signal that more costs are coming? Or did it signal to you that there may be additional increases in the cost requirements?

MR. DAVIS: Well, knowing that the powerhouse is behind and first power is delayed, and longer construction period generally means more cost – that does. And then with the “Additional cost and potential cost offsets and reductions associated with the powerhouse delays are also under review” – and I mentioned earlier as well that I knew that Mr. Martin was having discussions with Astaldi on trying to rectify or settle the issues with productivity.

MR. SMITH: And my understanding is, from your earlier evidence, that he, essentially – and his team – were successful in getting them to triple their production by mid-2015.

MR. DAVIS: That’s what was presented. I think it might be in, actually, this very deck –

MR. SMITH: Okay.

MR. DAVIS: – it might be here.

MR. SMITH: And I’ll ask you to look at page 66.

It says the “Key Remaining Risks.” And, in this particular slide, it says: “With all PO and Contract costs contracted there will be limited further Market Risk.”

It doesn’t say there will be no risks, just limited market risk. And then there’s also reasons why

“Risk exposure will be narrower and will shift to execution.” And there’s a list of those and then: “There are risk mitigation plans in place and being actioned.”

MR. DAVIS: Mm-hmm.

MR. SMITH: Once again, the slide is saying the positive, but in order to be positive in this regard they are recognizing that there are other risks.

MR. DAVIS: Yes.

MR. SMITH: Okay. So that the costs could go up.

Next page please, page 67. And the most important issue here is the red box that indicates that the Astaldi issue is still not resolved.

MR. DAVIS: Yes.

MR. SMITH: And Astaldi would be a risk and, as we learned later, several hundred million was added to the Astaldi contract.

MR. DAVIS: Mm-hmm.

MR. SMITH: Are you aware of that?

MR. DAVIS: Yes.

MR. SMITH: Okay.

MR. DAVIS: I don’t know what the number was, but I know that the cost continued to –

MR. SMITH: Yeah.

MR. DAVIS: – increase.

MR. SMITH: Yeah, cost continued to increase.

MR. DAVIS: Yes.

MR. SMITH: So is – there was never really any guarantee that the AFE that was requested in the August deck, which was presented to the Cabinet, I believe, in September of ’15 – never really any guarantee that that was the ultimate final set-in-stone number?

MR. DAVIS: No, but there was certainly a higher level of confidence.

MR. SMITH: A higher level of confidence.

Thank you, Sir. That's all the questions I have.

MR. DAVIS: Thank you.

THE COMMISSIONER: Thank you.

Kathy Dunderdale?

MR. HEWITT: No questions.

THE COMMISSIONER: Julia Mullaley, Charles Bown?

MR. FITZGERALD: Thank you, Commissioner.

Mr. Davis, Andrew Fitzgerald here. I represent Julia Mullaley and Charles Bown.

MR. DAVIS: Afternoon.

MR. FITZGERALD: Before I question the witness, I just want to raise an issue with the Commissioner.

Ms. Mullaley, obviously, was going back and forth with Mr. Davis, as she was the clerk of the Executive Council virtually for, I believe your whole –

MR. DAVIS: Yes.

MR. FITZGERALD: – time in office.

I have yet to be provided with Ms. Mullaley's documents with respect to what she's going to be questioned on in this Inquiry, and I'm not going to get those for some time. And I thought: Well, how am I going to handle this? What I propose is I will question the witness and – to the best of my ability – and will have answers from Mr. Davis, but I do want to reserve the right to apply to call Ms. – Mr. Davis again in the event that there's documentation in there that I believe should be put to the witness.

I have a concern that not notifying you of this, in an event that there's an adverse inference drawn for me failing to ask a question on a particular

document, so I just wanted it – for the record – to let you know that I don't have that documentation yet, and I'm not criticizing the Commission. I'm just saying that as a matter of fairness I want to make sure my client's rights are protected when I go forward on this.

And same with Mr. Bown; I don't have his documents for Phase 2 either.

THE COMMISSIONER: Okay.

Appreciate the problem, but as a matter of record – or whether I'm going to allow any further examination of this witness later is a matter that I will reserve to determine later. Most likely, I will be trying to avoid that, but if you can convince me there's a good reason and for fairness reasons that it should be done, then I certainly will consider that.

MR. FITZGERALD: Well, I didn't expect –

THE COMMISSIONER: No. No. I'm not going to get into an argument with you now, but I'm just telling you now: You put on the record what you had to say, I put on the record just –

MR. FITZGERALD: Yeah.

THE COMMISSIONER: – what I had to say. So, we both have an understanding, and we'll move from here.

So, ask your questions now.

MR. FITZGERALD: Premier Davis, you were elected in 2010?

MR. DAVIS: Yes, Sir.

MR. FITZGERALD: Became a minister in October 2011?

MR. DAVIS: Yes.

MR. FITZGERALD: And you worked with both my clients, Mr. Bown and Ms. Mullaley?

MR. DAVIS: Yes.

MR. FITZGERALD: How would you rate their performance as public servants?

MR. DAVIS: Excellent.

MR. FITZGERALD: No issues?

MR. DAVIS: Both competent, professional, very capable – both of them are.

MR. FITZGERALD: I'd like to direct the witness to P-00807, please, if I may?

THE COMMISSIONER: That's not in your book.

MR. FITZGERALD: No, it's not.

If we could go to page 2, to begin with. So, I will identify the document for the witness. This is a decision/direction note and if we can go to page 5, maybe we can get the date.

Okay. Sorry. Right here. May 10, 2011. It was prepared by Paul Myrden of the Department of Finance and it was approved by Terry Paddon and Charles Bown. And we'll also – we have also had evidence that this was – went to Mr. Marshall and Mr. Skinner – they've signed off on this, it's May 2011. And that, ultimately, it went to the premier's office.

I'd like to direct you to page 3 of this note. Have you ever seen this before, Mr. Davis?

MR. DAVIS: So far it doesn't look familiar to me, no.

MR. FITZGERALD: Okay.

Thank you.

If we can just roll down a bit to Scope. It says: "The retention of an independent consultant by the Province would be intended to obtain a new MFP project specific assessment of both the fundamental assumptions underlying the project development plan and the detailed accompanying analysis completed by Nalcor or its agents and advisors. It could also include an assessment of the due diligence completed to date including a report on the rigour of this process. It would be a risk-based assessment which would focus on the various types of project risk and the potential implications for the Province."

It continues: While preliminary in nature, the risk assessment that might be included in the consultant's mandate could include the following: design and engineering risk; construction risk; generation/technical risk; market risk; financial risk; contractual risk.

"These themes will be expanded in a detailed statement of work which will be required as a pre-condition of negotiating and retention of the consultant."

If we can just scroll down a little bit further. Thank you.

At the end of the Process paragraph, there it – there's a comment that says: "This leaves Ernst & Young, KPMG and possibly Grant Thornton as" – possible – "candidates."

So what I'm suggesting to you, Mr. Davis, is that this was a document that was drafted by two senior servants, civil servants – Mr. Bown being one of them – and it was provided to two ministers in the Tory government, Minister Marshall and Minister Skinner. Then it went to the premier's office. You were a member of caucus.

Did you ever see this document?

MR. DAVIS: I don't recall ever seeing this.

MR. FITZGERALD: Do you ever recall having discussions with these ministers or Minister Dunderdale about the potential for a review being done by a Grant Thornton or a KPMG-type entity?

MR. DAVIS: What's the date on this again? Sorry.

MR. FITZGERALD: May 2011.

MR. DAVIS: No.

MR. FITZGERALD: Okay.

If we can scroll down just – up a little bit further, sorry.

MR. DAVIS: Caucus wouldn't be provided with this.

MR. FITZGERALD: Caucus wouldn't have been?

MR. DAVIS: No.

MR. FITZGERALD: Okay. I'm gonna get to that.

Would you agree with me that in this recommendation that was made to the government by the civil servants that it identified construction risk and financial risk and contractual risk?

MR. DAVIS: I see that there.

MR. FITZGERALD: Yeah, it did. And it's included there, correct?

MR. DAVIS: Yes.

MR. FITZGERALD: Yeah. And you've reviewed the Grant Thornton report that has been provided to this Commission. Are you familiar that in that report Williams Engineering has done a lot of work with respect to contracting and construction, and they provided some opinions with respect to how the project was being managed?

MR. DAVIS: Mm-hmm. Okay.

MR. FITZGERALD: You're familiar with that?

MR. DAVIS: I think so, yeah.

MR. FITZGERALD: Yeah.

MR. DAVIS: I'd have to look at it again to get any specific (inaudible).

MR. FITZGERALD: So my point is, as early as 2011, Mr. Bown and Mr. Myrden were suggesting a similar type of review be conducted by the government.

MR. DAVIS: Mm-hmm.

MR. FITZGERALD: Do you believe that your caucus should have been made aware of this?

MR. DAVIS: No.

MR. FITZGERALD: Why not?

MR. DAVIS: It wouldn't have been a function for caucus to be made aware. Caucus are not all – they're members of the governing party, but Cabinet would be the government.

MR. FITZGERALD: Okay.

MR. DAVIS: Caucus is not the government.

MR. FITZGERALD: Cabinet wasn't advised of this document.

Do you believe Cabinet should have been provided with this document?

MR. DAVIS: Sir, there are many notes like this that are prepared for ministers on many matters. And I can assure you that while they go to ministers, they don't – they rarely go to Cabinet, but – I haven't seen the entire document. I'd have to think about the context of it at the time, what was happening to give you an opinion if it should go to Cabinet or not, but...

MR. FITZGERALD: Okay.

So we have a major project that's costing billions of dollars.

MR. DAVIS: Yes.

MR. FITZGERALD: We have two senior civil servants – deputy ministers, two ministers signing off on it –

MR. DAVIS: Mm-hmm.

MR. FITZGERALD: – saying: We need an independent review for all these reasons.

MR. DAVIS: Mm-hmm.

MR. FITZGERALD: And you don't know whether or not, in that context, it should have been provided to Cabinet or not.

Is that your evidence?

MR. DAVIS: No. What I said was, I don't know the full context. I haven't seen the full document and I haven't – I don't know the context of what was taking place in regards to

planning of the project at the time. I don't know what conversations may have been happening within Cabinet or between Cabinet ministers at the time. So what I'm saying is it's difficult for me to give you a firm answer of yes or no on your question.

MR. FITZGERALD: Okay.

Do you agree with me that this was prudent on term – in the terms of the actions that the civil servants could have taken at the time?

MR. DAVIS: I'm sorry, ask that again (inaudible)?

MR. FITZGERALD: Their job is to provide you with advice, correct?

MR. DAVIS: Yes.

MR. FITZGERALD: And provide you with options that you may pursue?

MR. DAVIS: Yes.

MR. FITZGERALD: And would you agree with me that this is a type of option or a type of duty that the civil service should do in providing advice to the premier?

MR. DAVIS: Yes, it could very well be, yes. Yeah.

MR. FITZGERALD: And it included construction issues as well –

MR. DAVIS: Yes.

MR. FITZGERALD: – we know that.

MR. DAVIS: Yes.

Commissioner, this is 2011. I wasn't – hadn't been a Cabinet minister at this point in time. I really can't speak to all of the nuances of what was taking place. I just – I think it's a bit difficult for me to provide an opinion on what should've or shouldn't have happened with it at that point in time.

MR. FITZGERALD: And this, with respect, was one of the reasons why I've raised that issue before I asked you any questions. There may be

documents that can help both you and me, and we'll deal with that later.

Thank you, Commissioner.

MR. DAVIS: And I don't – and back to your first question, as I said, I don't remember seeing this document before and it wouldn't be normal for a decision note or a briefing note to come to a caucus meeting like this.

MR. FITZGERALD: So, obviously, you couldn't remember that Premier Dunderdale did not bring this to caucus –

MR. DAVIS: Not that I recall.

MR. FITZGERALD: – or Cabinet. You didn't know that.

MR. DAVIS: What's that?

MR. FITZGERALD: You didn't know if this was ever in existence 'til today, did you?

MR. DAVIS: No. No. I don't have any recollection of it, no.

MR. FITZGERALD: Okay.

With respect to risk assessments, were you aware that the scope of work for DG3, the review prepared by MHI, that the risk assessment was removed?

MR. DAVIS: No.

MR. FITZGERALD: You weren't aware of that?

MR. DAVIS: No.

MR. FITZGERALD: Were you aware that this occurred because the project management team informed Mr. Martin that the risk assessment could not be completed in time for the House debate?

MR. DAVIS: No.

MR. FITZGERALD: You were in Cabinet at the time.

MR. DAVIS: Yeah – no, I don't recall that.

MR. FITZGERALD: You don't recall that – no discussions on risk?

MR. DAVIS: I don't – I don't recall that.

MR. FITZGERALD: At the Cabinet level, there was no discussions, okay.

MR. DAVIS: Know that there was something removed or not – information not included? No, I don't have a recollection of that.

MR. FITZGERALD: When you're dealing with something along the lines of a \$6- or \$7-billion project for a small province, wouldn't you think that it would be prudent for our premier to make Cabinet aware of such a situation, that there's problems here with risk and we should look into this further?

MR. DAVIS: I can assure you, Sir, that Cabinet had many, many, many hours of discussion and sharing of information on this project.

MR. FITZGERALD: I'm not debating that. That wasn't my question. The question was should you have been advised that the risk was removed? Should Cabinet have been told that?

MR. DAVIS: I think that would've been beneficial to know, yes.

MR. FITZGERALD: Thank you.

MR. DAVIS: But I don't recall, I don't have any recollection of (inaudible).

MR. FITZGERALD: I'd like to go – direct the witness to P-02009. This is an Oversight Committee – Update to Cabinet, September 21, 2015 –

THE COMMISSIONER: Tab 20.

MR. FITZGERALD: Sorry Commissioner, I don't know the tab number there.

THE COMMISSIONER: Tab 20.

MR. DAVIS: Tab 20, yes.

MR. FITZGERALD: Thank you.

And if we could go to page 8 – well, that's small. Can we enlarge that a bit, please? Thank you.

Ms. Mullaley will be giving evidence during this Inquiry; she's yet to be interviewed. But I would suggest to you that a major concern of the Oversight Committee at the time of this report – this Ernst & Young report – was that the risk hadn't been properly quantified by Nalcor. Does that ring a bell?

MR. DAVIS: No, but that could be the case.

MR. FITZGERALD: Yeah.

If you – and I believe Mr. Learmonth took you to bullet four below there: “A fully quantified risk or trend has not been documented for the most significant challenges related to work performed by a key contractor included in the Sample. The scale of potential challenges is not” –

MR. DAVIS: Quantified.

MR. FITZGERALD: – “quantified in the summary reporting made available to the Oversight Committee.”

Then there's a conclusion below: “Until such time as the noted management process and controls risks and issues are addressed, the completeness and accuracy of Project cost forecasting status reporting to the Oversight Committee cannot be fully verified.”

MR. DAVIS: Right.

MR. FITZGERALD: So there was problems being identified here by Ernst & Young that were being brought forward to Cabinet in September 2015.

MR. DAVIS: Right, there were concerns being brought forward, yes.

MR. FITZGERALD: Yes.

MR. DAVIS: Yeah, through the Oversight Committee.

MR. FITZGERALD: Yes, through the Oversight Committee.

MR. DAVIS: Yes.

MR. FITZGERALD: The evidence will be, Mr. Davis, that the Oversight Committee wanted to release this Ernst & Young report in September of 2015. Does this ring a bell to you? Does this – do you recall this at all?

MR. DAVIS: Tell me that again?

MR. FITZGERALD: The evidence will be that the Oversight Committee –

MR. DAVIS: Yes.

MR. FITZGERALD: – wanted the Ernst & Young report released in September 2015. Do you recall this at all?

MR. DAVIS: No, I don't recall that. No.

MR. FITZGERALD: Okay.

MR. DAVIS: You could be right but I don't recall them wanting that particular report released in September 2015.

MR. FITZGERALD: Do you recall that it was not released because Mr. Martin was against it being released?

MR. DAVIS: No.

MR. FITZGERALD: Do you know when it was subsequently released?

MR. DAVIS: I'm not sure if – Sir, if it was released with the report that came after that. I'm just looking for it; it's a couple of tabs further along. So – but I'm not – I guess the answer to your question is: I don't know when it was released.

MR. FITZGERALD: Well, it's my understanding that it wasn't released until after the election.

MR. DAVIS: Oh, that could be, yeah.

MR. FITZGERALD: Was there any political reasons why this report, which was issued in September, which was provided in September, when the Oversight Committee recommenced it

be released, why wasn't it released at that time and basically sat on until after the election?

MR. DAVIS: Yeah, so I don't have any – as I've said to you earlier, I don't have any recollection of discussions around releasing or not releasing that report.

MR. FITZGERALD: And the reason I'm putting this to you, Mr. Davis, is because I have an indication of what my understanding of what my client's evidence is going to be in terms of when the Oversight Committee wanted this report released and why it wasn't released.

MR. DAVIS: Mmm.

MR. FITZGERALD: It wasn't released – it's going to be – my client's evidence it's because Mr. Martin didn't want it released and you agreed with Mr. Martin. Do you recall that at all?

MR. DAVIS: No.

MR. FITZGERALD: In terms of the engagement of Ernst & Young, it's my understanding that Ed Martin, Mr. Martin, was opposed to Ernst & Young reviewing the numbers at Nalcor. Do you recall this issue?

MR. DAVIS: That Mr. Martin was opposed to Ernst & Young reviewing the numbers.

MR. FITZGERALD: Yes, he wanted to rely on his internal audit. Do you recall this becoming an issue?

MR. DAVIS: No, I don't. I'm not saying it wasn't; I'm saying I don't recall it.

MR. FITZGERALD: You just don't recall it.

MR. DAVIS: Yeah.

MR. FITZGERALD: Okay.

You don't recall that Ms. Mullaley threatened to resign from the Oversight Committee if Ernst & Young weren't brought in?

MR. DAVIS: I don't, Sir. I'd have to – you know, I'd have to dig but I don't – right here I don't remember it.

MR. FITZGERALD: In terms of information flow – and you’ve dealt with this with the other witness, including Mr. Learmonth and Mr. Smith as well.

I take it you were aware that the Oversight Committee was having difficulty getting timely disclosure from Nalcor?

MR. DAVIS: Yes.

MR. FITZGERALD: And Ms. Mullaley made you aware of that.

MR. DAVIS: Yes.

MR. FITZGERALD: What steps, if any, did you take as premier to try to help the situation?

MR. DAVIS: There was discussions between myself and staff, and I didn’t take any particular steps myself, but staff were aware of it; we were aware of it, and Ms. Mullaley made me aware of it, but we – did I pick up the phone and call anyone to stop it? I didn’t do that.

MR. FITZGERALD: Okay.

MR. DAVIS: But there – wasn’t unusual for staff to have discussions with department or with Nalcor either.

MR. FITZGERALD: Do you know if Deputy Minister Dalley intervened to try to speed up information flow or not?

MR. DAVIS: Or Minister Dalley (inaudible) –

MR. FITZGERALD: Sorry, Minister Dalley, yes, thank you.

MR. DAVIS: I can’t – no, I don’t know. He may very well have but I don’t know.

MR. FITZGERALD: You’ve mentioned the independent engineer a number of times in your testimony, and as level of oversight for the government – as one level of oversight for the Government of Newfoundland and Labrador.

MR. DAVIS: Well, they worked with –

MR. FITZGERALD: Yeah.

MR. DAVIS: – with the Oversight Committee.

MR. FITZGERALD: Yes.

MR. DAVIS: Yes.

MR. FITZGERALD: Are you aware, it’s my understanding, that there was a reliance agreement that was – or a reliance letter between the Government of Newfoundland and Labrador and the independent engineer?

MR. DAVIS: No, I knew there was some kind of an agreement, but I didn’t know what it was.

MR. FITZGERALD: Yeah, I believe it was a formal arrangement that was entered into.

MR. DAVIS: Mm-hmm.

MR. FITZGERALD: I haven’t seen it yet, but it’s my understanding that that’s out there.

In terms of your meetings with Ed Martin – you know, and I – in fairness to you, Mr. Davis – you can’t really remember exactly who was at any of those meetings? It was you and Mr. Martin, but whether there was one official or another, I mean, it’s so long ago and there are so many different parties involved; you haven’t taken notice of that. So you really can’t be certain who was at what meetings, can you?

MR. DAVIS: Correct.

MR. FITZGERALD: Yeah.

Give me a second, Commissioner, I think I only have a question or two left.

THE COMMISSIONER: No problem.

MR. FITZGERALD: In terms of the issues of the risks not being properly quantified that were identified in the Ernst & Young report. Did you believe that the public had a right to know that at that time, many years into a project, that the risks weren’t properly being quantified?

MR. DAVIS: Possibly.

MR. FITZGERALD: Possibly but your government never ever did release that report did it?

MR. DAVIS: I – you’re telling me we didn’t; I can’t disagree with you. I have no reason to disagree with you. You said we didn’t, so ...

MR. FITZGERALD: Those are all my questions, thank you.

MR. DAVIS: Thank you.

THE COMMISSIONER: All right.

Before I call on the next party to cross-examine, I just – obviously I know – I’m well aware it’s – we’re beyond 4:30, but I believe there’s arrangements made for Mr. Davis. He has to get out of town tonight, so I think we’ll continue on and hopefully finish in time for him to make his plane.

So Robert Thompson?

Not present? Okay.

Consumer Advocate?

MR. HOGAN: Good – I guess, good evening now, Mr. Davis.

My name is John Hogan. I’m counsel for the Consumer Advocate. Unfortunately, I’m going to go back to some of the issues you’ve covered, but I just got a few follow-up questions on some of the topics.

We go back to the meetings that you would have had with Mr. Martin when you were premier. I know you said you might have taken some notes on the decks, and that was about the extent of the notes you took, correct?

MR. DAVIS: Yes.

MR. HOGAN: Was anyone else that were at the meeting instructed to take minutes of the meeting – the meetings?

MR. DAVIS: No, I don’t believe, no.

MR. HOGAN: You don’t believe or no?

MR. DAVIS: No. I have no memory of instructing anyone to take notes, no.

MR. HOGAN: Typically when you had meetings in the premier’s office, did you instruct anyone, maybe the clerk or a DM or someone, to take minutes of those meetings?

MR. DAVIS: No.

MR. HOGAN: That wasn’t the practice when you were premier?

MR. DAVIS: Correct.

MR. HOGAN: I just want to turn to some evidence in your transcript from your interview. And you were asked about some issues regarding Astaldi. I’m just going to read out some of your evidence and it talks about your meetings with Mr. Martin and the issues around the schedule. Mr. Learmonth questioned you, and you said, and how some were on schedule, some were ahead of schedule and some were behind schedule.

So my question is which ones were ahead, which ones were behind and which ones were on schedule?

MR. DAVIS: So the generation – Muskrat Falls generation site itself was behind schedule. I believe that the Labrador-Island Link for periods of time were relatively on schedule, and there was a period of time that the Labrador Transmission Assets were ahead of schedule –

MR. HOGAN: Okay, so what is it that –

MR. DAVIS: – but –

MR. HOGAN: – stands out? Mr. Fitzgerald just went through a number of questions with you that you didn’t have any recollection of EY reports, the release of EY reports, meetings with Mr. Martin. I’m just curious as to why you remember that but not those questions.

MR. DAVIS: Because my memory was refreshed by the decks that I have here before me.

MR. HOGAN: Which decks are those?

MR. DAVIS: Well, do you want me to go – I can start –

MR. HOGAN: The schedule – when we were talking about the schedules and things like that. Is that –?

MR. DAVIS: Yeah, and the Oversight reports – the Oversight Committee reports and associated documents.

MR. HOGAN: Just, generally, in terms of the schedules being delayed, you knew some schedules were behind. You weren't worried at that point in time up until, you know, towards the end of your tenure that there was going to be a delay in first power. Is that correct?

MR. DAVIS: I was always concerned about the project. I was always worried about the project.

MR. HOGAN: Okay.

Well, I'm gonna – I guess I'm gonna ask you to square that with some evidence you've given. You said you were always confident in what Mr. Martin told you.

MR. DAVIS: Yeah.

MR. HOGAN: And then, at some point in your transcript as well when you were finally told – when you were first told that there was going to be schedule delays, you said you were surprised. So, how do you square being confident and not telling the public that there were going to be delays because you were confident that there weren't –

MR. DAVIS: Hmm.

MR. HOGAN: – with then not being surprised that there were delays? I guess I'm confused by that line of pattern of thinking that you had.

MR. DAVIS: Well, what Mr. Martin provided to us – he had a lot of confidence in what he was saying. That doesn't mean I wasn't worried about the project or concerned about delays. So –

MR. HOGAN: What steps did you take then if you were concerned about the project and the delays to help ensure that there were not going to be those delays that occurred because – other than having confidence in Mr. Martin telling you not to worry about it?

MR. DAVIS: Well, just to go back to your first question. Because there was a lot of confidence in what Mr. Martin was telling us doesn't mean I didn't have concerns or wasn't worried about the project. Of course I was worried about the project. I was worried about the impacts of the project on the people of the province, on our economy, on us as a government as well. I was concerned and worried about all of that. That was a concern for me. As well as a thousand other issues going on in the province at the time. But that was certainly a concern for me.

So, having confidence or Mr. Martin articulating his position with confidence doesn't necessarily mean that I wasn't worried or concerned. And I think what I said was I wasn't surprised because we knew there was pressures on schedule and on the budget, on the cost – there was pressure on the cost and there was pressure on the schedule. That grew over time – that pressure seemed to continue – was continuing to increase.

And if you read the language from Oversight report to Oversight report, I think you'll see that there's an intensification of those concerns, and so were mine as time went on.

MR. HOGAN: No, I don't disagree with that. I don't doubt your worry or concern. My question is – is what was done about that worry and concern.

So, I just want to take you to some documents there. We've probably seen some of them already today. P-01991 – and this is all in relation to Astaldi. P-01991, page 17.

THE COMMISSIONER: This'll be on your screen.

MR. DAVIS: Oh, thank you. Tab 3, I think.

MR. HOGAN: So this December 2014 and it talks about the Integrated Cover System, which – you're familiar with what that is?

MR. DAVIS: Yes.

MR. HOGAN: Not complete, "Units 3 and 4 currently being reviewed by Astaldi."

And if we could turn to – I'm just going to take you to three documents, I think, and then I'll ask

you some questions. P-01992, page 22. This – right there, thanks.

So this talks about weather impact on project schedule: “Nalcor advises that the main civil contractor at the Muskrat Falls site, Astaldi, is utilizing various means to enable winter construction including a temporary Integrated Cover System over the powerhouse to achieve a climate-controlled work front.”

So, you would have been aware, obviously, at this point in time – and it sounds like you were aware, anyways – that the ICS was important to make sure work was done throughout the winter?

MR. DAVIS: Yes.

MR. HOGAN: Okay.

And if we could turn to P-01994, page 4, please. So this – these documents I’ve shown you are all 2014 documents. Just scroll down a little bit, please.

And this says: “What actions are being undertaken to address the schedule slippage by Astaldi Canada on the Muskrat Falls Generating Facility?”

“The slippage to date has not had an impact on the key Project Milestones or critical path.”

So my question is, given that you knew units 3 and 4 weren’t – had issues, Astaldi had issues with units 3 and 4 – you knew that the ICS was important and necessary to maintain work throughout the winter, how can these – just from a common sense standpoint, how can these issues not have an effect on project milestones?

MR. DAVIS: There was also information that construction was continuing without the ICS and that that was part of the reason for the ICS not being completed. So, I’m sorry, I don’t know if that answers your question, but...

MR. HOGAN: No, it doesn’t really answer my question. That – so you were – I guess if your answer is that you were comfortable, despite all this evidence that the schedule was not going to slip at that point in time, then that’s fine if that’s your evidence. Is that what you’re telling me?

MR. DAVIS: Well, no, I was not – I was worried about –

MR. HOGAN: Let’s put it this way, there was no delay announced to the public at this point in time despite – my suggestion is that there were sure signs that there was going to be a delay as of 2014.

MR. DAVIS: Yeah, so –

MR. HOGAN: And if we back up even further, we knew right away that Astaldi was off to a slow start and now it’s starting to manifest itself –

MR. DAVIS: Right.

MR. HOGAN: – as we moved through 2014.

MR. DAVIS: Right, yeah.

MR. HOGAN: So my question – all I can ask you is were you comfortable enough in 2014 not to tell the public that there was probably going to be missed milestones despite the fact that Astaldi had a schedule slippage?

MR. DAVIS: And when we’re assured there wasn’t going to be?

MR. HOGAN: Pardon me?

MR. DAVIS: We were assured there wasn’t going to be. Because –

MR. HOGAN: You were assured –

MR. DAVIS: – in 2014, Mr. Martin was still telling us then, as I spoke about earlier a short time ago, that Mr. Martin – I believe Mr. Martin felt that they could make ground on lost time and a slow start by Astaldi. So back to 2014, that was very true.

MR. HOGAN: Okay.

And what – other than him giving you a level of confidence during your meetings or Cabinet briefings or however you were told –

MR. DAVIS: Right.

MR. HOGAN: – did he give you any documents or any analysis to show that he would be able to make up – or Astaldi would be able to make up that schedule slippage? So you can say yeah, I can see it right here. You're X number of months behind, but you will be able to do the X number of months because of these –

MR. DAVIS: Right so –

MR. HOGAN: – tasks?

MR. DAVIS: So, I expected improvement and find a way to make that happen. And –

MR. HOGAN: Based on what?

MR. T. WILLIAMS: Mr. Commissioner, if counsel could let the witness finish –

MR. HOGAN: Sorry.

MR. T. WILLIAMS: – answering his questions –

MR. HOGAN: Sure. Go ahead.

MR. T. WILLIAMS: – that's the third time –

MR. HOGAN: Sorry.

MR. T. WILLIAMS: – he's been interrupted.

MR. HOGAN: Go ahead, Mr. Davis, sorry.

MR. DAVIS: So it's a few months after that, I can't tell you what the specific time but, you know, Mr. Martin was aware that we wanted to see improvements on productivity by Astaldi which was the main concern – main issue with the slow start as you referenced. And at some time after that we're given a list of actions that had been taken to rectify the production of Astaldi. I've referenced some of them a little bit earlier in my testimony. So he was providing evidence to us that steps were being taken to correct that productivity problem.

MR. HOGAN: Okay. Thank you.

If we could go to P-01997, please? If we could scroll down a little bit, Mr. Learmonth I think brought you to this earlier today. This is a

transcript from the House of Assembly and my question goes at the – near the bottom it says:

“PREMIER DAVIS: Mr. Speaker, Premier Marshall was quite clear in his position – and I share in his position on this in that he said we will use some of that revenue to offset those costs. I believe that is the right thing to do as well.”

MR. DAVIS: Mm-hmm.

MR. HOGAN: And if you want to up and read what Mr. Ball was asking you at that time, he says he's calling for any revenue realized from the sale of surplus Muskrat power to be used to offset the high power rates in our Province.

So you recall this?

MR. DAVIS: Yeah, it's the same time he said we've had 3½ premiers in the last year or so.

MR. HOGAN: He did say that, yes.

MR. DAVIS: Yeah.

MR. HOGAN: Do you take issue with that?

MR. DAVIS: Three-and-half premiers?

MR. HOGAN: Yeah.

MR. DAVIS: What's half a premier?

MR. HOGAN: Fair enough. We can get to that actually.

MR. DAVIS: You have to remember, too Sir, you're in the House of Assembly and the House of Assembly is a political theatre.

MR. HOGAN: Okay, well, that sort of goes to my question: What was the excess revenue that was going to be used to offset the rates?

MR. DAVIS: From sales – from excess – from sales of excess power.

MR. HOGAN: Okay. And for – to who?

MR. DAVIS: That's the discussion that was taking place. Nalcor sells energy today.

MR. HOGAN: Okay, but it has no –

MR. DAVIS: And –

MR. HOGAN: – we've never – we haven't had any evidence that it has any firm contracts in place for the sale of revenue –

MR. DAVIS: Right.

MR. HOGAN: – do you agree?

MR. DAVIS: Yes.

MR. HOGAN: Okay.

So how much revenue are we talking about, or sorry, how much revenue were you talking about when you made that statement?

MR. DAVIS: It would depend on how much was available and how much sales there are, 'cause they sell, I know, Nalcor –

MR. HOGAN: At the time you made this statement what was the amount (inaudible) –

MR. T. WILLIAMS: Once again, Mr. Commissioner, counsel is continuously interrupting. If Mr. Davis could be allowed to answer the question completely.

MR. HOGAN: It's a bad habit; it's not intentional, so I'm sorry Mr. Davis.

Well, do you want to finish?

MR. DAVIS: Yeah –

MR. HOGAN: (Inaudible.)

MR. DAVIS: – I wouldn't mind actually, yeah.

MR. HOGAN: Yeah, go ahead, sorry.

MR. DAVIS: Yeah, thank you.

So Nalcor sells energy today in spot markets – happens on a daily basis; they make frequent agreements and sales. My understanding is they're – they operate on a 24-hour basis in selling in the spot market. So that happens today and in – and without firm contracts, as you

referenced, then there is an opportunity for sales of excess power.

MR. HOGAN: Okay.

THE COMMISSIONER: If I can just – so do you know where they're selling today?

MR. DAVIS: No, and it varies from day-to-day. They do sell in markets through –

THE COMMISSIONER: No, do you know which route they're actually selling through?

MR. DAVIS: Through Quebec.

THE COMMISSIONER: Do you know how much capacity they have to actually sell?

MR. DAVIS: I did one time but I don't know today, no.

THE COMMISSIONER: Okay, go ahead.

MR. HOGAN: So, at this point in time when you made the statement, do you know how much revenue you would have been talking about when you said excess sales?

MR. DAVIS: I don't think so, no.

MR. HOGAN: Okay, so was the statement more for theatre than for factual purposes?

MR. DAVIS: No, it was answering a question from Mr. Ball.

He was making a slight against different positions of premiers – Premier Dunderdale to Premier Marshall – and was trying to make theatre out of what my position was. And I was telling them that I agreed with what Minister Marshall – the position he had taken – that we would utilize resources from excess sales.

It was a point of contention publically and it was one that the Liberals were making a public issue and a political issue about at the time.

MR. HOGAN: Back to financial close, do you recall what was discussed at Cabinet during financial close?

MR. DAVIS: Pertaining to ...? There would have been several Cabinet discussions on this at any, you know, through –

MR. HOGAN: Okay, do you recall how much of a priority the issue was at the time?

MR. DAVIS: The loan guarantee was significant.

MR. HOGAN: Okay.

I guess I'm wondering what sort of questions were asked and by whom to do any probing, because we've now seen evidence today that numbers of \$6.5 billion and \$7 billion existed at financial close. You were only aware of 6.2.

MR. DAVIS: Yes.

MR. HOGAN: So were any questions asked at that point in time that could have led to that answer being provided by Nalcor – that it was 6.5 or 7 and not 6.2?

MR. DAVIS: I can't provide you specifics for that time, no.

MR. HOGAN: Okay.

So you can't say whether it was asked or wasn't asked?

MR. DAVIS: I can't provide you specifics for that time.

MR. HOGAN: Do you know what you – documents or any presentations you received to satisfy yourself at that point in time or to satisfy Cabinet that the number –

MR. DAVIS: There should be Cabinet records of any of that.

MR. HOGAN: Do you recall what they were?

MR. DAVIS: Any – no, anything that would've been brought in as a document, Cabinet document, then there would be a Cabinet record of it.

MR. HOGAN: If we could please turn to P-01993. So this was your mandate letter which you were – mandate letter to Minister Dalley.

You talked about mandate letters earlier today. And my question is, he was named minister of Department of Natural Resources and Forestry and Agrifoods Agency?

MR. DAVIS: Mm-hmm.

MR. HOGAN: So Forestry and Agrifoods at that point in time was not a separate ministry, I assume. Is that correct?

MR. DAVIS: No, there's – it's not unusual for minister responsibilities to have responsibilities other than the name department.

MR. HOGAN: Is it – I mean, I put to you Natural Resources is one of the one or two most important ministries. Is that fair to say?

MR. DAVIS: Yes.

MR. HOGAN: Do you think it was fair to add additional duties to the minister of Natural Resources at this point in time?

MR. DAVIS: Well, forestry and agrifoods are natural resources.

MR. HOGAN: They are but it's a separate agency than the Department of Natural Resources? Or is it all – is this what you called it at the time is my question, I guess?

MR. DAVIS: Yeah, that's what – that's how we refer to it.

MR. HOGAN: So he doesn't have two roles; it's just one role as the minister of this department?

MR. DAVIS: I'm not sure the difference. He has a responsibility as the minister of Natural Resources and the minister responsible for the Forestry and Agrifoods Agency, which was a separate agency at the time.

MR. HOGAN: Okay.

MR. DAVIS: But it's also a natural resource.

MR. HOGAN: So my question is, was it too much to ask one person to have those two responsibilities if one of them is Department of Natural Resources?

MR. DAVIS: I worked in departments where I may have had half a dozen additional responsibilities like that.

MR. HOGAN: So, no, you thought it was fine, obviously. You made that decision.

MR. DAVIS: Yes, it's quite common for ministers to have multiple responsibilities.

MR. HOGAN: Do you recall when you were interviewed you talked about themes that Mr. Martin would speak to you about in terms of pressures and cost overruns and things like that? And one – you do recall that?

MR. DAVIS: Yeah.

MR. HOGAN: One of the things you said was market pressures.

MR. DAVIS: Yes.

MR. HOGAN: Do you recall that?

MR. DAVIS: Yes.

MR. HOGAN: Just – if we could just turn to P-02010, please, page 18.

MR. DAVIS: 02010, tab 21?

THE COMMISSIONER: (Inaudible.)

MR. DAVIS: Yes?

THE COMMISSIONER: It's tab 21.

MR. HOGAN: So this – the overruns here at \$462 million is market conditions and –

MR. DAVIS: I'm sorry – I'm sorry, 02010 you said?

MR. HOGAN: 010 –

THE COMMISSIONER: Tab 21.

MR. DAVIS: Tab 21, yes.

MR. HOGAN: Okay, do you see it?

MR. DAVIS: Yeah, just the Commissioner and I were –

MR. HOGAN: Okay.

MR. DAVIS: Just make sure we're on the same page.

MR. HOGAN: Okay.

It says \$462 million for market conditions and market factors.

MR. DAVIS: What page are you on?

MR. HOGAN: Page 18.

MR. DAVIS: Okay.

MR. HOGAN: Is that what you meant by market –

MR. DAVIS: I'm sorry, what was the question?

MR. HOGAN: Is that what you meant by market pressures?

MR. DAVIS: Market conditions and market factors, \$462 million? Yeah, that demonstrates my – what I was referencing, yeah.

MR. HOGAN: Can you just elaborate a little bit what market pressures are?

MR. DAVIS: Market pressures –

MR. HOGAN: And why they would drive the costs up?

MR. DAVIS: Yes, market pressures are demand for workers, supplies, procurement. When there's a high demand and your economy is competitive and with high volume and high demand for skilled workers, trades, businesses and so on, then you got to pay a higher price to get it.

MR. HOGAN: So, obviously, it's higher than anticipated when the estimates were done. This is where this category fits into.

MR. DAVIS: Right. And we know that we compared to other megaprojects in the province at the time and saw some comparisons.

MR. HOGAN: I'll ask you now about the 3½ premiers. I guess what Mr. Ball was referring to

is the fact that Frank Coleman was almost premier and then did not become premier.

MR. DAVIS: You'd have to ask Mr. Ball. I don't know what he's referring to.

MR. HOGAN: I think you know that that's the case though.

MR. DAVIS: I don't – no, I don't – I could be – I don't know what he meant by it. I really don't.

MR. HOGAN: Well, you do know that Mr. Coleman was scheduled to become premier – Mr. Coleman. Correct?

MR. DAVIS: Yeah, he had won a leadership process.

MR. HOGAN: And then he –

MR. DAVIS: And before he became premier he resigned from the process and withdrew from the process.

MR. HOGAN: So that – I think the date I have is he was scheduled to become premier in July of 2014. So that – as you mentioned, there was an ongoing leadership at that point in time within your PC Party and then Mr. Coleman was successful and then decided to back away.

I'm just wondering, you know, if there was any – if this was a tumultuous time, politically, for you and members of the PC Party?

MR. T. WILLIAMS: Mr. Commissioner, I have to object to that question. I wonder what the relevance of that question is, given the issues that are before the Commission of Inquiry and the sensitivities of time this afternoon, if we're getting into political debate about 3½ premiers and leadership runs. I don't see the relevance of that question.

THE COMMISSIONER: I'm not concerned about –

MR. HOGAN: I've got –

THE COMMISSIONER: I'm not concerned about the time but I am concerned about the relevance of it. So maybe you could explain to me –

MR. HOGAN: So the –

THE COMMISSIONER: – how this is relevant.

MR. HOGAN: The relevance is that there was – for lack of a better way of putting it – 3½ premiers. There was – my understanding is that the office that Mr. Marshall – Tom Marshall at the time was the premier – emptied out – made way for Mr. Coleman. Mr. Marshall had to come back. This all happened in the summer of 2014 which was when we first see costs and schedules starting to have pressures.

So my question is just: Was there any lack of leadership within the premier's office at that point in time, or the ministry, because there was a political focus? I mean, they have two roles. We have to remember, they're government workers, but they're also politicians that need to get re-elected and things are happenings.

So my question is: Was there any lack of leadership within the ministry because they were focused on things like leadership campaigns?

THE COMMISSIONER: That's a fair question.

MR. DAVIS: So your – maybe I can respond to it from your first comment about –

MR. HOGAN: Sure.

MR. DAVIS: – was it a tumultuous time. Yes, it was. It was.

We had been in government for 13 years. That's a long time for a government to hold office; been elected three times in that period of time – four times in that period of time – sorry, three times. And it had been a difficult time for – so the timing was difficult.

We had a crash in the world oil prices that significantly impacted our province. The price of oil fell around the same day I announced I was going to run for the leadership and then continued to fall 'til after the election in 2015. It was a significant hit on the economy of our province and the revenues for our government.

So we had a premier who resigned – Premier Dunderdale resigned – after DarkNL process, which was no responsibility of hers. And we went through a couple of processes as a party in trying to elect a new leader. So, was it a tumultuous time? Yes, but that’s what governing is about.

There’s not one thing in government at any given time; there are a number. And it’s a tough business. Is it a tough business? It absolutely is. It’s big responsibilities and it takes a lot of work to try and execute it.

If I was only focused on politics, I probably would’ve said wait ’til after the election before you announce the 7.65. But we announced that right before the election because it was the right thing to do.

MR. HOGAN: Okay.

So my question was then – you answered most of it, I guess – that it did not have an effect on anything going on with the project?

MR. DAVIS: We were focused on governing. That was our first process or first responsibility. And our priority at any given time –

MR. HOGAN: Okay.

MR. DAVIS: – was governing. Leading –

MR. HOGAN: Thank you.

MR. DAVIS: – the province.

MR. HOGAN: Just want to go back to financial close again. And you said you didn’t have a full understanding of the ramifications of the federal loan guarantee at that point in time in 2013. You said that here today, correct?

Being that – Mr. Learmonth put it to you that the project basically had to go ahead, once the –

MR. DAVIS: After the loan guarantee.

MR. HOGAN: Yes.

MR. DAVIS: Yes.

MR. HOGAN: Okay.

MR. DAVIS: Yeah.

MR. HOGAN: So –

MR. DAVIS: And I think the question he asked me was: Was I aware of that when? Or I was asked earlier: When was I aware of that?

MR. HOGAN: Yes.

MR. DAVIS: And I was uncertain.

MR. HOGAN: Okay, but it wasn’t at the time. It wasn’t in 2013, was it?

MR. DAVIS: I really don’t recall, Sir. I really don’t.

MR. HOGAN: Okay.

So do you recall Cabinet getting a briefing on the ramifications of the federal loan guarantee?

MR. DAVIS: We had several discussions in Cabinet on it, yeah.

MR. HOGAN: Do you recall getting a briefing at Cabinet in 2013 – the consequences will be what Mr. Learmonth described here this afternoon?

MR. DAVIS: No.

MR. HOGAN: You don’t recall that?

MR. DAVIS: I’m not saying it didn’t happen or did happen, I just don’t recall.

MR. HOGAN: You don’t recall.

If we could just turn to P-02004, please? So, Mr. –

THE COMMISSIONER: Tab 15.

MR. HOGAN: Mr. Davis, do you recall this meeting you had with, I believe, the premier of Ontario and the premiers of the Territories?

MR. DAVIS: The Yukon and Northwest Territories, yes.

MR. HOGAN: Just the two of them. Okay, thanks.

MR. DAVIS: Yeah.

MR. HOGAN: And did you discuss sale of Muskrat Falls power with them?

MR. DAVIS: Yes.

MR. HOGAN: And what were the discussions? What were the details?

MR. DAVIS: We were – at the time, I was the chair of the Council of the Federation, which is the Canadian premier’s group; I was hosting them here in this province. And as part of our plan to host them, we brought them to Labrador. We wanted them to experience not just the City of St. John’s and downtown St. John’s, but we thought it’d be beneficial to experience Labrador. And in doing so we could also offer them an opportunity to tour Muskrat Falls and have a discussion about power.

I had many discussions with other premiers – and governors, United States governors – on the hydro opportunities that we had existing in Labrador. And this was a good time to offer them an opportunity to come a day early or a little bit ahead of time before the meeting started to have a look at the project, and three of them came to visit.

MR. HOGAN: And what came of those discussions with the premiers and/or governors in terms of export sales of – from –

MR. DAVIS: There wasn’t – there was no contracts or – concluded. But part of our discussions was on a Canadian energy strategy, which had been underway for several years by Canadian premiers trying to reach an agreement. It’s more of a philosophical document than a legal document. And we were able to reach an agreement on that that included that document and discussions while premiers were here. It included the agreement on the free movement of energy through and across provinces.

MR. HOGAN: Okay, thank you.

September 2015, when the cost increased to \$7.65 billion, so that was the second increase that you were made aware of – a now \$1.45-billion overrun now. What discussions did you, at that point in time as premier, have with the

Department of Finance in terms of how much the government could afford?

MR. DAVIS: So part of the discussions that we had with the Finance – Department of Finance – and I think it’s reflected here in one of the Cabinet directives – was to – one of the considerations was – it was how is this extra cost going to impact us on a financial level and what actions that we had to take in order to deal with those extra costs. There was no conclusion of that before the election.

MR. HOGAN: Okay.

So you never had any conversations about outer limits on a budget for the completion of that project with the Department of Finance or with Nalcor.

MR. DAVIS: We had discussions, I believe, as a Cabinet about if it requires a special warrant how do we finance that in this particular fiscal year, what implications that have for future fiscal years. And the Department of Finance took it away to do some work on it but it wasn’t concluded.

MR. HOGAN: So this was two months before the election or less.

MR. DAVIS: Yes.

MR. HOGAN: I guess the last question I have is – you said you talked about rate mitigation in September 2015. You remember being shown that deck here today?

MR. DAVIS: Mm-hmm.

MR. HOGAN: Yes?

MR. DAVIS: Yes.

MR. HOGAN: Why wait until September 2015?

MR. DAVIS: But I mean –

MR. HOGAN: When you – I mean, it was 6.9 billion at one point, so you were over at that point. Why isn’t rate mitigation talked about earlier?

MR. DAVIS: Well, it had been talked about earlier. You just – that discussion in the House of Assembly was about rate mitigation. So there was ongoing discussion by government and also publicly about rate mitigation and the impacts of rates on people of the province.

MR. HOGAN: Okay.

MR. DAVIS: So that wasn't the beginning of discussion. That was a continuation of a discussion.

MR. HOGAN: Okay, but nothing concrete ever came from it from your government, in terms of how to deal with rate mitigation, did it?

MR. DAVIS: No and it wasn't at the – the project, I don't believe, was far enough along at that point in time to make any solid assessments of what mitigation levels were needed to impact what cost.

MR. HOGAN: Okay.

And then, I guess, the cynic and maybe the political operative in me would say that was close to the election, as was the announcement about changes to the Nalcor board.

So I guess I'll put it to you: Were those issues raised at that point in time for election reasons?

MR. DAVIS: There was no – I don't recall any public discussion about having government internally do an assessment on rate mitigations. I don't think we had any – I don't think we made any political policy discussions or announcements out of that.

MR. HOGAN: What about the board announcement?

MR. DAVIS: Board announcement was that we were increasing the board. We were at the point – it was something I wanted to do before we got to the election. And, you know, it's one of those things you want to finish up or get to a stage before the election happens.

MR. HOGAN: Okay. That's all the questions I have.

MR. DAVIS: All right.

MR. HOGAN: Thank you.

THE COMMISSIONER: Thank you, Mr. Hogan.

All right, the NunatuKavut Community Council?

MR. RYAN: No questions, Commissioner.

THE COMMISSIONER: Okay.

Grand Riverkeeper/Labrador Land Protectors?

MS. URQUHART: Thank you, Commissioner.

And good afternoon, Mr. Davis. I am Caitlin Urquhart and I am representing the Labrador Land Protectors and Grand Riverkeeper Labrador. As you may know, they are citizens' groups that have opposed this project based on their mandate to protect the Mista-shipu or the Grand River, which is the traditional name of the Churchill River.

So based on our discussions here today I understand that really we're looking at this period between September 2014 to November 2015. And, as you'll know, this project was released from environmental assessment – the environmental assessment process – in March of 2012. It was done so on a number of conditions, including that Nalcor would abide by all commitments that it made in its environmental impact statement and throughout the JRP through all information requests and its submissions in that process.

And, of course, the Government of Newfoundland also provided its response to that. I just want to put as a background that some of the key findings of the JRP, in terms of where significant adverse effects would be, were specifically fish habitat and fish assemblages, and riparian habitat and fish and seal hunting in Lake Melville. So would you agree with that sort of basic premise as the background for ...?

MR. DAVIS: Yes. Yes, I would and – yes, okay.

MS. URQUHART: Okay.

So my understanding is that during your tenure as premier there were sort of two main items outstanding under the environmental assessment release. And my understanding is that that was the wetland and riparian compensation plan and the Human Health Risk Assessment Plan and environmental effects monitoring plan. Is that – does that reflect your recollection of events from that time?

MR. DAVIS: I don't have any information to the contrary.

MS. URQUHART: Okay.

So I guess my question is given that there were some items outstanding – I'm not a bureaucrat or a politician and so I'm not fully familiar with the process.

MR. DAVIS: Mmm.

MS. URQUHART: But assuming that these items were being worked on and monitored by departments, like the Department of Natural Resources, what would you expect to see coming up the chain in terms of information on those things?

MR. DAVIS: Yeah, so I remember some discussions on it but I – but it's not a significant aspect of what I'd be involved in. That would mostly be involved with Nalcor. I know Nalcor and Mr. Martin had a – what he had explained to me was a good relationship with Indigenous representatives in the area and that he tried to maintain a working relationship, but they didn't always agree, but he did have discussions with them. And so then I think him and the Department of Natural Resources would have – would've been closer to it – to those focus – to that focus.

MS. URQUHART: I mean, before you were premier, though, you had other portfolios. So I guess I'm wondering like, this, to my mind, would be one of the most important projects. This is the biggest – clearly, the biggest project that Newfoundland and Labrador is undertaking.

MR. DAVIS: Mm-hmm.

MS. URQUHART: And there are issues in relation to environmental assessment –

MR. DAVIS: Mm-hmm.

MS. URQUHART: – that are still ongoing and need and require monitoring.

So, from your experience as a, you know, minister and your time in government, what would you expect? What kind of information would you expect to be receiving on such an important project, in terms of ensuring that those things were happening?

MR. DAVIS: So I would expect that the minister would have information and would be knowledgeable on the processes and what steps were being taken.

MS. URQUHART: And so how would that information come up the chain? Like, what would be – what would you be expecting in terms of – so this – so the regulation that releases Muskrat Falls from environmental assessment –

MR. DAVIS: Mm-hmm.

MS. URQUHART: – is passed, and that's – it contains conditions.

MR. DAVIS: Mm-hmm.

MS. URQUHART: Now, obviously it's the responsibility of the government to monitor those – that those are – that those conditions are being met.

MR. DAVIS: Mm-hmm.

MS. URQUHART: They're the regulator.

MR. DAVIS: Mm-hmm.

MS. URQUHART: Like, the environmental – Department of Environment would be the regulator.

MR. DAVIS: Yeah.

MS. URQUHART: So what types of information would you expect to be coming up to the minister and, then, what would you expect to come up to the premier's level?

MR. DAVIS: I wouldn't expect to know, or to be receiving, you know, regular information on it. And I'm – as we're – as you're asking your questions, I'm trying to recall what information or – would have been shared with me and I'm struggling to try and recollect that in any way that's valuable to you.

But Nalcor and Mr. Martin themselves – himself – quite often handled the relationship, as far as the construction of the project and development of the project went, and handled the relationships with Indigenous representatives himself, and would – and had communicated that he had a good relationship – it was my understanding he had a good relationship, working relationship with them. So between him, and then reporting to the Department of Natural Resources would be the main relationship.

I'm –

MS. URQUHART: The fact that Mr. Martin has a close relationship with Indigenous leaders doesn't displace the responsibility –

MR. DAVIS: Mm-hmm.

MS. URQUHART: – of the government to monitor whether or not Nalcor is complying with its regulations. So I'm just struggling to see how that – you know, how that process, of what monitoring was in place. And it sounds like, to me, as far as you're aware, the monitoring was we deferred to Nalcor to do this work.

MR. DAVIS: No, I never said that. I said Nalcor and the Department of Natural Resources. So you're going to have the former minister available to you tomorrow and I'd suggest he might be able to shed some more light on it.

MS. URQUHART: Okay.

And I guess I'm just going – I'm just trying to understand, as I say, what you would expect. What type of information would you expect would come down – come up the chain on that type of thing, so that when we speak to Mr. Dalley, we have a sense of what he might, you know, based on – just based on your experience,

what types of information would come up to the ministerial level?

MR. DAVIS: I don't know if I can adequately give you an answer. If there's expectations, there's rules and regulations, then the minister would likely have – and the department would likely – would have an interest in if they were being accommodated, it was being – if the regulations were being met and the requirements were being met.

MS. URQUHART: So more likely gaps would be identified and that would be brought up rather than compliance, necessarily? So if there was non-compliance, that would be the type of information that would be more likely to be –

MR. DAVIS: Potentially. And, again, I don't – I can't speak to what the department were tracking –

MS. URQUHART: Okay.

MR. DAVIS: – through them or through the Environment minister at the time, and – but I'm – you know, I would – again, I think Minister Dalley might be in a better position to provide you with that information.

MS. URQUHART: Okay.

And so you would have been aware that Nunatsiavut was doing their own human health studies –

MR. DAVIS: Mm-hmm.

MS. URQUHART: – into methylmercury during the time of your tenure?

MR. DAVIS: Mm-hmm.

MS. URQUHART: And you will recall that they had released a study in the fall of 2015. And that was called: *Freshwater discharges drive high levels of methylmercury in Arctic marine biota*. Do you recall that?

MR. DAVIS: I remember they released a report, yes, and it was – you say it was the fall of 2015?

MS. URQUHART: Yes.

MR. DAVIS: Okay.

MS. URQUHART: And do you have any recollection of what your government anticipated – how they anticipated responding to the concerns that were set out in that report?

MR. DAVIS: No, I don't recall.

MS. URQUHART: And this is just a question to clarify. You had said something earlier – and I'm – I just want to understand – see if understand what it was that you were saying – I think that the overall project cost in some ways had gone down because the North Spur construction had come in under budget? Was that – I may have misheard it. I'm trying –

MR. DAVIS: What I said, there was a schedule change on the North Spur.

MS. URQUHART: Mm-hmm.

MR. DAVIS: And part of the explanation for the schedule change is by spreading it over, I think, three seasons instead of two – or four seasons instead of three, I just forget right now –

MS. URQUHART: Okay.

MR. DAVIS: – would create cost efficiencies or lower costs to the work being done on the North Spur.

MS. URQUHART: Okay.

And as you say there's no other – you had no other information in terms of what was being done for compliance.

And that was my last question. That's all.

Thank you, Mr. Davis.

MR. DAVIS: Thank you.

THE COMMISSIONER: Thank you.

All right, Nalcor board – Former Nalcor Board Members?

MS. BUIS: No questions, Commissioner.

THE COMMISSIONER: Okay.

All right, Former Provincial Government Officials '03-'15?

MR. T. WILLIAMS: Thank you, Mr. Commissioner.

And I'd like to thank you for the indulgence of sitting late to accommodate schedules. Based upon that, I'm going to reduce my questions, Mr. Davis, just to three or four questions from – arising from cross-examination, if I could.

My first question is in response to Mr. Budden's comparison during his cross-examination of your questioning of Mr. Martin during the various meetings regarding issues arising from the project. And he used the analogy of your experience based as a police officer in regards to responding to his replies to your inquiries.

At any time, did you have any sense of doubt or concern with respect to the information or the details that were being provided to you by either any Nalcor executive or any senior government officials during your term in office?

MR. DAVIS: Mr. Martin was very good at – I think he answered every question. I can't remember a time that he wasn't able to articulate and explain a circumstance or answer a question.

MR. T. WILLIAMS: Would there have been more than one person present for those meetings so that there would be questioning from various officials?

MR. DAVIS: And I'm including my time back, you know, in early days of Cabinet, when he would – because he didn't just start doing Cabinet presentations when I was premier; when I was a minister he had done Cabinet presentations as well. He was always very good at articulating and explaining position and always seemed to be very knowledgeable and confident in the information he had.

MR. T. WILLIAMS: Okay.

Mr. Simmons, in his questioning, suggested that there didn't appear to be much change in the manner in which Nalcor communicated with government over time. But wouldn't it be true that there would have been less interaction between Nalcor and the Premier's office during

your tenure, given the fact that you did not take sole control of the Nalcor file, as we've heard that Premier Dunderdale had done in the past?

MR. DAVIS: Yeah, and when Premier Dunderdale moved from the Department of Natural Resources to the Premier's office, my understanding was that much of the control management oversight of the file went with her to the Premier's office. And when Premier Marshall became premier, he had experience in Natural Resources as well as Premier Dunderdale, but – probably had less oversight but he certainly had a better understanding of the project.

And when I came in, I had no previous direct involvement as a minister of Natural Resources as my two predecessors and I relied on Minister Dalley much more – as the minister of Natural Resources, much more than my predecessors.

MR. T. WILLIAMS: Okay.

Mr. Smith, in his questioning, suggested that the offset of the \$300 million in savings arising from the federal guarantee negates substantially the \$230 million overrun that was identified by Grant Thornton in their report.

MR. DAVIS: Mm-hmm.

MR. T. WILLIAMS: My question to you is: Do you see that in any way lessening the burden and obligation on Nalcor executives to be forthright and forthcoming with the actual or projected project costs to the shareholder as early as possible?

MR. DAVIS: No, absolutely not.

You know, the offsets – there was two offsets: Actually, there was 300 million that was referenced in the September briefings 2015 from revenue of excess electricity sales and 500 because lower budgeted financing costs, so – for a total of 800. But that still doesn't change what the cost of the project was. That offsets those increases but it didn't change what we should have known about the cost of the project.

MR. T. WILLIAMS: And what is your opinion with respect to the obligation on Nalcor executives to provide government and/or

Cabinet with projections as to possible overruns or schedule delays at the earliest opportunity, even though they may not be fully realized at any point in time?

MR. DAVIS: Yeah, so I – you know, I fully expect that from day to day that the project cost would have been changing and moving and it would have been very fluid. But when there was a significant change in cost I would've expected that the province be made aware of it.

What this report here by Grant Thornton appears to determine, you know, based on their report, is that the known costs were increasing without government knowing that and the costs were changing without government knowing that.

MR. T. WILLIAMS: Okay.

My final question is with respect to Mr. Fitzgerald's cross-examination. He raised a number of issues which Ms. Mullaley, as a member of the project Oversight Committee, had dealing with Mr. Martin and whether or not you interjected in that.

Was it your practice as premier to interject into the day-to-day operations of the project Oversight Committee? And what was your perspective on the role of the Oversight Committee vis-à-vis the Office of the Premier?

MR. DAVIS: To the contrary, actually, Mr. Williams, because I wanted hands off from the work they did; I didn't want it to influence the work that the Oversight Committee did. I wanted them to report to me and the Cabinet on their determinations and their findings, but I didn't want to be seen or to be – in any way it felt like I was trying to influence any of the work they were doing.

MR. T. WILLIAMS: Okay.

Thank you. That's all my questions.

THE COMMISSIONER: Thank you.

Redirect, Mr. Learmonth?

MR. LEARMONTH: I have a few questions.

You answered one of Mr. Smith's questions with a question that why couldn't the information be shared with Cabinet if there was some concern by Nalcor that it could affect them commercially to disclose to the public the projected cost overruns. Do you recall that?

MR. DAVIS: Yes.

MR. LEARMONTH: Yeah.

Well, isn't that something that isn't – would be a very reasonable approach? If Nalcor had a concern that the increase in the cost estimates could affect their ability to deal with contractors, why not share the information with Cabinet, have a discussion and then Cabinet can decide what they want to do with this new information?

I'm suggesting that that is a logical approach rather than Nalcor on its own deciding not to share it with government. Do you agree with that?

MR. DAVIS: Yes.

MR. LEARMONTH: You do? Okay. Thank you.

Now, in Mr. Smith's questioning there was a suggestion – as I understood his questions – that there was something, not magical, but some – that the – an AFE was something that was certain, whereas a cost estimate was not certain?

MR. DAVIS: Yes.

MR. LEARMONTH: Do you remember?

MR. DAVIS: Yes.

MR. LEARMONTH: Now, I want you to turn to page 19 of the Grant Thornton report, that's Exhibit P-01677.

MR. DAVIS: Yes, Sir.

MR. LEARMONTH: So we have at December 2012, the date of sanction, the AFE number is 6.2 as is the executive cost estimate. Now, do you agree that the AFE, whether it's the executive cost estimate or the AFE – well, it's the same amount, but that's just a preliminary

estimate? I mean, they haven't got any contract bids in. That's just an estimate, isn't it?

MR. DAVIS: It is.

MR. LEARMONTH: Yeah.

MR. DAVIS: There's a low level of engineering completed.

MR. LEARMONTH: Yes.

MR. DAVIS: There'd be some understanding, very high level assessment of what the contracts would expected to be and the costs would be, yes, I –

MR. LEARMONTH: And do you agree that as you move along and you get bids in and there's more information –

MR. DAVIS: Yeah.

MR. LEARMONTH: – then there's likely to be more certainty with a later cost estimate or AFE than there would be with earlier ones?

MR. DAVIS: Right, yes.

MR. LEARMONTH: Because you're accumulating information.

MR. DAVIS: Yes and if you fast-forward to the fall of 2015, virtually all the contracts have been awarded. Ninety-eight, 99 per cent of the engineering have been completed and would give you a high level of reliability.

MR. LEARMONTH: Yes but the point is that – or the point I'm trying to get your confirmation on is that a cost estimate, for example, in July '13 –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – of \$7 billion –

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: – because it was more – it was at a later date than the 6.2 billion at sanction, it would logically be a more reliable number?

MR. DAVIS: That's a reasonable conclusion, yes.

MR. LEARMONTH: Yeah.

And I'd also point out that – to the suggestion that there was certainty in the AFEs, I'd also point out that that is probably not true because in the AFEs that we've seen, there was always a contingency amount?

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: So there's no certainty to a contingency. It's just an –

MR. DAVIS: Right.

MR. LEARMONTH: – estimate, correct?

MR. DAVIS: Right and the contingency is to offset the uncertainty.

MR. LEARMONTH: Yeah, the uncertainty. So, for example, in the 6.2 estimate or AFE, at the time of sanction there was a \$368 million contingency.

MR. DAVIS: Yes.

MR. LEARMONTH: And do you agree that that wasn't – there's no certainty to that component of the 6.2, is there?

MR. DAVIS: No.

MR. LEARMONTH: Likewise, in the 7.65 we've just seen that there was an amount for contingency.

MR. DAVIS: Yes.

MR. LEARMONTH: And there's no certainty to that, is there?

MR. DAVIS: Correct.

MR. LEARMONTH: Right. Okay.

The – there was a question raised in cross-examination about affordability. And Mr. Smith was speaking about this – the analysis like the 2.4 figure in the CPW analysis that – you know, over the 50-year term.

Now, do you not agree that regardless of the CPW analysis that there comes a point when affordability has to come into play? In other words, let's say with an \$8-billion capital cost estimate let's say the CPW analysis still favours Muskrat Falls.

MR. DAVIS: Mm-hmm.

MR. LEARMONTH: I suggest to you that you still have to look at the question of whether the province can afford the \$8 billion.

MR. DAVIS: Yes.

MR. LEARMONTH: Isn't that true?

MR. DAVIS: Yes.

MR. LEARMONTH: Because there's a limit on the fiscal capacity of the government.

MR. DAVIS: Yes.

MR. LEARMONTH: So you agree with that point that –

MR. DAVIS: Yes.

MR. LEARMONTH: – you have to look at the capital cost independently when you're considering the affordability question?

MR. DAVIS: It's – affordability is always a factor for the province and for the people who have to pay the bills.

MR. LEARMONTH: Okay. Thank you.

I wanted a little bit of clarification on the – your evidence on the federal loan guarantee. Are you able to say with any level of certainty as to whether you, as a Cabinet minister, received an explanation of the fundamental workings of the federal loan guarantee; specifically, that if Muskrat Falls was cancelled by the province after the federal loan guarantee, that the federal government could come in – come take over the project, complete it and send the bill to the province? Were you aware of that at the time of the federal loan guarantee being put in place on November 29, 2013?

MR. DAVIS: So, as I said earlier, I don't recall knowing or not knowing then.

MR. LEARMONTH: Yeah.

MR. DAVIS: I fully expect we would have been briefed on the details of the project.

MR. LEARMONTH: Yeah.

MR. DAVIS: But to remember – me to remember all aspects of what those details were –

MR. LEARMONTH: Okay.

MR. DAVIS: – six years ago is a challenge.

MR. LEARMONTH: Okay but – so you're not saying you didn't know on –

MR. DAVIS: Yeah.

MR. LEARMONTH: – November 29, 2013, you're saying that you don't know – you can't say for sure whether you did or not?

MR. DAVIS: Right. I don't remember when I first knew that.

MR. LEARMONTH: Yeah.

MR. DAVIS: I can't tell you.

MR. LEARMONTH: Okay.

MR. DAVIS: Yeah.

MR. LEARMONTH: But are you confident that there would have been a full briefing at a Cabinet meeting to the members of the Cabinet –

MR. DAVIS: Yeah.

MR. LEARMONTH: – around the time that the federal loan guarantee was put in place?

MR. DAVIS: Yes.

MR. LEARMONTH: Yes.

Okay. Thank you.

I also wanted to ask you about the – I raised this and in my examination earlier and there was some cross-examination on it. I asked you whether you recall ever having a meeting with the chair of the board of Nalcor's, just the two of you.

MR. DAVIS: Yes, I believe I did.

MR. LEARMONTH: Do you have any recollection of that?

MR. DAVIS: I'm pretty sure I did.

MR. LEARMONTH: You're not certain though, are you?

MR. DAVIS: I'm pretty sure I did, yeah.

MR. LEARMONTH: Yeah.

MR. DAVIS: I think.

MR. LEARMONTH: Would that have been dealing with a compensation issue for the executive of Nalcor?

MR. DAVIS: It may have been.

MR. LEARMONTH: Yeah –

MR. DAVIS: It may have been.

MR. LEARMONTH: – so you don't –

MR. DAVIS: I don't recall specifically, Sir.

MR. LEARMONTH: Yeah.

MR. DAVIS: I'm – I really don't but it would be very conceivable that it was, it was about –

MR. LEARMONTH: It was.

MR. DAVIS: But I –

MR. LEARMONTH: And –

MR. DAVIS: But I don't recall.

MR. LEARMONTH: As opposed to discussing costs and scheduling and so on?

MR. DAVIS: I shouldn't – right, right. I don't think I should be trying to assume what the discussion was but –

MR. LEARMONTH: No, I don't want you to speculate but –

MR. DAVIS: Yeah.

MR. LEARMONTH: – so you're not sure. You think you met once with the –

MR. DAVIS: Yeah.

MR. LEARMONTH: – chair but you're not sure what the subject matter of the meeting was?

MR. DAVIS: That's correct, once, maybe twice, but it may have been around – board governance may have been included in the discussion, yeah.

MR. LEARMONTH: Okay, you're not sure.

MR. DAVIS: Yeah.

MR. LEARMONTH: All right.

MR. DAVIS: It could be what led to the follow-up work that we did on board governance.

MR. LEARMONTH: But you're speculating really, aren't you?

MR. DAVIS: I am, yeah.

MR. LEARMONTH: Yeah, okay. Well, we'll leave it at that then.

MR. DAVIS: All right.

MR. LEARMONTH: Thank you very much.

THE COMMISSIONER: All right.

Thank you very much, Mr. Davis.

We'll end for the day then and we'll begin tomorrow at 9:30. I assume Mr. Dalley will be ready to start at 9:30 tomorrow morning and we have two witnesses for tomorrow.

All right, good evening. Have a nice evening.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.