COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2	Volume 11

Commissioner: Honourable Justice Richard LeBlanc

Friday 1 March 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

Ms. O'Brien?

MS. O'BRIEN: Good morning, Commissioner.

Before we begin today, I'd like to seek an order to enter the following exhibits: P-02081 to P-02088; P-02091 to P-02109; P-02111 to P-02112; P-02127 to P-02138.

Commissioner, can I just draw your attention to what two of those exhibits are in particular.

Exhibit P-02138, I believe yesterday, you asked Mr. Simmons, who's representing Nalcor Energy, whether he could do some follow-up with regard to papers that may have been sent to Nunatsiavut Government. So P-02138 is an email from Maria Moran of the Lower Churchill Project CA to a number of individuals, including Johannes Lampe with the Nunatsiavut Government. And attached there is a number of papers attached to that email.

Also, when Mr. Collins was before you yesterday, he indicated that we would be seeking to enter another version of P-00298, which was the IBA summary document that was prepared. And I think Mr. Collins indicated that a new version would be entered that would have fewer redactions. And that is among the exhibits I am seeking to enter: P-02135.

THE COMMISSIONER: And just so – for clarification, because I haven't seen this, but 02138, so is that – or is that actually referring to the reports that were done by Nalcor Energy subsequent to the IEAC recommendations?

MS. O'BRIEN: Commissioner, I haven't – we've just received it, I haven't had a chance to review all the individual attachments. So Mr. Simmons, I can see is on his feet.

MR. SIMMONS: Yes, Commissioner, five of the six reports were transmitted with that email on August 27, 2018.

THE COMMISSIONER: Mm-hmm.

I noticed that there are nobody – there's no one here – Inuit Government, no. I noticed that there is no one here from the Nunatsiavut Government. So, I think we should somehow provide them with an indication that we've received this email in the event that they have anything they want to submit to us.

So can we do that in some way, shape or form?

MS. O'BRIEN: I'll ensure that's done.

THE COMMISSIONER: Okay. Thank you.

All right. Go ahead, then.

MS. O'BRIEN: Thank you.

Our witness today is Pat Hussey, who's here. He's a consultant for Nalcor Energy.

I did not canvas with Mr. Hussey previously whether he wanted to be sworn or affirmed.

MR. HUSSEY: Affirmed is fine.

THE COMMISSIONER: Okay.

If you could stand then, Sir, 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. HUSSEY: Yes, I do.

CLERK: Please state your name.

MR. HUSSEY: It's Pat Hussey.

CLERK: Thank you.

MS. O'BRIEN: So, Mr. Hussey, you're here today because you are the – your position, I think, is – I'm – actually get the name of it – contracts and procurement lead with the Lower Churchill Project.

Is that right?

MR. HUSSEY: Actually, it's supply chain manager.

MS. O'BRIEN: Supply chain manager. Okay, thank you.

We're gonna start with getting you to give the Commissioner a brief review of your education and work history. To assist you with that, we do have your résumé entered into evidence. Exhibit 02091, please, Madam Clerk. And Mr. Hussey, for you at tab 14 of the book in front of you.

So you – we – that's entered into evidence, so you don't need to go through all the detail of it, but if you could give the Commissioner, please, an overview.

MR. HUSSEY: Sure.

I graduated from MUN in 1976 with a Bachelor of Arts degree and in 1979 with a Bachelor of Commerce degree in the co-op program as well.

I started my career in the oil and gas industry in January of 1980, with Mobil Oil Canada. And I started off in the purchasing department as a buyer. And I spent the first 10 years in the 80's supporting Mobil and Husky Oil in the purchasing field, in the offshore oil and gas drilling days.

In 1991, the Hibernia project had – the construction part of the project had started and I was recruited to move to Montreal and take on a role as the industrial benefits supervisor, based on my knowledge of the Newfoundland and Labrador benefits agreement and workings with the government and the board, C-NLOPB. I moved along in Montreal into the purchasing field, when they saw my experience in that area.

And in 1994, I came back to Newfoundland – the office was for the topsides in Montreal. And I ended up being the procurement manager for the topsides and the GBS, and worked in Bull Arm for just about two years.

From there I moved on to the Terra Nova project. Again, I worked at that time for AGRA Monenco, which is now AMEC. And they were one of the bidders on the Terra Nova project. So I worked there during the bidding phase. And then we were successful and won that bid. And it was an alliance arrangement. And I was the procurement and contracts manager for that project.

Commissioner, for your benefit, procurement and contracts manager is just another earlier version name for supply-chain manager. And the role that that covers is contracts, purchasing, materials control, expediting, logistics and sometimes inspection – third party inspection out in the supplier facilities. So when I – I'll use supply chain manager, but as you see from my résumé, it's the same term.

So I spent a number of years on the Terra Nova construction project. And then I moved into – transitioned to get Petro-Canada – the operations, contracts and procurement systems, and everything – set up.

I spent a year with the Hibernia operations group, because they were trying to establish a regional operating entity. When Exxon took over Mobil, they didn't want to do that. So I went back to Petro-Canada and continued on working in the operations world.

In 1991, again, I was called by – actually SNC – if I would go on the Sable Tier II project in Halifax as the procurement lead.

MS. O'BRIEN: So you said 1991, maybe 2001?

MR. HUSSEY: Sorry. Yes, 2001. Yes, sorry.

MS. O'BRIEN: Thank you.

MR. HUSSEY: And after about six months, I – the procurement and contracts manager left and I took over as the procurement and contracts manager for that project until late 2003. And I returned home – I was commuting back and forth – I returned home and was recruited by KBR to take over their supply chain role with their firm in St. John's, who had the operations and maintenance contract for Hibernia and Terra Nova.

In 2007, I, again, was called and asked if I was interested in working for Hatch as – in the same type of role for the Voisey's Bay project. And at the time, Inco was the owner and operator of that project.

And so, then – I knew Lance Clarke and Jason Kean from Petro-Canada, worked with them before. And I was at a social function with Lance and he'd indicated that he was looking for someone to head up their supply chain group, contracts group and procurement. And, you know, was I interested? But he was sort of asking did I know of anybody.

So I called him the next day and I said: Look, Vale just got – or Vale just bought out Inco. They put a hold on the project. They were looking at a different method. And I said, you know, for someone like me, I don't want to sit around for a year while they try to straighten out their acquisition. So I said: If you're looking for someone, I'm available.

And so, with that, it put the ball in motion for me to join the Lower Churchill Project. He asked me for a proposal and I have my own consulting company, SRL Consulting Inc., and I sent him a letter and offered my services and –

MS. O'BRIEN: Okay.

MR. HUSSEY: – then obviously I joined them and entered a contract with them.

MS. O'BRIEN: Okay.

And that letter you're referring to, I believe, is entered as Exhibit P-02092, tab 15 of your book, Mr. Hussey. And I understand that – sorry, is that the letter that's up there?

MR. HUSSEY: Yes, it is. Yes.

MS. O'BRIEN: That's what you're referring to?

MR. HUSSEY: Yeah.

MS. O'BRIEN: That's great.

And you said SRL Consulting Inc., so this is a company – are the sole owner and director?

MR. HUSSEY: Yes, I am.

MS. O'BRIEN: Okay.

Was – to your knowledge, was there any advertisement for the position for the supply chain manager or any competitive process?

MR. HUSSEY: No.

MS. O'BRIEN: Sorry?

MR. HUSSEY: No. I'm sorry, no.

MS. O'BRIEN: Okay, thank you.

And you mentioned that when you joined the Lower Churchill Project, you previously knew Lance Clarke and Jason Kean.

Was there anybody else on, say, the project management team who you knew?

MR. HUSSEY: I knew Paul Harrington. We worked – he worked for Mobil or ExxonMobil – no, I guess it was Mobil – in Montreal when I was there. So I – that's the first time I met Paul. And at the back end of Terra Nova, he was there in a role leading operations.

MS. O'BRIEN: Okay.

And what about Mr. Ed Martin? Did you know him?

MR. HUSSEY: Yes. Ed Martin worked as… When I was with Mobil, he worked as – I'm going to say a co-op student placement. It could've been after he graduated, I'm not quite sure, but I knew him from back in those days when he worked in the accounting group. And then, you know, being in the industry, I would know of him and run into him over the years as well.

MS. O'BRIEN: Okay.

And what about Mr. Gilbert Bennett?

MR. HUSSEY: No, I had never met Gilbert until I took this job.

MS. O'BRIEN: Okay.

There's another one I wanted to ask: Ron Power. Did you previously know Mr. Power?

MR. HUSSEY: Yes, I knew Ron. Again, he worked for ShawMont Newfoundland – is who I worked through on the Hibernia project. And so I knew him from those days but didn't know him – I didn't work with him: he was stationed in St. John's, and I was in Montreal. But I did run into him and then, you know, I saw him throughout the following years.

MS. O'BRIEN: Okay.

Now, your contract and a number of amending agreements have been put into evidence. I'm not going to bring them up but, Commissioner, I'll identify them for you: P-02094, P-02096, P-02098 and P-02099.

We've seen similar contracts before, Mr. Hussey, with other consultants who've worked on the project. Is it fair to say that this was an evergreen-type contract that you had?

MR. HUSSEY: Yes, it was.

MS. O'BRIEN: Okay. So an initial contract that would be renewed annually and often with an increase to the day rate?

MR. HUSSEY: Sure.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yes. And there was a termination notice of – in my case, it was 30-days termination notice –

MS. O'BRIEN: Okay.

MR. HUSSEY: – at any time.

MS. O'BRIEN: Now, SRL Consulting, are you the only employee of that company?

MR. HUSSEY: I'm the only employee – no, I guess, I'm just trying to determine that I'm the only employee but I have another individual who is working on the Lower Churchill Project through my company. That person went in to – in April, I think, of 2007. Again, he worked at Petro-Canada through my company, and Lance and Jason knew him from there. And they were looking for a guy for contracts administration and putting contracts in place. And so, they asked me, you know, was he available? And so I talked to him; he said yes. He was finishing up his time on Petro-Canada and so he went to work there in April of 2007.

So I think what I want to disclose is that, when I was asked to go on the project, I declared that that could be seen as a potential conflict of interest and I raised it to Paul Harrington and Gilbert Bennett and I said, look, I said, if you don't want me to join, that's fine, or if you don't want Philip to stay there. And so they approved having him staying there working on the project, and that subsequently has been – it's carried in, I guess, the Internal Audit conflict of interest rules and reports for Nalcor, so it's well known that he works through my company.

MS. O'BRIEN: Okay. And just to be clear, you joined the project in June 2007?

MR. HUSSEY: Yes, yeah.

MS. O'BRIEN: Okay. So he was there previously.

And just for those who might not be familiar, SRL consultants limited [sp. SRL Consulting Inc.], I understand, would – places people with certain skills with more companies than just the – Nalcor for the Lower Churchill Project, is that right?

MR. HUSSEY: At the time when I came back from Halifax, some of the folks that I knew in the oil and gas industry reached out to me – if I knew of anybody to fill, like, a materials role or a buyers role or a contracts role. And so because of my network and the people that work for me, they're recognized as being experienced.

So I placed probably two or three people with Husky and Petro-Canada in particular, and they – that was for, like, a couple of years. I'm not an agency, as such, that has now cropped up in St. John's, and Philip is the only person through my company.

MS. O'BRIEN: Still – he's the only person who's still being employed through your company?

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay, and just so that we understand how that works, when your company would place a person with a company, that – the company would pay SRL Consulting Inc.

MR. HUSSEY: Yes.

MS. O'BRIEN: You would take – SRL Consulting Inc. would keep a portion of those fees and then would also – then pay the person directly who you've –

MR. HUSSEY: Correct.

MS. O'BRIEN: – got placed.

MR. HUSSEY: Correct.

MS. O'BRIEN: Okay, and we understand, too, if – Commissioner, I'll just draw your attention to this. You'll see it's Mr. Philip Bursey. He is mentioned in these agreements that I've just put you to. In the agreement for 2008 – the renewal for 2008 in P-00296, there was another individual there. I understand that was a family member of yours –

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: – who was placed with a zero-dollar pay rate to do some summer or student-type work with the company, is that –

MR. HUSSEY: Yeah, it was in –

MS. O'BRIEN: – with the Lower Churchill Project?

MR. HUSSEY: Yes, it was in October of 2008, and it was a case of giving some office experience to see if that was the type of career path that the individual wanted to go to. Just graduated with a business degree. And that lasted for just a couple of months. And that person ended up returning to university in Nova Scotia in 2009 to further her career.

MS. O'BRIEN: Okay.

So now in your position as supply chain manager, can you just tell the Commissioner who you report to and just how that works? We have entered org charts, Commissioner, previously – P-00998. I don't think we need to go to the org charts, Mr. Hussey, but if you could just generally let the Commissioner know of what your position is in those charts.

MR. HUSSEY: Right.

I'm a supply chain manager. I'm one of the functional managers for the project. And functionally, I reported to Lance Clarke, who was the business services manager at that time. But day to day, I reported to Ron Power and supported Ron in his role as, I think, general project manager at the time. And I provided support to the three component project managers as well and – under Ron.

MS. O'BRIEN: Okay.

So I'm gonna start asking you some questions about the early days of the contracting strategy that was used on the Lower Churchill Project. We are aware, from evidence that's already been led here before the Inquiry that, you know, in these early days, when you first came on, it – the – SNC was coming in as the engineering, procurement and construction managing company. So at – I understand initially your role in – as the supply chain manager was as the owner's oversight –

MR. HUSSEY: Yes.

MS. O'BRIEN: – of procurement that was going to actually be performed by SNC-Lavalin Inc. We've heard evidence already that there was a transition to an integrated management team, and I understand at that time your role would have changed somewhat in that you would've been ultimately responsible for the procurement piece.

MR. HUSSEY: That's correct.

MS. O'BRIEN: We are gonna talk a little bit later this morning about that transition. So as we go through now, though, I just wanted to flag that, you know, your role would've changed over time.

So I wanna talk about the contracting strategy, and that is really how you ultimately got through to get the contract packages developed. We've heard evidence already about CH0007, for example, the Astaldi package and –

MR. HUSSEY: Mmm.

MS. O'BRIEN: – whatnot, and the various packages.

You have provided us with a timeline that I think will be of some assistance here. It's P-02112 and tab 37 of your book, Mr. Hussey. And I'm gonna suggest that you give us a bit of an overview of this timeline, and then once you're done there's certain aspects of it that, if you haven't touched on, we may drill into a little more deeply.

MR. HUSSEY: Mm-hmm.

Okay, back when I joined in 2007, there were a number of folks on the team from Hydro, Newfoundland and Labrador Hydro, and those guys had been working on the project maybe six months to a year at that time, and Hydro had done a lot of work on Gull Island project, and so they were doing a lot of studies. They had a number of engineering companies like SNC and Hatch and AMEC, a lot of environmental companies, et cetera, that were working on the project doing studies and getting ready to do some field work in 2007.

So the significance of that is we – the team that was starting to be assembled from the project experience side of it – we were trying to put some structure around what it would look like going forward if the project had – would result. And so I interfaced a lot with people like Bob Barnes, Kyle Tucker, Raj Kaushik, Bob Besaw – these were senior folks that worked on the team, all with specialist experience. And then we worked together as a team in order to try to look at the project, how we would execute it, how you would break down the packages, what's a good fit. And at the same time – so we had that internal work going on, but in the same time, we had a lot of work going on with external consultants. And, you know, we had a lawyer from Fasken and Martineau from BC, who had lots of experience out West. We had – I think there's another exhibit there –

MS. O'BRIEN: Yes. I was just about to interrupt you. It may be of assistance –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – Madam Clerk, for this part, to bring up P-02088. That's tab 13 of your book, Mr. Hussey.

MR. HUSSEY: Yeah.

MS. O'BRIEN: And this is a – it's – the document's entitled Background Information on Contract Packaging. And this is a document that Mr. Hussey provided to us, Commissioner. And you've just mentioned some of the names here.

MR. HUSSEY: Sure.

MS. O'BRIEN: So that's what flagged me to it. I understand Bob Barnes – that's a name we've heard, I believe, previously –

MR. HUSSEY: Yes.

MS. O'BRIEN: – Bob Besaw, Raj Kaushik, Kyle Tucker, Dave Brown. Were these individuals with Newfoundland and Labrador Hydro?

MR. HUSSEY: All except – Dave Brown, I think, was a consultant as well. But all the other ones were Newfoundland and Labrador Hydro employees.

MS. O'BRIEN: Okay. Thank you.

MR. HUSSEY: Yeah. So I won't get into detail and bog us down, but you can see there's a number of companies outside that provided different services to the project. But, you know, we dealt with the company out of Iceland, Landsvirkun Power. We visited their hydro dam that they were building in Northern Iceland, Karahnjukar. We had Statnett, which is a Norwegian company, which came in and gave us some advice on HVD specialties, I think. Fasken and Martineau, I mentioned. PwC, they were there in 2008 looking at the financing and the response – and the requirements of the lenders. So, you know, there was a lot of work going on at the time and that continued on throughout '07, '08 and into '09, I guess.

I think what's important, too – and we'll probably maybe get a diagram later – but the project at the time was Gull Island. So we had broke the project down into components. It was Gull Island generation. It was the transmission line, both the LTA portion in Labrador to Churchill Falls and then from the Strait of Belle Isle to Soldiers Pond. We had the HVDC specialities, which was the switchyards and converter stations. And another scope that was off by itself was the Strait of Belle Isle, the crossing. There was a team set up with – for the project for Nalcor that looked after that separately. That wasn't part of the EPCM contract going down the road.

So we broke the project down into those components and then there were studies done by SNC and Hatch about how to break it down. The Hydro folks had some experience in looking at breaking it down into, you know, manageable packages. We had feedback from all these different consultants as well on what the packages should look like.

So what we produced in 2008 was one of the first package breakdowns with responsibility of who would do engineering – who would do front-end engineering, I'm sorry, or engineering – would we go out to an EPC contractor or an EPCM. So we were looking at all the models at that time as well while we were still looking at breaking the packages down.

MS. O'BRIEN: So I've just brought back up P-02112, which is –

MR. HUSSEY: Yes –

MS. O'BRIEN: – at tab 37. So are you referring to now this contracts package responsibility matrix?

MR. HUSSEY: Yes, that's –

MS. O'BRIEN: Is that what you're talking about –

MR. HUSSEY: Yes.

MS. O'BRIEN: – now here –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – on the timeline?

MR. HUSSEY: Yeah.

MS. O'BRIEN: Okay, thank you.

MR. HUSSEY: Okay.

There's another presentation that I shared with you about feed options. And what that was, again, it was an internal discussion in late 2008. We were looking at sort of the timelines and determining did we have to award a contract or go to bid for a contract to do front-end engineering detailed design, or would we go into an EPCM contract. And so that was looked at; we never followed that path. We moved along to starting the process of looking for an EPCM contractor.

I think you have another slide there to show this, the project management approach and contract strategy that was issued in 2008?

MS. O'BRIEN: Yes, we're going to get that one in a little more detail –

MR. HUSSEY: Later? Okay.

MS. O'BRIEN: – in a few minutes.

MR. HUSSEY: Sure, okay.

So then I'll just move along then on the track here. So with – in 2009 we had done a lot of work with the marketplace on who the contractors out there were and what they were doing. There was a – it was a really hot market and there was some concern about who was available, you know, worldwide, to do something like this.

Locally, we had Hebron, Voisey's Bay and ourselves, plus Hibernia and Terra Nova at the time were doing extensions and modifications to their platforms. So there was a lot of work going on out west, I think, in Manitoba.

So based on the intelligence that we'd got, we decided that we would issue an EOI out to the marketplace in order to gauge what we had heard. There's a –

MS. O'BRIEN: So I'm just going to interrupt you there for a second, Mr. Hussey.

MR. HUSSEY: Yeah.

MS. O'BRIEN: So this is – if we can bring up just quickly, Madam Clerk, P-01888. It's tab 20 of your book, Mr. Hussey, but it is only the first page because it's a very large document.

MR. HUSSEY: Yeah.

MS. O'BRIEN: But I believe this will be the expression of interest that was put out – thank you.

MR. HUSSEY: Yes, yes.

MS. O'BRIEN: So for engineering design and project support – but really this was the one that went out to test the market for an EPCM contract or another form of engineering design and project support. And this was one that eventually led to the SNC-Lavalin contract, as we'll see in a few minutes, correct?

MR. HUSSEY: Sure. If I can just build on that for one second, I was going to say it because what I got in this diagram in tab 37, I had EPCM in there and that's incorrect. It should've been for an engineering design and project support contractor.

And that was based on the model that we selected to move forward with was an integrated team led by Nalcor folks. And so we would go out and look for an engineering contractor, and then we would get another contractor who would fill the discipline, functional roles, construction management to support the integrated team.

So that's one change here and that's what we did. And we did that based on the marketplace, what they were telling us. However, we issued that EOI, which we just referenced, and the response that came back from that was changed with the contractors that replied to our expression of interest. And it showed clearly that they were interested in EPCM model versus the type of model that we had gone out with.

And so we reviewed that, we reviewed their submissions, we visited them and we made a recommendation to the leadership – Paul, Gilbert and Ed Martin – saying that, you know, we should switch to an EPCM. So – but what we did to keep our different options, when we put together the RFP, which I'll jump to in a second, we put it out for an EP plus CM, and there were a number of options that would give us flexibility, depending on the responses that came back.

Which moves us in then to 2010 and we prepared the RFP throughout 2010 and it was issued in July of 2010. And the bids – we had three bidders and we determined the bid list from the EOI submissions. And we had three bidders and we received – I'm just thinking, yes, then we receive the bids in September and continued to evaluate those throughout the fall until we made the recommendation in 20 – in December of 2010.

MS. O'BRIEN: And for completeness of the record I think the RFP that went out, Commissioner, has been entered as P-02133. Mr. Hussey, that's – the first page of that is in tab 48 of the book in front of you. And if you could just identify that for us.

MR. HUSSEY: Yes, that's it. Yes.

MS. O'BRIEN: Okay.

And the Commissioner has heard some evidence on this already but I understand that that went out to three companies: SNC-Lavalin Inc., Hatch –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and Black & Veatch.

MR. HUSSEY: Yes.

MS. O'BRIEN: Is that correct?

MR. HUSSEY: Yes, that's correct.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yeah.

Included from a package – contract packaging perspective, included in the EOI as well was a listing of our package breakdown for the project and we wanted to get comments back from the various EOI suppliers how they felt about that, or was it right, was it wrong, give us some comments.

We also included a listing from my recollection in the RFP as well because I know from the responses that we got from the three bidders, they commented on the package listing, they gave some comments breaking some of the packages down, combining some. So we took that into consideration as well as we developed along developing the contract package list.

MS. O'BRIEN: Okay.

And relative to that point, Commissioner, P-02100 has been entered. It is SNC-Lavalin's response to the RFP. And I think that shows where they were giving some response back with respect to contract packaging.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yeah.

So from the – again, moving along the timeline, we issued a letter of agreement in December 22 to SNC and we finalized the contract and signed it in February of 2011. At that time, we took – one of the things we had to do was to give SNC, the EPCM contractor, a list of the contract packages as they were broken down. So we took all the information that we had, we produced a document on the 3rd of March, 2011, which was the master contract package list and we issued that as a formal document to SNC.

And I think you've got that –

MS. O'BRIEN: Yes, that's one we'll come back to after you give your overview and we'll drill down a little bit on that one –

MR. HUSSEY: Okay.

MS. O'BRIEN: – as well.

MR. HUSSEY: Okay, fine.

MS. O'BRIEN: Yeah.

MR. HUSSEY: So then, throughout – in March of 2011 we had a kickoff meeting with SNC; we had the – two of the teams together. And part of that kickoff was talking about the procurement and talking about the packages there, as well, and SNC's responsibility.

So we continued to review that list throughout 2011 and 2012. And in April, I think, of 2012 SNC prepared – we call it a master package dictionary. So what that was, it was the – each of the packages, they prepared – we – again, a package dictionary and I think we got some examples to show. And that was their deliverable, that was their responsibility, from an engineering perspective, to produce that document which pointed towards the specs and the items that were required to go out to the contract packages.

And that information was used in the – for the DG3 estimate and was included, I think, in the estimate as well. And, then, in December of 2012 the project was sanctioned and then, again, we continually worked on the package listing.

MS. O'BRIEN: Okay, so, what – with that overview there as to how the contract packaging was developed, we're going to go back now and maybe dig in a little deeper on some aspects of that.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: When we're done that, Commissioner, just to give you a bit of a roadmap of where we're going, once we finish with the contract package development – Mr. Hussey just ended around the time of sanction – then we'll move into the process for actually awarding the packages, so that will be the next piece we do. But for right now we're going to stick with the contract package – the packaging development.

If you could please bring up, Madam Clerk, P-02093 – tab 16 of your book, Mr. Hussey.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: And this was a – one of the items, I believe, that you referred to in the timeline. This is a "Contracting Strategy, General Overview" as of October 18, 2007.

So this work – you would have just started with the Lower Churchill Project in June of this year, so this was fairly early on. I'm not going to take you through every slide in this deck –

MR. HUSSEY: No.

MS. O'BRIEN: – but there are a few that I would like to go to.

MR. HUSSEY: Mmm.

MS. O'BRIEN: And I'm going to just start with slide number 2, please, Madam Clerk.

So this is a graphic that we see in this early presentation, but we see this graphic repeated in many of Nalcor's documents, particularly with respect to the contracting packaging strategy. Can you explain please for us what this diagram is depicting and how it's important to how you carried out your work?

MR. HUSSEY: Sure. This was a diagram and a process that Lance Clarke worked with on – with Chevron on the Hebron project and on the Fort Hills project with Petro-Canada prior to coming on the project, so – in his role as business services manager and responsible for contract and procurement.

So he brought this process to the project, which we used in order – initially, we used it to decide on what model we were going to use for the overall execution of the project.

MS. O'BRIEN: So meaning whether an EPCM model or an integrated management team model.

MR. HUSSEY: Or an – yes, exactly.

MS. O'BRIEN: Okay, so you would have used this process for that decision. Did you use it for other decisions as well?

MR. HUSSEY: Exactly. So this was flexible enough that you could, you know, change some of your – you know, what the contracting environment was, depending on what package and what your selection criteria was, et cetera. So we used this in a scaled-down version. For all the different packages that we used we used this kind of a thought process, I guess.

MS. O'BRIEN: Okay so when we're now talking about the overall contracting strategy and how you did your packages, sort of in a – at a higher level, what I'm taking from what you're saying – when we get down to individual packages and you are deciding, okay, how we're gonna proceed with package CH0007 –

MR. HUSSEY: Sure.

MS. O'BRIEN: – as an example, you would do a contracting strategy for that particular package. And this would – you know, to determine exactly how you were going to go out to the market with that package and this was the process that was used.

MR. HUSSEY: Yeah.

MS. O'BRIEN: Am I correct?

MR. HUSSEY: Yes, that's correct. And again, you know, this process here is flexible that we did use it down with the smaller – with – when I say the smaller packages, all the other 116 packages. And for every one of those packages, we created a contract strategy which outlined what some of these drivers were and what some of the selection criteria – what type of contract, commercial basis, those types of things. So they were prepared for each one of the packages, again using this kind of a model.

MS. O'BRIEN: Okay. Next I'd like to go to slide 3, please, Madam Clerk.

So this is where you've identified some of the risks that were affecting your contracting strategy back –

MR. HUSSEY: Yes.

MS. O'BRIEN: – in 2007; the list is pretty self-explanatory. But on the bottom there there's a note. You were referencing lessons learned from IPA/Newfoundland and Labrador and hydro megaprojects will be considered. Can you give us a little bit more on that, please?

MR. HUSSEY: Yes.

IPA was one of the consultants that we brought in to – they had a lot of information and data on projects and on different industries and what have you. So, we brought them in and we got lessons learned in some of the – what was happening in the market and the trend.

We also – at the time, the guys on the management team or on the team that had oil and gas experience – we're familiar with all of the East Coast oil and gas projects, construction projects, megaprojects that were happening. I mentioned Lance. You know, Lance worked on the Hebron project; he worked on the Fort Hills.

So we had lots of experience with regards to megaprojects – what worked, what didn't work; which model worked, which one didn't work – which – and Hydro, as well, we had – the Hydro folks had worked on some smaller hydro projects, but they were familiar with, you know, some of the issues with those, but we tapped into Manitoba Hydro a lot. We were – we had people who were members of the Canadian utilities association. This guy Helmut Johannsen from Fasken Martineau, he had a lot of experience with the hydro projects in BC. So we built upon all of those to help us with this strategy.

MS. O'BRIEN: Okay.

Slide 4 please, Madam Clerk?

So this is where you were doing a bit of an analysis of the current contract or markets and the trends.

MR. HUSSEY: Yes.

MS. O'BRIEN: A couple there I just wanted to get a little more explanation on.

One of them says: "EPC LS have significant disadvantages for the near future …." What was that observation about?

MR. HUSSEY: That came from either IPA or Westney or both. And, again, they were very familiar with the large construction and project world.

And so what they were telling us is – I'll just back up a second. PwC were doing work, as I said earlier, with the financing of the project, and the lenders wanted to have an EPC contract and have it lump sum, cost certainty. And, you know, these folks told us that's not going to work in this marketplace. It's too hot. If you want someone to come in and do an EPC turnkey, lump-sum job, it's going to cost, I think, 30-plus per cent premium for them to take on that risk and come in.

And so, from that perspective and the way the market was, we ruled out the EPC model for executing the job.

MS. O'BRIEN: Okay and an EPC model is like a turnkey-type model.

MR. HUSSEY: Yeah.

MS. O'BRIEN: You just –

MR. HUSSEY: It's engineering, procurement –

MS. O'BRIEN: You pay them and they build it.

MR. HUSSEY: Exactly, you just over – you oversee them, but not as heavy as you would an EPCM and you just take the keys at the end.

MS. O'BRIEN: Okay, and an EPC contractor, that carries, essentially, the risk of not completing for the lump sum.

MR. HUSSEY: Exactly.

MS. O'BRIEN: Okay.

The other note I just wanted to bring you to here – because there's been some talk about package sizes. In the Analysis of Current Contractor Market, the second-last bullet there is: "Smaller packages in this market work better …." Can you give us some comment on that, please?

MR. HUSSEY: Again, it was the current market at the time. And, you know, all the contractors were busy, all the equipment manufacturers as well. So, you know, what they were saying is that if you broke it down into smaller packages, you could probably get – I'll use the word – smaller contractors who could, you know, bid on your work and supply it.

I'll talk about that a little later as we go through, but that's what it meant right there.

MS. O'BRIEN: Okay, thank you.

And just going to visit two more slides briefly – slide 5, please.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: "Project Drivers & Selection Criteria" – this is a bit of a list here. The one I just wanted to speak to is – you know, you're looking – the list again is pretty – you know, it speaks for itself, but "Optimal allocation of risk …." So this is something that we've had a fair bit of speaking about, evidence about, and I just want to ensure that we're on the same page here as to what that bullet might be referring to.

As I take it, that would be if you're taking on more risk. So if the owner is taking on more risk, they can expect to drive the – the contract package price may be lower.

MR. HUSSEY: Yes.

MS. O'BRIEN: If you're going to push the risk over to the contractor, you can expect your price to go up.

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yes.

MS. O'BRIEN: All right.

And even at this time early on, cost and schedule predictability was an important criteria for you. Is that correct?

MR. HUSSEY: Yes, and that was driven by the financing requirements. They wanted cost certainty.

MS. O'BRIEN: Okay.

And page 6, just – I'll visit it very quickly – you're just talking about maintaining flexibility here and understanding the market conditions –

MR. HUSSEY: Sure.

MS. O'BRIEN: – which I understand is consistent with what you've already spoken about.

MR. HUSSEY: Yeah. Yes.

MS. O'BRIEN: Okay.

All right, the next exhibit I'd like to bring up is P-02095. It's at tab 18 of your binder. We're going to jump ahead in time now approximately a year – we're in 2008, 21 April. This document was referenced in the timeline that you brought us to earlier.

MR. HUSSEY: Yes.

MS. O'BRIEN: And I said we'd get to it in a few minutes –

MR. HUSSEY: Okay.

MS. O'BRIEN: – so here we are with it.

MR. HUSSEY: Yeah.

MS. O'BRIEN: So, just generally, can you tell us about what is the significance of this document?

MR. HUSSEY: Okay, this document was – I just want to look at one thing here. Yeah, this document was prepared – we're at this time in April and we had done all this work. And myself, Ron Power, Jason, Lance and Paul Harrington were working on gathering all this data, all this information that we had.

And it was for a presentation to Gilbert Bennett and Ed Martin in order to tell them where we were with our process in order to get approval, in order to – that we're on the right track and we're moving along. And then it would get to the stage where we would start going – looking for the contractor to execute the job.

So, originally, it was an integrated team looking for the engineering, plus project support services, which turned into the EPCM. And so that's what this was, is bringing all that data together so the presentation could be made to Ed Martin and Gilbert.

MS. O'BRIEN: Okay, if we can just go to slide 6 because the post-Gate 2 note at first may be confusing to people.

MR. HUSSEY: Yes.

MS. O'BRIEN: But if we see here clearly on slide 6, this was in a Gull Island-first scenario at this time.

MR. HUSSEY: That's correct, yes.

MS. O'BRIEN: And in Phase 1, the Commissioner heard a fair bit of evidence about how there'd been an initial analysis of Gull Island, so that orients us a bit. Here, though, we do see the actual scopes being broken down into components as you referred to earlier.

I understand – and maybe I'll cut to the chase a little bit here – as the contract package ultimately got developed, I understand Component 1, or C1, related to the Muskrat Falls Generation.

MR. HUSSEY: Correct.

MS. O'BRIEN: Component 2, or C2, was reserved for Gull Island and that's why we don't see very much of that right now.

MR. HUSSEY: That's correct.

MS. O'BRIEN: Component C3 referred to the transmission lines.

MR. HUSSEY: C3 was the –

MS. O'BRIEN: Sorry.

MR. HUSSEY: – HVDC specialties.

MS. O'BRIEN: I keep doing that.

MR. HUSSEY: Yes.

MS. O'BRIEN: It's HVDC specialties.

MR. HUSSEY: Sure.

MS. O'BRIEN: C4, Component 4, was the transmission lines.

MR. HUSSEY: Correct.

MS. O'BRIEN: And I think you said earlier the SOBI, the underline cable, stood a little bit separate from that.

MR. HUSSEY: Yes, it did.

MS. O'BRIEN: Okay.

And I think we've had evidence previously that, when we get to the SNC contract, their EPCM, they were not responsible for the SOBI?

MR. HUSSEY: No, they weren't.

MS. O'BRIEN: Okay.

All right, I'm just gonna go through a few more slides in this. If we could go to slide 10, please, Madam Clerk.

So we can see here, Mr. Hussey, I believe this is a little more detail on the analysis of some of the megaprojects and trends that you were looking at?

MR. HUSSEY: Yes, that's correct.

MS. O'BRIEN: Okay, and that continues on to slide 11, please, Madam Clerk?

Okay, we see a little bit more, and I think this is consistent with what you've already talked about. You've talked about the Canadian Electrical Utilities Project Management Network Group already, I believe.

MR. HUSSEY: Yes.

MS. O'BRIEN: Slide 11, please?

UNIDENTIFIED MALE SPEAKER: Slide –

MR. HUSSEY: That was –

MS. O'BRIEN: Sorry, slide 12, please. My apologies.

And here we see another slide here looking at trends, and again, here you're looking – the second bullet here says: "Integrated teams are more successful." And this is, I think, consistent with your evidence already, that initially you had planned to go out with an integrated management team prior to the expression of – getting the responses from the expression of interest.

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay.

Commissioner, and just to tidy this piece up a bit, I'm gonna ask to bring up P-00886, please – tab 9 for you, Mr. Hussey.

Commissioner, this is one of the slideshows that was prepared by the project management team, and these have been referenced previously in evidence. Mr. Hussey, I understand that you were part of the group, the project management team, that presented these slide decks to Grant Thornton. Is that correct?

MR. HUSSEY: Yes, that's correct.

MS. O'BRIEN: Okay, and I understand you did have involvement in preparing them, but primarily with respect to the topics that were in your wheelhouse, so to speak?

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay.

And I believe the pieces that you'll speak to us today we will be – will be focused on the things which you dealt with in your position.

I'm just going to go just to review, quickly, a few slides. Slide 5, please, Madam Clerk?

Commissioner, I'm doing this mostly to remind us all, as we have had a bit of a break here since Phase 1, but these slides were reviewed previously, I believe, when Mr. Paul Harrington was on the stand, but we see that here it was initially set to be this option 1 integrated management team. There's a little more on that – these slides continuing through here. I'm on to slide 6, here, where we see this is describing the expression of interest process that Mr. Hussey just gave us some evidence about and the various companies that initially responded to that expression of interest, the feedback that led them to switch – oops – to the EPCM contract. And I have – my fingers are – okay.

MR. HUSSEY: Which slide are you on?

MS. O'BRIEN: Oh, sorry, I was just on slide 8.

MR. HUSSEY: Okay.

MS. O'BRIEN: Eight.

MR. HUSSEY: Yeah.

MS. O'BRIEN: Okay.

And I – you've already covered this in evidence –

MR. HUSSEY: Yes, okay.

MS. O'BRIEN: – Mr. Hussey, I was just sort of tying up to give the reference.

Can we go to another one of these slideshows now? P-00887; tab 10 for you, Mr. Hussey.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: And this was a slide deck that we've, again, previously seen. It was specifically on the SNC-Lavalin contract. Can we go to slide 12, please? So, Mr. Hussey, looking at this slide, I understand that this covers the RFP being issued and SNC being selected as the EPCM contractor.

MR. HUSSEY: Yes, that's correct.

MS. O'BRIEN: We have not yet had much evidence with respect to how SNC or why SNC was chosen between Black & Veatch and Hatch – those were the other two that had responded to the RFP. So I'm gonna ask you to do that now. And to help you with that, I'm going to bring you to a slideshow, P-02136, please, Madam Clerk. Tab 51 of your binder, please, Mr. Hussey.

MR. HUSSEY: Okay.

MS. O'BRIEN: On page 2 is the first page of the deck, here. Do you recognize this document?

MR. HUSSEY: Yes.

MS. O'BRIEN: Can you please explain for us what it is?

MR. HUSSEY: What it was, it was the final recommendation of the bid evaluation that we presented to Ed Martin in December of 2010.

MS. O'BRIEN: Okay.

MR. HUSSEY: And it summarized the process and the evaluation.

MS. O'BRIEN: Okay, I'm gonna go through it now. Go to the next page please, Madam Clerk. I think this just sort of sets out the background.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: Maybe if you made the slide a little bit smaller, Madam Clerk, so we could – that would help. Great.

So that's just the purpose; I think it's self-explanatory. And on slide 4 is just an Evaluation Scope & Recap. We get into the Evaluation Findings on slide 5. Slide 6 and 7, this is – I understand this would be how you did some evaluation or scoring. Can you just – I'm not going to get into the numbers in detail – but just generally explain for us how the evaluation was done –

MR. HUSSEY: Sure.

MS. O'BRIEN: – and why is Black & Veatch not on this table.

MR. HUSSEY: Okay, so I think I'd like to say, as well, from a process perspective, this was a very important package for the project, obviously. And so myself – we had a team put together to carry out this evaluation; it was consist of myself, Ron Power, Bob Barnes. We brought in a construction specialist, I guess, from Landsvirkun, from Iceland, to be part of the team, to look at the construction part of it; and we also brought in Ken McClintock to do the commercial analysis with me because my role was to, sort of, run the process and make sure that we followed it and so there would be – you know, the process was followed properly.

MS. O'BRIEN: Who was Ken McClintock?

MR. HUSSEY: Ken McClintock is a consultant that has worked on the project. He's an experienced project controls manager. I've worked with him on three different jobs. And so when I needed someone to come in and help out with this – because, again, I was tying it all together and I contracted Ken through his own company to come in and help with this. So that's where Ken – you'll see Ken's name pop up in some documents as we go on. He was retired and he used to come in and do a bit of work and go away.

But one key thing with this I think I want to talk about, Mr. Commissioner, is we took those bids when they came in and we worked on them, getting the RFP ready to go out, from the Nalcor office on Columbus Drive. We rented another facility and we pulled ourselves away from the day-to-day work and from everybody around us so that we could maintain the confidentiality around this process as well. And we had a number of functional team members that came in to this facility and – to do different evaluations. And so we kept the technical – we required the bidders to give us the technical submissions separate from the commercial, and we separated those. And so even Ron and Bob and Johanne, they didn't see the commercial until later on down the path of evaluation where we had to share it with them because of what we saw in the commercial and also with the technical.

So everything was kept under lock and key, and separate, until we actually awarded the contract in December. Then we moved back into the Hydro building.

So what you have in front of you here is – just gives you a summary of the different components of the different scenarios we had and the percentage weighting for the criteria and the scoring. There's pages and pages of the scoring behind it.

And I think I've heard, Commissioner, some discussion so far about, you know, criteria and weightings and what have you. You know, our basis of evaluation is on best value and it's with regards to commercial, technical, safety, environment, benefits. Those are the high-level criteria, and then each of those individual areas are broken down into 10, 15, sometimes 20 or more detail that those disciplines would want to break their evaluation down and assign weightings and scoring to. So this was no different. We did the same thing for this, for, you know, Ron and Johanne and Bob.

So that's what those two slides basically go – show you.

MS. O'BRIEN: Okay, so Black & Veatch –

MR. HUSSEY: Oh.

MS. O'BRIEN: – didn't get that type of treatment –

MR. HUSSEY: Sorry.

MS. O'BRIEN: – that type of analysis. Can you just explain for us why?

MR. HUSSEY: Sure, sorry.

Black & Veatch – when we reviewed them for – on the EOI stage and to see if we were going to select them as a bidder, they – when we went and visited them, they – we had a company called MWH on the EOI list. And so what they did is they –

MS. O'BRIEN: And this is the same MWH who eventually gets appointed as the independent engineer?

MR. HUSSEY: No, I'm sorry. No, that's – MWH is – it's a company called Harza. They were – there's – they're a US engineering company, and they do a lot of hydro work and what have you. And so they've got the experience.

So they themselves were not capable of being a bidder by themselves, so Black & Veatch tried to do a joint venture with them. We were led to believe they were going to have a joint venture arrangement. So Black & Veatch – the bid list actually had Black & Veatch and MWH as a combined joint venture, but what we found when the bid came in, we – whatever happened between that EOI period and the bid, MWH was no longer a partner with them. They couldn't come to an arrangement or what have you. They wouldn't be explicit with us what it was.

So the bid that was supplied by Black & Veatch was substandard to if they were partnered with MWH. So when we looked at it and we evaluated with it, it was clear they didn't understand the conditions up north, they didn't understand working here. They wanted to come in and hire everybody locally, not bring in their own engineering, so it was very deficient, and the scores would show you that they were – in the preliminary review we did, we didn't shortlist them to carry them on to the end in the detail that we did with Hatch and SNC.

MS. O'BRIEN: Okay.

Slide 8 please, Madam Clerk. So here we see the Estimated Contract Value comparison between the two bidders and the estimate there for SNC as well as Hatch. And then on the next slide, slide 10, there's a little – there's an explanation, obviously; Hatch was higher under both analyses there and here's an explanation here.

Madam Clerk, could you make that smaller so we can see the full slide, please, in the screen view? There we go.

All right so maybe using the slide, can you just explain for us, please, Mr. Hussey, based on your analysis, why were Hatch's numbers coming in higher than SNC-Lavalin's?

MR. HUSSEY: Sure.

The bid consisted of a reimbursable portion which is for their man-hours with markups and what have you. And then there was a fixed fee that they would get for every man-hour that was worked on the project. And so when we opened up the bids and started to evaluate and we saw that the fixed fee – there was a big discrepancy between the two bidders and so this caused us some concern that – if I can just back up one step.

The man-hours, the hourly rates and some of the burdens, that wasn't a big driver. They were in the ballpark of where you would think they – there was no big discrepancy between them. This was, I'm going to call it the outlier, which caused us some concern of, you know, what's happening. Because if you look at this you would say – okay, did Hatch overprice this or did SNC underprice it?

So we had a dilemma that we said we've got to get under the hood of this and see just exactly what's happening. So in our discussions with SNC we were comfortable that, you know, this was their profit, I guess – their markup on the job and, again, we were concerned that it was probably low. You know, you – I think in my interview with you, Ms. O'Brien, I said, you know, is it a low bid? Did they – are they trying to buy the job? And that's a slang term that we use in the industry.

But as we checked through it we were okay with it. But Hatch causes some concern, again. So we had – as I said in the last bullet here under Hatch, we held several discussions with Hatch. We just couldn't let it go. We said: What was it?

So what we determined it was is that their fee was about – when I say 50 per cent, if you looked at their fee and their average hours, it was about $95, I think. So, you know, $48 of it was their markup. And from our discussions with them, what we have in here is they had, like, approximately a 10 per cent profit. They included a 15 per cent-plus factor for risk.

All of these contractors – I worked on the EPCM side, you know, for two or three of the projects I worked on, so each of these contractors go through a risk review by their senior management leadership and it's all about the appetite that they want to take on a project. So Hatch had a 15 per cent-plus risk built into their bid as the way we're able to determine.

Also, there was some issues with their office overheads. It seemed to be lower and – than SNC. So, again, we determined through our discussions that it was probably a 7 per cent included in the fee for office overhead. That's the only other explanation we can get.

So – and the last thing that we feel – or felt that contributed to it is Hatch had a number of engineering companies that they were going to bring on to their team. So they had a lot of – they were in subcontract roles with Hatch, so we felt that also brings on another layer of profits and everything, so they just keep adding up. And that's the explanation that we got through those discussions and why we said, okay, it was a real number and we were comfortable. But that was a factor in commercially determining this outcome.

MS. O'BRIEN: Okay.

Any concern – obviously, Hatch had 15-plus, you know, as best as you could judge it, there for risk. I understand SNC didn't have anything there for risk from your analysis. Did you have any concern that SNC-Lavalin had not accounted anything for risk on a project of this size?

MR. HUSSEY: No. Again, it depends on the company, but as I said, SNC's hourly rates were a bit higher than Hatch's, so it could've been in there. You know, again, with a project like this, their estimates for the man-hours were quite similar to what we had come up with ourselves as well. So, you know, they could've looked at it from the perspective: Well, there could be problems with the project. We could make more profit. So I think we were okay with their risk profile.

MS. O'BRIEN: Okay.

Page 10, slide 10, please, Madam Clerk. Here's where we see the ultimate recommendation to issue a letter of award to SNC-Lavalin with an estimated contract value of $285 million.

MR. HUSSEY: Mmm.

MS. O'BRIEN: I understand that that would've just been an estimate at the time.

MR. HUSSEY: Yes.

MS. O'BRIEN: Because, I think as you said earlier, this was a reimbursable contract –

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: – so based on actual numbers of hours worked, plus a fixed fee in addition to that. Is that correct?

MR. HUSSEY: That's correct, yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: And –

MS. O'BRIEN: So this was no lump sum or –

MR. HUSSEY: No.

MS. O'BRIEN: – or no caps on. It was really reimbursable for time worked.

MR. HUSSEY: And this number was based on 2.5-million man-hours.

MS. O'BRIEN: Okay. We'll come to that again in a little bit, in a second.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay.

So I'm just going to go to a previous version or an earlier draft of this deck. P-02137, please, Madam Clerk.

MR. HUSSEY: Which tab?

THE COMMISSIONER: Tab?

MS. O'BRIEN: Sorry, 52. My apologies.

MR. HUSSEY: Okay.

MS. O'BRIEN: So this was – I think the final draft we looked at was out on December 16 of 2010. This one's a little bit earlier and there's – this is when – if you look through the whole deck, it's clear it's not a complete deck. But I just want to take you to slide 15. It's the only the slide I want to look at here.

Sorry, slide 16, please.

Okay. So I take it –

MR. HUSSEY: Slide 15 –

MS. O'BRIEN: Slide –

MR. HUSSEY: Oh, I'm sorry, yes.

MS. O'BRIEN: Yes, it's page 16, slide 16.

MR. HUSSEY: I see. Yes, I see your red number, yes.

MS. O'BRIEN: Okay.

So I – can you just confirm, Mr. Hussey, that "Bidder 1" here is SNC-Lavalin?

MR. HUSSEY: Yes, that's correct.

MS. O'BRIEN: Okay, so this is something we just discussed earlier. So this was an area of concern here, one – and the one I want to talk about is: "Bidder is 'buying' the job." So I take it from what – maybe give us a little bit of an explanation. I know it's a slang term; it doesn't appear in the final but – in other words, the idea is they may be coming in with a low estimate?

MR. HUSSEY: That's – I just said that in my description earlier. And that's – I didn't know you've – if you had this slide here. That's where this comes from. We were concerned when we saw the Hatch and the SNC fixed-fee discrepancy. And I said earlier, you know, again, the slang term we use: Are they buying the job? You know, was it a low bid? And, again, when we finished the analysis, we were okay with it.

MS. O'BRIEN: Okay.

And we – I understand, just to get a little more clarity on this 'cause we did discuss it in our interview, but there can be concerns that someone bids low to get the job and then there's a concern then that, particularly with a cost-reimbursable job, that they'd ultimately rack up a lot more hours than originally anticipated and sort of make up their profit that way.

MR. HUSSEY: Yeah.

MS. O'BRIEN: Is that a fair summary?

MR. HUSSEY: That's correct, yes.

MS. O'BRIEN: Yeah.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay.

And I just want to look at – go back to P-00887, please, Madam Clerk. Tab 10, Mr. Hussey, slide 22, please, Madam Clerk. So I'm going to ask you if you could make that a little bit bigger, please, so we can see it. Even bigger again, please. Okay.

So this is a letter –

MR. HUSSEY: Which page? I'm sorry.

MS. O'BRIEN: Sorry, tab – sorry.

MR. HUSSEY: Tab 10.

MS. O'BRIEN: Slide 22.

MR. HUSSEY: Oh, 22.

MS. O'BRIEN: Page 22.

MR. HUSSEY: Okay.

MS. O'BRIEN: And it's probably going to be easier, Mr. Hussey, if you can bring it up in your book because it is –

MR. HUSSEY: Yes.

MS. O'BRIEN: – a challenge on the eyes. Are you familiar with this letter?

MR. HUSSEY: Yes.

MS. O'BRIEN: Can you please tell us what it is?

MR. HUSSEY: Okay, I can't – it's tough to read it but I know what it was. I think this is – again, we had in the bid from SNC, we – roughly 2.4-, 2.5-million man-hours. And then this was dated in 2012.

MS. O'BRIEN: That's right. It's January 16th –

MR. HUSSEY: Yes.

MS. O'BRIEN: – or 15th – one of those days – of 2012.

MR. HUSSEY: Yes.

MS. O'BRIEN: So this would have been after – just to put some context around this –

MR. HUSSEY: Yeah.

MS. O'BRIEN: In – on December 15, 2011, SNC-Lavalin Inc. is one of their deliverables, delivered the DG3 estimate. And I understand when you looked through – part of their estimate initially included what their estimate was for their own services –

MR. HUSSEY: Yes.

MS. O'BRIEN: – under the EPCM contract. And they had an amount in that estimate that was higher –

MR. HUSSEY: Yes.

MS. O'BRIEN: – than what they'd initially proposed. And I think if we scroll to the bottom there, Madam Clerk, we'll see that table.

MR. HUSSEY: Yeah, this is the one, I think, is about the 6-million man-hours or the – I can't read the number. But what it is, this was a big difference in man-hours to execute the job than what was in the bid. And so I think Ron may have issued this letter to them, you know, stating we're – our surprise and shock over this.

I think – and this was handled at the higher level than me. At the time Ron was the company representative on that contract and Lance was on the steering committee, so – and I had a contracts administrator assigned to administrating the SNC contract, so I was aware of this but they handled the issue.

But what I'd like to say about it is that what we saw was the bid team from SNC, you know, they felt that the 2.5-million man-hours were fine and the approach they were taking was aligned with us. I think there was a change in view of how to execute the job and, you know, I will say it is when Normand came on the job.

MS. O'BRIEN: Normand Béchard?

MR. HUSSEY: Normand Béchard, yes.

You know, it was a different approach and it was more of – you need more people in order to manage the project. I give you one example, and it gets back to the packaging thing as well where you talk about SNC wanted larger packages and, you know, there was smaller packages and break it up – or SNC, I'm sorry, wanted smaller packages.

I saw that in the transmission line team. Those folks came from hydro. They worked with projects in Hydro-Québec and, you know, they wanted to bring, like, in this estimate, 275 people to manage the transmission line construction. The project, under the model that we took once we integrated, I mean, we had 65 to 70 people that managed that.

So, you know, it seemed to be a change – I'm going to use an execution strategy versus ideology – but it caused some concern and, as a result, this is one of the things which, you know, left some doubt in what the strategy was from an SNC perspective.

MS. O'BRIEN: Okay. So in terms – and I don't expect you to be able to comment on what was SNC's thinking behind this.

MR. HUSSEY: Sure.

MS. O'BRIEN: Obviously, we'll hear from people from SNC, but fair to say that in your initial evaluation where you raised the concern that there may – there's a risk here, they are buying the job, coming in with low numbers, ultimately will jack up their reimbursable numbers, this is perhaps showing that that risk was at least potentially manifesting at this time? Fair to say?

MR. HUSSEY: Yeah, I think so, but I think you have to go to the point of the execution strategy, which is what drives these types of things, as no different with the way we packaged it, you know. You're driving the risk out to the contractors. So I think you got to combine both of those.

MS. O'BRIEN: Okay.

MR. HUSSEY: And, again, I don't know what their thinking was, but this is what our assessment was.

MS. O'BRIEN: Thank you.

I'd like to go quickly to P-02083, tab 5 of your book. So this is not – I'm gonna follow up, Commissioner, with a better exhibit for this, but this one will serve my purpose for now.

PowerAdvocate – can you just – you'll see here this is a presentation, Mr. Hussey, "Transmission Project Contracting and Packaging Strategy Risk Assessment …." I understand that power advocacy [sp. PowerAdvocate] was retained to come look at the project packaging strategy with a focus on the transmission, but that's not all they looked at. I understand they looked a little more broadly than that. Is that fair to say?

MR. HUSSEY: That's correct, yes.

MS. O'BRIEN: Okay.

And they ultimately did, you know, have a report that came in and a more – a fuller slide deck –

MR. HUSSEY: Yes.

MS. O'BRIEN: – that they presented. And I'll make sure that those get into evidence. This is – they then had a round-table discussion, I understand, and so there was a – they got together with some of the key players at Nalcor –

MR. HUSSEY: Correct.

MS. O'BRIEN: – to discuss the results. And this presentation is just a very short one, summarizing some of their key findings.

MR. HUSSEY: Correct.

MS. O'BRIEN: Okay.

So the purpose I want for it it's – this one will do. Can we go, please, to page 3? And this was – they were talking – this is a bit of a summary of the risks and opportunities that they had identified. And I want to just talk about, under "Commercial" there, the second bullet is: "Risk sharing/incentive program with the EpCM."

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: And when we get their full report in, we'll see that that was one of the things that they had recommended that you do. As I understand it, essentially, get your EPCM contractor to have some skin in the game –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and you're likely to get a better result.

Now, we know that the contract or the commercial terms, as you've explained them to us, just reimbursable with a lump – fixed –

MR. HUSSEY: Fixed fee.

MS. O'BRIEN: – fee portion.

Was there any incentivization or sort of skin in the game for SNC-Lavalin?

MR. HUSSEY: Further to our discussion, our meeting last night, I reviewed – I indicated to you that there was discussion. And I reviewed the detailed PowerAdvocate document and, yes, it's listed in there. They confirmed what I had thought, is in – and I couldn't get the SNC contract last night to confirm this, but my recollection was that we talked about that with SNC, but we said we would put it off until after contract award and we would review it to see if there was some kind of an incentive scheme that we could come up with based on the type of contract it was.

In the PowerAdvocate, they did quote our exhibit 4, which was the compensation section of the SNC contract, which said that we had that listed in there as something that we would explore with SNC if we could come up with some kind of an incentive scheme, even though our thoughts on it in our previous documentation is that it's very difficult to put an incentive program in with a reimbursable-type contract.

But it was in their report. It referred to our exhibit 4. I just – I wasn't able to confirm that. But again, though, it goes to my recollection to you last night that, you know, we had talked about it and planned it, but because where we ended up after 2012 with integrating, we didn't pursue it with them.

MS. O'BRIEN: Okay, thank you.

One more exhibit, I think, that I want to look at with respect to the award to SNC-Lavalin Inc., P-02134, please, Madam Clerk. Tab 49 for you, Mr. Hussey.

MR. HUSSEY: Okay.

MS. O'BRIEN: So this was – this is in the evaluation of SNC-Lavalin and Hatch, and you talked earlier – I think you mentioned these people having been involved in the evaluation of the two – to the two contracts. And this document is, as it's referred to up here, a "Compendium of Notes." So in reading this, it looks to me that both companies would've come independently and made presentations to the team and there would've been some back-and-forth questioning by the team, the evaluation team, and these are notes that were taken and put together to be used as part of your evaluation.

Is that correct?

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay.

And I'm not going to go through all the notes. If we can just go page 7 –

MR. HUSSEY: Excuse me, can I just give you some context with this?

MS. O'BRIEN: Absolutely.

MR. HUSSEY: Okay.

When we got the bids in from both bidders – well, three bidders, but the shortlist bidders, it wasn't – they weren't – it didn't appear they were as strong in the construction management side of their proposal as they were in the engineering and procurement side. So Ron and Bob had some concern about that, but we knew these companies and, you know, their experience.

So what we decided to do is we advised them that we wanna meet with them, both of them individually, and we wanted a presentation on construction management. We wanted them to bring their key people to that meeting so that they could be – number one, be part of the presentation. We didn't want, you know, somebody who puts bids together to stand up and talk about it. We wanted those actual construction folks that they were going to nominate to give the presentation, be there. And Ken McClintock isn't – he wasn't in front here, but Ken was another guy, from his experience, who was part of these interviews and presentations as well. So that will give you the context of why this meeting was held.

And, again, we drilled down pretty hard on all aspects of this RFP so that we could get the best solution for the project. And this is one example of it here whereby the guys wanted to drive down deep on the construction management to see were there any gaps or any concerns. And so that's the reason why we did this.

MS. O'BRIEN: Okay.

And I know we're gonna hear from Mr. Power. We're not currently planning to call Mr. Barnes as a witness, but I understand Mr. Barnes – we've had evidence – I believe we've had evidence in the hearing room he was from Newfoundland and Labrador Hydro and had some hydroelectric experience.

MR. HUSSEY: Oh, yes, 35 years or something. Yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: Very experienced.

MS. O'BRIEN: So if we can just go to page 7, please, and these are the notes on the Hatch presentation. I believe this is Mr. Ron Power's notes here. But they're showing – what we're seeing here under the heading "Other": "Winter works – Pierre – may not need to do much of it – low productivity evident in winter works."

So, from this, I was taking that there may have been a difference between the two companies as to how they were approaching winter work, so that being Hatch. And before I put the question to you, I'll go to the SNC-Lavalin reference. If we could please go to page 16, I believe, Madam Clerk.

And these – just to put it in context, these are the notes from Mr. Bob Barnes on SNC-Lavalin's presentation.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: And I'm just going to go down there to point 31. He writes – the notes indicate:

"There was a discussion on the schedule prompted by a question I asked. SNC's approach appears drastically different from Hatch. SNC claim they need to do winter work and need to double shift the construction work – this concerns me greatly as it will box us in with little maneuverability to handle changes and difficulties. There appeared to be some disagreement between their construction personnel and planner – we can, and should, address this before award. I am unclear what they have put in their proposal to cover this – both winter and back shift work is not productive, I'm surprised at this approach."

Do you recall this discussion between the approaches of SNC-Lavalin and Hatch?

MR. HUSSEY: I was in the presentations – in the role that I was in coordinating all this I was there. But as to getting into this discussion between, you know, the team that was evaluating it, I didn't participate in it. But what – and that's why I indicated to you probably Ron is the best one to answer this.

But I think what I'd like to do with this, just bring it to the next stage, is that – so these notes were done up individually by the guys during the presentations. So they went back then to the office and sat down and reviewed these and discussed them. And, you know, that was Bob's view and what he heard and what he saw. Then Ron had a view, so did Ken and so did Johanne.

So I guess the only answer I can give you to it without – I'm not going to go into it because I'm not technically able to speak to it, but from a process perspective, they discuss these and they came to their scoring. Each of them scored the two bids separately, then sat in a room and determined what the final score would be. And so, based on that and the scoring that SNC got, I would think that this got talked about and resolved and clarified. But, again, from a process perspective, to me, it did, but I would ask you, if you want, you would probably talk to Ron.

MS. O'BRIEN: Ron Power. Okay, thank you.

One final point: in our interview, you had mentioned that there were some showstoppers with Hatch as well with respect to the articles of the contract or the terms and conditions. Can you just explain for us, what was the issue that Hatch was unwilling to give on the terms and conditions?

MR. HUSSEY: Sure. Again, because we shortlisted both of them, we were carrying their bid evaluation out right out as far as we could and completed because, again, we wanted to be – have it complete. SNC, there were no major showstoppers with the articles.

The issue with Hatch is – and we had numerous meetings. I was in the meetings along with Lance Clarke and our legal counsel – outside legal counsel – reviewing these and negotiating. Hatch had issues. The main issue was with the liability clauses. And they were not willing to compromise and we couldn't agree on what that was.

Again, we went as far as we could with regards to that issue, but again, we have corporate standards, financing – you know, requirements we had. We couldn't go any farther with them. Obviously, in the end, you know, that was just – we wanted to complete it just in case something else came out of our evaluation before we did our final selection, but as it was, SNC were technically and commercially the best offer.

MS. O'BRIEN: Okay.

And so, ultimately, SNC-Lavalin was retained and, as I believe you said earlier and it's indicated on your timeline, that contract was awarded in February 2011.

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yeah, we issued a letter of award just on the 22nd of December; the contract was finalized on – in February.

MS. O'BRIEN: Okay.

I'm going to go a little more now into the contract package listing. And can we bring up P-02129, please, Madam Clerk? Tab 44 of your binder, Mr. Hussey.

MR. HUSSEY: Okay.

MS. O'BRIEN: So this is the SNC – sorry, this is the "Muskrat Falls & Island Link Master Contract Package List." And we'll see here this was issued for use March 2011, so just after the contract was assigned to SNC-Lavalin.

Can you just explain for us what the significance of this document is?

MR. HUSSEY: Yeah, I mentioned earlier that all the work that we had done throughout the project and all the feedback we got – feedback we got from SNC in their bid, and Hatch as well, we had to issue this "Master Contract Package List" to SNC so they can continue on then with their work in the EPCM model.

MS. O'BRIEN: So this was – Nalcor issued it. And, Madam Clerk, I'm going to ask you if you could make it a little bit smaller, please, so I can get a little more on the screen.

You can go even smaller again. Okay.

So I'm just going to just, kind of, do a little bit of a scroll through here, but we see that this is doing – this is setting out what the actual packages are.

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay. And they're all there in an Excel spreadsheet at the back.

I just want you to talk about – I understand that this is a living document. In fact, it says that, I believe, right – essentially right here on page 4 under "Scope." It does say this "is a living document and will be subject to constant revision throughout the life of the Project."

So I'm going to get you to please explain that. I just want to give you a little bit of context here. The Commissioner has already heard evidence, particularly in the presentation of the Grant Thornton report on phase 2, that there were at times between the – some scope changes in between; you know, a package may have had a scope increase or decrease, and scope transfers were referred to. I understand that may relate directly to this document and the fact that it is referenced as a living document.

So if you could give us a little more detail around that, please.

MR. HUSSEY: Sure, no problem.

Yes, I think what's critical with this document is showing sort of the transfer over of responsibility to SNC for this package listing now. So, again, as you pointed out, this is a living document and there would be, you know, adds and deletes and what have you to the packages, and I'll talk about that in a second.

But I think what I wanted to point out as well is the final sentence in this paragraph: "The final contract package arrangement as well as contract scopes will be … the EPCM Consultant as agreed by" Nalcor. And you'll see, when we talk about the package dictionary, that's what I'm referring to there.

MS. O'BRIEN: Okay.

MR. HUSSEY: To your point for the Commissioner – and I think we may have an example of it, a list, but – so you start off with this master package list and as you go through, you know, the market conditions, changes in execution approach, you would delete some of the packages and include them into other packages. And there's – or you would even, in some cases, delete some of the packages. But there was a process around that, Commissioner, whereby the project controls team within SNC – and eventually, when we integrated, it will be within the integrated project controls team – they cover cost control and so they would be responsible to update this package listing going forward, and SNC would've updated the package dictionaries.

And so all these changes, though, would've been covered within the change-management process. And I think the form that would've been needed to be complete when you were doing these transfers was a modification to commitment packages, and that would be signed off and approved by individuals that would approve, again, the change. And then the project controls folks who are managing the cost, then they would do – my – I heard in Grant Thornton's – when they were presenting, they would control the puts and the takes in the various packages and adjust the numbers – the cost numbers, sorry.

MS. O'BRIEN: Okay.

And just to give a little more explanation there to ensure that we're clear: so the project controls team would be a specific group of people working within Nalcor on the Lower Churchill Project who'd be responsible for change management –

MR. HUSSEY: Yes.

MS. O'BRIEN: – with respect to the project. And I understand Grant Thornton gave us some evidence already about how change would often start with a DAN, or a deviation alert notice, and then, if appropriate, that may become – turned into a project change notice or a PCN, ultimately may result in a change order to a contract.

MR. HUSSEY: That's correct.

MS. O'BRIEN: And so the tracking of this change throughout these various levels in that, as I'm hearing as you would – you're saying is that process would still be used for changes or transfers between scopes in the packages?

MR. HUSSEY: Yeah, that's why I mentioned this other form. So you've heard about a DAN and a PCN and a change order.

MS. O'BRIEN: Yes.

MR. HUSSEY: Then this form here, because the package wasn't, say, awarded and it was done beforehand, they would use this modification to the commitment package form.

MS. O'BRIEN: Okay.

MR. HUSSEY: And that's how it would be documented.

MS. O'BRIEN: Okay. And this group, the project controls group, would be responsible for tracking all of that.

MR. HUSSEY: That's correct, yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: They're a functional group, just like I am within the project team.

MS. O'BRIEN: Okay, thank you.

And I understand that the contract package list was – this document that we're looking at here, this was prepared by Nalcor but with input from SNC-Lavalin.

MR. HUSSEY: Exactly.

MS. O'BRIEN: Okay.

Okay, one of the issues that has been canvassed in evidence at the Inquiry to date is the advice that SNC-Lavalin gave with respect to package size.

Do you recall if SNC-Lavalin ever raised a concern regarding the size of the packages that were being used?

MR. HUSSEY: I'd have to say, yes, and I look at it from the perspective, as I mentioned before, about the transmission line.

You know, they wanted, you know, smaller packages and break it up, but the market told us differently. I'll come back, though – again, I heard lots of discussion about the CH0007 package. SNC were responsible. That was theirs. It was their team; it was their strategy. I, you know, I didn't hear anything that said that's too big, we should break it down, but I was aware of it from the transmission line perspective.

So I never saw any big disagreement, to be honest with you, but maybe I can put it in context for you as well, is, you know, when we look at these packages, you know, they were in sizes that fit the marketplace. There was – you had – probably the biggest package was the Astaldi contract, and then we had the EPC contracts for the switchyards and the converter stations and the condensers. So that was a large – those were large packages, but they're EPC, which is what the lenders wanted.

And then, in the process of breaking these packages down, we were looking at the site services, as an example, up here in Muskrat Falls. We had talked about a – one single contractor providing all of those services, which would be transportation, medical, security, site services, even the catering, but because of the IBA agreement, when that got finalized in, I think, February of 2010, that changed our strategy where we had to break it down into individual packages.

So, and then you could talk about the Valard and the DC contract. I mean, that's well documented of why that package was combined into one large versus smaller ones; I won't get into that detail. But my point to you is that, you know, we had a combination of large and small. It's what fit the project and what was there as a result of SNC, with the EPCM, or EPC contracts for the HVD specialties. Their guys were familiar with that strategy.

So, I don't – I didn't think it was such a big issue that it's been made out, so far to this date in the Inquiry, to be honest with you. It's a logical breakdown of the project. Some people have different views on whether the Astaldi contract should have included the spillway and the powerhouse but, again, I come back to SNC were heavily involved in that strategy and they signed off on it. They were okay with it.

MS. O'BRIEN: Okay, thank you.

You just referenced the IBA and that's with the Innu Nation and we'll come back to that later this morning.

We'll see if that can hold me for now.

THE COMMISSIONER: Do you need a few minutes or …?

MS. O'BRIEN: We are actually close to the break time so it's probably not a bad idea.

THE COMMISSIONER: All right, let's take our break now then for 10 minutes.

CLERK: All rise.

Recess

CLERK: Please be seated.

MS. O'BRIEN: Thank you, Commissioner.

All right, Mr. Hussey, and the next I'm going to take you to is P-02984. This is the LCP Master Package Dictionary. It is most certainly not in your binder. It is a very large document. So if we could just get that brought up on the screen, please, Madam Clerk.

MR. HUSSEY: Which tab is it?

CLERK: No (inaudible) –

MS. O'BRIEN: No tab.

MR. HUSSEY: Oh, it's no tab.

MS. O'BRIEN: It's –

MR. HUSSEY: You're just gonna –

MS. O'BRIEN: – because –

MR. HUSSEY: – bring it up, okay.

MS. O'BRIEN: – it is so large.

MR. HUSSEY: Okay.

CLERK: 02984?

MS. O'BRIEN: 02984.

MR. SIMMONS: 02084, maybe.

MS. O'BRIEN: Thank you. And I may have put a wrong reference in my notes.

CLERK: 02084?

MS. O'BRIEN: Yes, that will do. Thank you very much, Mr. Simmons.

Okay. So I understand that this was a – one of the – an early deliverable for SNC-Lavalin. Is that correct?

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay, so you described it a little bit earlier, and I'll just bring it down. Madam Clerk, can you make it a little bit smaller, please, so we can get a little more on the screen?

So here is what it is, and I'm just gonna bring up a couple of pages here so you can – this – here we see, this is a listing of all the different contract packages. So we can see the CH ones have to do with Component 1. Is that correct?

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay, and then we see ones having to do with Component 3 and such.

MR. HUSSEY: That's right.

MS. O'BRIEN: And then we actually get into the dictionaries themselves.

So here, I'm bringing up now, what's on the screen is the dictionary for package CH0002. I can bring up another one if it works better, but if this one works for you, maybe you can give us a little overview of what this does using this as an example.

MR. HUSSEY: Sure.

Yeah, I'm not – I think there are two or three pages. I'm not sure. But basically what it does – this is a deliverable from SNC and they have their project number on this as well. But it describes the package; it describes the scope of work in a summary perspective and then it gets down into some of the detail of what's included in that package. And I think if you scroll down further, it talks about the contract basis, what's excluded from the package. It talks about –

MS. O'BRIEN: So I'm just going to interrupt you there.

MR. HUSSEY: Yeah.

MS. O'BRIEN: So contract basis, you got some boxes here. It could be a lump-sum contract; it could be a unit-price contract; it could be a cost reimbursable.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay. Sorry, continue.

MR. HUSSEY: It – you touch on – you'll touch on some of the different disciplines. I see quality in there. And it talks about what other packages it's gonna to interface with as well, and that's what – those are listed there. Again, it could talk about – and these dictionaries are for all the packages, so some of these may apply, may not apply. But I'm just reading from this now. Specific site conditions that may impact this package. You know, i.e., the site had to be cleared, as an example, and levelled.

Any environmental effect, any free-issue materials that would be required to be purchased and issued for this package, and as you can see, there's none for this. And then the budget would be there as well.

MS. O'BRIEN: Okay.

MR. HUSSEY: And whether it's an IBA package is critical as well.

MS. O'BRIEN: Okay. So that's what we just see. It's a –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – few pages long, and there's one of these for each package. If I continued scrolling down now, we'd go to the next package, CH0003. And so it's a very –

MR. HUSSEY: Sure.

MS. O'BRIEN: – sort of a high-level summary of all the key information for each package –

MR. HUSSEY: Correct.

MS. O'BRIEN: – its interfaces and whatnot.

MR. HUSSEY: Correct.

MS. O'BRIEN: Okay, thank you.

Next, if we can bring up P-01942, please.

THE COMMISSIONER: Tab number or …?

MS. O'BRIEN: I don't have a tab number for this. I'm sorry, Commissioner, I believe it may – it may not be in the book because, again, it is rather large.

MR. HUSSEY: Mmm.

MS. O'BRIEN: But this is – again, can we make that a little bit smaller, Madam Clerk, so we can get a little bit more on the screen at the same time.

So this is the Overarching Contracting Strategy – oh, thank you. We have seen this document previously. The A3 version was entered already as an exhibit, I think, as P-01177. This is the B1 version approved for use.

Mr. Hussey, can you please explain for us what is the purpose of this Overarching Contracting Strategy document?

MR. HUSSEY: Basically – and as you can see, Ken McClintock's name is on here as well. Ken – this was a deliverable from SNC, in order to come with this as part of their procurement deliverables, and because of the issues that we had, it didn't get done.

So what we did is we asked Ken to come in and put this together for us, and what it is – if you went through, there's a – I don't know how many pages, a hundred pages – it's a combination of, you know, what we did to select the EPCM, how we arrived at that decision. It talks about the procurement management plan, summarizes that. So it's, you know, I think four or five different documents throughout the project that all come together in order to identify and describe the overall – overarching contracting strategy for the project.

MS. O'BRIEN: Okay, and can we go to page 103, please, Madam Clerk?

And here we actually have the – a summary of the contract package listing as of the 3rd of February, 2012. So this again lists the contracts. And can you just give us an idea of how many contract packages were there?

MR. HUSSEY: This here includes – I think I saw SOBI up there, but that SOBI –

MS. O'BRIEN: It does say excluding –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – SOBI, yeah.

MR. HUSSEY: Yeah.

So about 116 packages, I think, was the final number that comes to mind. It was – I've seen 125, like – so I think we ended up with 116, approximately.

MS. O'BRIEN: Okay.

Can we bring up P-00888, please – tab 11 of your book, Mr. Hussey. This is another one of the project management team slide presentations. This one is actually on contracting strategy and process. We have reviewed, I think, most of the information here with respect to the contracting strategy, at least, already in the course of your testimony this morning, but I'm gonna take you to a – just a couple of slides on that.

Slide 5, please. So can you just give us a bit of an explanation as to what this slide is showing?

MR. HUSSEY: So I think we saw a similar version before.

What this mainly does, it takes the project again and breaks it down into the three components. And it's got scope one, scope two but it's – Muskrat Falls generation is C1. The HVD specialties is C3 and the overland transmission is C4.

And then what we did below that is, it outlines the engineering design will be SNC's responsibility and they would develop the functional specifications, for instance, for any of the various contract packages. And it also outlines the different – some of the different packages, for instance, the turbines and generators, balance of plant and they – the turbines and generators was a supply-and-install EPC contract as an example of one of the contracts – models that we went with. And then you would – and they would design, fabricate and install and commission the equipment.

Then if you move over into the HVD specialties, again the specification would be done by SNC and the EPC contractors for – I talked about these as well – converter stations, switchyards and the subsea; that's a transition compounds I think. Again they would be responsible to do the design, fabrication, install and commission the equipment.

And then you move over into the C4, the transmission line. The engineering – detailed engineering was done by SNC for this and we, as the project, bought the materials for the transmission line and free issue it to the construction contractor who would then do the install and the commissioning of the plant.

MS. O'BRIEN: Not everyone may be familiar with the term free issue; can you just explain for us what that means?

MR. HUSSEY: Sure. Sure.

Basically, what a – one of the strategies we took is that we would purchase all of the hardware, the towers, the foundations, the anchor systems, the conductor from the individual suppliers worldwide and, again, I talk about – I heard some discussion about, you know, size of bid packages. Some of these packages had eight, nine, 10 bidders. So we went far and wide to all the manufacturers who were capable and had the capacity to supply this materials.

And so we also established a freight-forwarding company contract to move the materials to two marshalling yards. We had one here in Labrador just off the highway as you cross over the bridge and that was all the transmission materials for the Labrador transmission construction.

And then we also had one in Argentia, on the eastern end of the Island, for the rest of the transmission line throughout. So, we brought all that material into those yards, we stored it, we confirmed that it was delivered and no damage and what have you, and then we would free issue that according to the construction schedule to Valard for them to install in the construction of the line itself.

MS. O'BRIEN: Okay, so Nalcor Energy itself was responsible for purchasing the material, getting it to –

MR. HUSSEY: The marshalling yards.

MS. O'BRIEN: – either – Labrador –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – or the Island of Newfoundland, getting it into the marshalling yards and then the contractor could pick it up from there at no charge to them, obviously, but they weren't going to charge you for the materials.

MR. HUSSEY: That's right – no, it was a strategy we took and I mean that's, again, a cost-effective strategy for that whole process I just described.

MS. O'BRIEN: Okay, and again I'm going to take you to slide 6 here. You may have discussed the most important parts of this already, but just in the event that there's something of importance there that you want to draw to the Commissioner's attention you haven't had an opportunity yet with respect to the strategy, please do.

MR. HUSSEY: I don't know – we may – we'll probably discuss this, I think, with the process about the package teams –

MS. O'BRIEN: Yes, we will.

MR. HUSSEY: – and, yeah, I think that's the – 'cause you talk about a project-delivery team, that's what – I would discuss it right there.

MS. O'BRIEN: Okay, that's fine.

So, we'll get on to that. This slide deck, P-00888, does cover the contracting strategy and the process. So if we could jump to slide 15 now, please.

This is the part of the slide deck that actually gets into the process. If we can go to the next slide, slide 16, and here we have another – a flow diagram here, talking about the contracting and procurement process and that maybe a good place, Mr. Hussey, for you to begin explaining for us how the contracting process worked.

MR. HUSSEY: Okay, that's fine.

So, you know, this process describes all of the pre-award steps from the time that the contract package is identified right to awarding of the contract. And one of the things I want to talk about before I get into the scope of work is that, you know, these packages are managed by a team; it's not any one individual that can do all these activities.

And so there's a responsibility matrix that was prepared to – for each of the packages, which shows – and it's so large we had to print it on a drawing plotter. It covers all the package teams, so the main functions that would be there would be a contract's administrator or a buyer, an engineer, there'd be a safety representative. It would be a project controls, it would be quality, benefits and you'd also get into schedulers and planners, expediters. So everybody who's involved in this would be listed on that responsibility.

So it's a team effort, not just one person.

MS. O'BRIEN: Okay.

And would there be a separate team for each contract package?

MR. HUSSEY: Yes, there would be, and some people – obviously some of the functions would have multiple packages they respond – would be responsible for. And the engineers in particular would be applicable to where there was transmission or HVDC specialties or civil works or what have you. So again, you'd have the right mix of people that would be involved in this right here.

MS. O'BRIEN: Okay, so the same person may be on multiple teams.

MR. HUSSEY: Sure.

MS. O'BRIEN: And I understand the team would be led by either a contracts administrator or a buyer, is that correct?

MR. HUSSEY: Yeah, usually the term I use is either the buyer or the engineer, depending on, you know, expertise, strength, experience or what have you. But the role of the contracts administrator and the buyer would be to ensure that the process that I've – you know, I and the team put in place is followed and adhered to and if there's anything that strays away from that then they bring it to my attention.

MS. O'BRIEN: Okay.

MR. HUSSEY: Okay?

MS. O'BRIEN: All right, thank you.

MR. HUSSEY: So –

MS. O'BRIEN: Please, go on.

MR. HUSSEY: – we have the packages, so the first step, an offshoot from the dictionaries, is the scope of work has to be developed by SNC and has to be reviewed and approved and a little – I'm – SNC, I guess, part of their process is they would prepare the scope of work and they would approve it on their side. Then they would give it to Nalcor; we would review it and sign off on it.

When we integrated, that got a little bit more seamless than that and we use one document for the sign-off versus having to go through from them to our document – their document control system over to ours. So, it got streamlined. So I'm gonna talk from the perspective of being integrated here now, okay?

MS. O'BRIEN: That's fine.

MR. HUSSEY: Okay.

So that was issued through document control to the buyer, who would then take that and get it ready for the RFP. But as I talked about before, we developed a contract strategy for all of these different packages and the complexity of the package dictated, you know, how much of that diagram we used and the different criteria or whatever. But again, that was – those were prepared and they were approved and they were issued as well.

The next phase – and EOI is in here but this was in the early days when we used the EOI and we changed the process to a bidder-selection questionnaire –

MS. O'BRIEN: Okay, I'm –

MR. HUSSEY: – that was sent out.

MS. O'BRIEN: – just going to interrupt you for one moment just to go back to the contracting strategy –

MR. HUSSEY: Sure.

MS. O'BRIEN: – to find – so as part of that you – this is the diagram we looked at awhile ago, and I understand – so this might be where you'd evaluate, okay, are we going to do this as an EPC contract; is this going to be a cost-reimbursable? You know, who are – you sort of look at the approach you're going to –

MR. HUSSEY: Exactly.

MS. O'BRIEN: – take to that package. Okay.

MR. HUSSEY: Yes.

MS. O'BRIEN: All right. Sorry, please go on. So –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – you wanted to make a correction here to the next box over the EOI?

MR. HUSSEY: Yeah, it's a bidder selection questionnaire. Evaluation questionnaire.

MS. O'BRIEN: Okay.

MR. HUSSEY: So all of these packages, by the way, one – in – we'll talk about it in the – on the – when we get to the benefits and the IBA – one of the commitments we made is we would list all of our packages on our website and we would give a schedule of what dates they were due to come out.

And we would have a high-level definition of the package. And if there was anybody out there before we started the process wanted to – again, use the word – expression of interest, they could send in that request to us with some information on their company and then we would consider that when we get into the next phase here I'll talk about.

MS. O'BRIEN: Okay. So I understand when you put together an expression of interest, you're saying you put that up on your website. I also understand that you might have – as part of your contract strategy work – identified who may be key players –

MR. HUSSEY: Yes.

MS. O'BRIEN: – in that particular area.

MR. HUSSEY: Yes.

MS. O'BRIEN: And you may target some of those players and specifically send them the expression of interest as well?

MR. HUSSEY: Yeah, maybe I can explain that here. I was gonna do it a little later but that's fine. You know, the website is a requirement from a benefit strategy, and it's become, you know, a practice used by all projects now. So that is a general stage where people can approach us.

But one of the biggest things about doing a project like this is you have a lot of people who've done this work before. They know suppliers. Their suppliers have come in and given presentations. You know from industry, et cetera.

So we use the word, targeted. You've heard that before. So that's through the work of the team from knowledge base. And, you know, you've got to have, for instance, the Siemens and the Alstoms on a bid list for, you know, switchyards and things like that. So that's when we talk about targeted companies.

But anybody who feels that they could provide, they can put an expression of interest in, then they're given a bidder selection evaluation questionnaire in order for the team to determine that they're qualified to be able to bid on the project.

MS. O'BRIEN: Okay.

MR. HUSSEY: So when we – so we issue these questionnaires to the list of companies in order to see if they're qualified in order to be able to be a bidder on the project. And, again, all the way through you're gonna hear the same theme from me is that these – the contract strategy is developed and it's approved. The EOI or the bidder selection questionnaire, we do an evaluation plan of those, and those are developed by the team and they're signed off and approved by the appropriate folks. Then – and they – and that has to be done before the questionnaires come back in.

So then the questionnaires are received, and they're reviewed against a criteria that's outlined in that evaluation plan. And, again, you know, you got the main categories and it's a little bit more high level than we get into with the RFP, but it's enough information to allow us to make a determination are they qualified to bid.

Based on that evaluation, there's a bid list recommendation that's prepared by the team and reviewed by folks and signed off. And, again, it goes up the ladder of authority in order to determine the bid list. And, you know, in – and those are challenged, as well, based on, you know, what information is coming and because, you know, you want to make sure you got the right bidders. So now that we got the bid list determined, then we can move on to the RFP. And that's where the full scope of work comes from, from the SNC folks, and gets included in there.

I want to identify that the RFP consist of two parts. And the part one of the RFP is the instructions to bidders and that includes instructions on how to bid, how we want the bid received and what have you, but it also includes all of the different questionnaires from all of the functions that are included in the evaluation of the bids that come in. So you'll have a commercial, you'll have a technical, you'll have a quality, safety, benefits, and in any packages that are applicable, you'll have an environmental questionnaire as well, especially for the civil works packages. So that's part one of the RFP.

Part two contains the articles for the contract and all the exhibits that go along with the contract. And some of the information from the part one will end up into the contract and the exhibits. So I just want to make that difference in how the RFP is put together. And again, that RFP is circulated amongst the team and it's signed off and approved for issuance, as well, to ensure that everything is included that's required for that particular package.

MS. O'BRIEN: Do you have a target as to a number of bidders that you'd like to have on the bidders list to go to the RFP stage?

MR. HUSSEY: Yes.

In our – actually, the procurement management plan, it talks about any contracts over $25,000 there's two bidders. That is more meant for sort of post-award when you're at site and the guys are up here and, you know, they need to go out and get some work done locally or whatever. You get two bids and you can get on.

But our bid list for these major packages – we wanted them as large as they needed to be in order to attract and get the right bidders. So we would have bid lists. Most of the bid lists were five or six bidders or more. You, again, leave no stone unturned and I think you've heard, maybe last week, I think probably with maybe the Astaldi contract there was a lot of work done searching the market and going out and looking for bidders and the number of bidders was there – I'm not sure what the number was. The same thing for –

MS. O'BRIEN: Four I believe.

MR. HUSSEY: – the – some other packages. So, again, you would try to get the bid list as many as you could.

MS. O'BRIEN: Okay. Thank you.

I think you were just up to the RFP being issued, then.

MR. HUSSEY: Yes.

So the RFP is issued and, again, we have a bid evaluation plan which is developed and approved prior to submission. Then when we receive the bids – the bids come in and we have the bid closing date and if the bids come in before that, they're logged into a bid receipt log and they're locked up in a secure cabinet until the official closing. And then when the bids are all in, we would convene at bid opening, which would be attended by the buyer or contracts, in most cases a project controls person and then either another person from my group or, in some cases, myself. If I was available I would attend the opening as well.

And one of the things we did, Commissioner, as well – I talked about, you know, confidentiality and trying to keep this – we would have the bids come in. Technically would be separate from the commercial, and we would keep it that way so that the technical folks didn't see the commercial. We didn't want the price to affect the evaluation from the technical folks, 'cause if they saw the bid price they would probably go, well, let's just jump right to that – to the low bidder and that's not the way we evaluated the bids.

So we were very cautious and it would get to a point where, if we shortlisted and we got close to making a decision, then you would let the technical folks – you'd had to, especially if there were some technical exceptions taken that required some clarification, which could affect the price. So eventually they would see it but it'd be closer to the end.

So the bids came in then, and they were evaluated against the evaluation criteria, and there was clarifications, negotiations going back and forth. And I think you've heard that, you know, if packages came in over budget, they were reviewed and we looked at whether – what ways we could reduce those prices, whether, you know, through negotiation or checking the scope and see, you know, if it was really applicable, et cetera. So that went on through the evaluation stage. Then we had – a bid evaluation and award recommendation was prepared, and that was circulated for approval as well.

Now, our approval process included probably two stages – or three stages, I guess. Anything less than $10 million, that would be reviewed by the project team and would be signed off according to approval levels. Anything above $10 million had to go through a Nalcor due diligence process. That is a Nalcor requirement that we on the project adapted as well.

And that included folks in Nalcor's Finance group, their project controller, their insurance people; we touched base with their legal counsel as required if we needed them to review anything. And then, anything above $100 million had to go through another phase of review, and that was, again, by Nalcor senior leadership – like the manager, the general manager of the Finance group, the investment group, the VP of legal – Wayne Chamberlain at the time, he would review it as well – and the Treasury folks.

So, they would sign off on any contract over $100,000. And I think one thing I –

MS. O'BRIEN: Over –

MR. HUSSEY: Hundred million, I'm sorry.

MS. O'BRIEN: Thank you.

MR. HUSSEY: One other thing – I lost my train of thought – was on the creditworthiness. A creditworthiness would be done at the bid evaluation stage as well, by the Nalcor Treasury department, to check the creditworthiness of the companies.

MS. O'BRIEN: And would that be for any contracts over $10 million?

MR. HUSSEY: Yes, over $10 million, yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: And then, I guess, once we got the recommendation signed off, then we start preparing the contract. And again, the contract would be put together with the information that came in and it would be reviewed and signed off by – both internally, and also, within Nalcor, they had to review it based on whether it was over $10 million. Over $100 million, it would go to the cold eyes team.

MS. O'BRIEN: Okay.

MR. HUSSEY: And then we would award and issue the contract and issue it out through document control.

MS. O'BRIEN: Okay, thank you.

MR. HUSSEY: So before we move on – then what I wanted to state as well – I talked about the package pre-award. So post-award, then you would hone in on a smaller group that would manage that package going forward. And in the case of Muskrat Falls, all the contracts that were for Muskrat Falls, they got transferred up here to the site to be administered by a site contracts team which was led by a contracts manager up here. And so you had your construction folks and your engineers and your contracts folks up here.

In St. John's – for the HVDC specialties and the transmission line, where they were spread out, they were administered from St. John's. So I would have – on the HVDC specialty I think I had four contracts administrators that actually moved over and worked next to that group: the engineers and the area managers. And they were a team working in a portion of our office.

And on the transmission line, the contracts administrators who administered the right-of-way clearing contracts and the buyers of buying all the equipment, they were situated closer to me, and that's where the transmission line. So just give you an idea of, post-award, how we split up the administration and the management of these contracts.

MS. O'BRIEN: Okay, so you used the word contracts administrator for the pre-award review that you've just gone through and contracts manager for post-award –

MR. HUSSEY: No.

MS. O'BRIEN: – or is it –?

MR. HUSSEY: No. No.

MS. O'BRIEN: No.

MR. HUSSEY: Still contracts administrators. But there was a contracts manager up here at Muskrat Falls site who was responsible for those – I think we had seven or eight or nine contracts administrators. So he was responsible to manage them and the contracts if any issues came up. And he actually was a – he's got a dispute avoidance and claims management background, so he was heavily involved in any issues that arose commercially.

MS. O'BRIEN: Who would that have been?

MR. HUSSEY: It's Mike Harris.

MS. O'BRIEN: Okay.

All right. So am I understanding correctly then that the contracts administrator who might be there through the bid award process would then stay with that package post-award and be responsible, in particular, for making sure that the proper paperwork was flowing on that packages, deliverables were coming in on time –

MR. HUSSEY: Correct.

MS. O'BRIEN: – doing change – taking, you know, overseeing change management on that contract and such?

MR. HUSSEY: Yes, you're right, except for one little thing. Some of the contracts administrators that looked after the package in the bidding phase, they didn't come to site – some people didn't want to come to site. So we had other contracts administrators that were hired that would take the contract and administrate it up here in particular in Muskrat Falls.

MS. O'BRIEN: Okay. Thank you.

All right. We're going to go through some – that's a fair bit of detail there. Maybe a couple other – couple of areas you've covered I'm going to go in into a little more detail. P-00888, please, it should already be up there, Madam Clerk – oh yes, it's on the screen. Page 17 – slide 17 is the next slide, and I think this – I'm not going to go over this; I think you've just discussed the information –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – on this slide in what you've given us. Page 18, again, so this talks about, again, a lot of what you've covered to date and I understand this is a – gives maybe a little more detail about, you know, their – the proposals are sealed and –

MR. HUSSEY: Yes.

MS. O'BRIEN: – the "Bid evaluation plan must be approved prior to bid opening," and it sort of takes us through those pieces there.

Slide 19, here this talks – this introduces the benefit strategy and also the IBA with the Labrador Innu, and we're gonna come – and the – also the Nova Scotia memorandum of understanding. I'll just highlight that for the Commissioner right now. We're going to come back to that, Commissioner, in a few minutes in a little more detail.

So a few minutes ago you were talking about the due diligence process for contracts over $10 million and then a – more of an executive, an additional review –

MR. HUSSEY: Yes.

MS. O'BRIEN: – for contracts over $100 million, as I understood, at the executive level. You talked about creditworthiness checks. Can we please just quickly bring up P-02130, tab 45 for you, Mr. Hussey. A little bit smaller, please, Madam Clerk?

So this document's been entered into evidence. This is Guidelines for Credit Worthiness Verification. So I think that's what you were – you mentioned this document –

MR. HUSSEY: Yes.

MS. O'BRIEN: – when you were giving your description, so this is there and in evidence.

From what I understand, Mr. Hussey, it wouldn't be your team that would do the creditworthiness verification; that would be done by people within one of the financial groups at Nalcor?

MR. HUSSEY: Correct. In Treasury.

MS. O'BRIEN: In Treasury –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – thank you.

Want to get a little bit from you with respect to performance security that would have been negotiated on the packages. We've seen, from the Grant Thornton report, they reviewed a – just a limited number of the 116 contract packages, but we saw in that report that –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – there was different types of security, and here I'm talking about performance bonds –

MR. HUSSEY: Yes.

MS. O'BRIEN: – letters of credit, parental guarantees and such.

Can you please explain for the Commissioner how those negotiations would've been carried out on the packages in a more general sense?

MR. HUSSEY: Sure.

We had four contract templates which we put together for the project, but we had the same security for each of those. So we had a performance bond of 50 per cent of the – this was within the template, this is what would go out with every bid. And contractors, obviously, would take exceptions or agree or whatever, which led to negotiations.

So we had performance – and we had the option – we had these four performance security options and, again, depending on the creditworthiness, it gave us the flexibility to select what was appropriate for the contract. So the performance bond, I think it was 50 per cent of the contract value; a parent company guarantee; a letter of credit, which had a 15 per cent limit for the contract and for the warranty period, if that was applicable, it would drop down to 5 per cent; and we also had a labour and materials bond as well which was 50 per cent of the contract. So those were the securities that were listed in our contract.

And then, as I said, the contractors would comment on that and based on the creditworthiness review, that would help us with what we could accept and what we absolutely needed, or any compromise. And I think as you see in some of your findings, that those percentages changed depending on, you know, what the supplier could supply and what we would accept in order to satisfy our requirements.

MS. O'BRIEN: Okay.

Just going to go over that a little – a bit, just to make sure it's very clear, because it's – some people will have a lot of familiarity with this –

MR. HUSSEY: Sure. Okay.

MS. O'BRIEN: – and others won't.

So I understand that when you put out your request for proposal, one of the documents that would be included would be the form of the contract that you anticipated entering with the successful bidder.

MR. HUSSEY: Correct.

MS. O'BRIEN: And so you used general template – a general template. And you said you had four different templates, and in a few minutes we'll talk about what each –

MR. HUSSEY: Yeah, sure.

MS. O'BRIEN: – of those were.

MR. HUSSEY: Yes.

MS. O'BRIEN: But there was a – depending on the type of the contract, there was a template you used.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: And those templates would've had in them the performance security that you were looking for, just as you set out there a few minutes ago. When bidders then put in their bids – this is fairly common in the construction industry – they put in their bids and they can take exceptions –

MR. HUSSEY: Yes.

MS. O'BRIEN: – to some of the terms and conditions or articles of the contract, where they, you know, say whether or not they're willing to –

MR. HUSSEY: Correct.

MS. O'BRIEN: – agree with those terms and, if not, what they would agree to. And when bids come back with exceptions it can happen in the course of the evaluation of those bids or proposals that there's some negotiation back and forth –

MR. HUSSEY: Correct.

MS. O'BRIEN: – with the companies and so things that they've taken –

MR. HUSSEY: Yes.

MS. O'BRIEN: – exception to would be things that would be negotiated.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay. And so as part of your work as you've just described for us you would have done that due diligence creditworthiness analysis.

MR. HUSSEY: Yes.

MS. O'BRIEN: So what I'm understanding from you is the results of that creditworthiness analysis would have informed Nalcor in its negotiations –

MR. HUSSEY: Yes.

MS. O'BRIEN: – with the bidders.

MR. HUSSEY: Yes.

MS. O'BRIEN: So, therefore, what – how far you were willing to move off your template would at least be informed by the results of that creditworthiness –

MR. HUSSEY: Correct.

MS. O'BRIEN: – check.

MR. HUSSEY: Correct.

MS. O'BRIEN: Okay.

And so that's why when we look at the actual contracts, different contracts ultimately were issued with different types or levels of performance security.

MR. HUSSEY: Correct. Yes.

MS. O'BRIEN: Okay. Thank you.

And just going to what those – the four master templates were, can you just please explain for the Commissioner what each of them was.

MR. HUSSEY: Yeah.

MS. O'BRIEN: And if you could, when you give the name of the type, if you could just give us a bit of an example of the type of contract that would be covered by that form.

MR. HUSSEY: Sure, okay.

Yes, when we started out this was one of the things that we were – we needed to do for the project because we had the template that we used for the EPCM bid. And that was fine for that and it had, you know, most of the components in part one and part two, but what we decided to do is we decided to tweak the articles and the exhibits to match what we were going out for.

So this is where we came up with the four different types of templates that we had: one was for civil works contracts, one was for services, one was for supply and install and one was for procurement of the materials that we were buying and free-issuing.

And so as an example of the – of a civil works contract, it's the CH0007, the Astaldi contract. And another one would be the bulk excavation –

MS. O'BRIEN: I think that's CH0006.

MR. HUSSEY: – 0006, I think, yeah.

MS. O'BRIEN: Okay.

MR. HUSSEY: And then the services packages would be like the medical, the waste disposal, the ground transportation, the air transportation and the – and security and, also, the catering as well as an example.

The EPC contract would be the AC switchyards, the converters and the turbines and generators.

MS. O'BRIEN: Okay. You just referred to that as an EPC contract, is that – would have been supply and install?

MR. HUSSEY: I'm sorry. Sorry, yes.

MS. O'BRIEN: Same – same – same –

MR. HUSSEY: Yeah, supply and install. Yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yeah. And then, of course, the procurement is for buying the towers and the foundations and the hardware and things like that.

MS. O'BRIEN: So that's when you're actually buying materials from people when you're doing free issue.

MR. HUSSEY: Yes, and the design is – the detailed design is done by us and we give it to them and they manufacture to that.

MS. O'BRIEN: Okay. Thank you.

All right, I'm gonna go back now and talk a little bit about the transition to the integrated management team. We have heard some evidence, already, as to the problems that Nalcor – from Nalcor's perspective, it was having with SNC-Lavalin. I'm not gonna go over all those with you. I'm gonna focus with you on issues with respect to the P, the EPCM, P for procurement.

So can you tell us: When did you first have concerns about SNC-Lavalin's performance with respect to the procurement part of their contract?

MR. HUSSEY: I guess it was early on, after we awarded the contract, and it started in two areas. It started in the resourcing and then it started when we started putting those early works packages together that we had to get – and we'll talk about that later – when we had to put those out on the street and get the bids so that we can start the early works. I could see that there was a disconnect between procurement and engineering.

But the big thing, starting off, was the resources. You know, when the contractors bid, they nominate people and, you know, we review résumés and we say yes. But if they're successful, there's a possibility that some of those people will not come onto the project; this project required that you be executed in St. John's, and so people wouldn't – didn't want to move here for different personal reasons or whatever. So we – so some of the people they had nominated either didn't want to come or when you get deeper into reviewing their résumés and even partaking in some interviews, they weren't acceptable; never had the right experience.

So SNC struggled that way. The first three people that they got, actually, had worked for me on previous projects and they had contacted me about, you know, any opportunities on the project before we went out to bid because they didn't know what execution model was. Anyway, I and a couple of those people had worked or were working for SNC. So I identified those three to SNC's procurement manager to get those. So those three people actually came onto the project. They had finished up on other projects and came and one person was in between jobs. So that was fine but they still weren't staffing up to the schedule that they needed. So, anyway, I had to, you know, highlight that and bring it to their management that, you know, you got to start finding resources because, you know, we're falling behind.

Then on top of that, you know, all of the procedures and the forms and formats of the deliverables they had to give us from a procurement perspective, they weren't there, they weren't producing them. And again, as I said earlier, I worked for SNC before, I worked in the oil and gas division, which later became amalgamated with the mines and metallurgy and they had the procedures. I mean, I just – I came off the Sable project where I had those procedures and I adapted them to ExxonMobil, so I new what they had. But the hydro division didn't have those, so that caused me a concern as well, because again I had – they were starting to get some people and there was no consistency in what those folks had to do. They were coming with what they did somewhere else, which just doesn't work on a project. You got to get yourself organized and set up for success.

So those were the two main things there but what really started to come to light with me was when we had meetings to discuss the requirements for the bid packages and the schedule that was put together in order to get the packages out. And I think we'll look at an exhibit later on that. But there was a disconnect between the engineers and procurement. It's almost like they worked in silos. But the hydro engineers, they weren't used to working this way before. So I couldn't understand for the life of me because, again, when I go on a project it's the first thing I do is get together with the engineers and buy into the schedule. So that took a little bit of work. When we used to go to these status meetings and I'd be sitting there with the experience of doing this and I asked the tough questions, they were all looking at me with blank faces. So it took us a bit of time to get that straightened out whereby they understood what their roles were and that they had to work together in order to meet the schedule that we had.

So those were the biggest things early and then further on as we went through the different tools that they had for doing the job, I mentioned the forms and the procedures, but also their project management system, PM+. I was familiar with that system because I had worked with it before and again, the hydro side didn't use it. And so – and SNC – the engineers, for instance, had to do their scope of work and their building materials, then it had to go back into Montreal and somebody in Montreal would put it in the PM+, and that took a lot of time. You know, the priorities in Montreal weren't the same as what we had. And so from that perspective there's another disconnect and that needed to be fixed. And so, I think those are the ones that affected the procurement side that caused the issues for my heavier involvement.

MS. O'BRIEN: Okay.

I'm gonna just go over some of those and just get a little bit more on them. I understood what you're talking about, the PM+ there and the software system they were using, so that would've been one issue. You talked about no consistency in the forms and documents and such and I just want to make sure we all understand what you're talking about.

So when we look at – when you just took us through –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – the processes that you just did, we – you talked about, you know, bid evaluations and recommendations for awards, for example.

MR. HUSSEY: Yes.

MS. O'BRIEN: And we can see, going through Nalcor's documents, that there was an actual – for each contract package there is a document called bid evaluation and award –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and it sort of fills out and it talks – it summarizes what the process was on the evaluation for that package, what considerations were taken and ultimately who the package is being recommended for award to.

MR. HUSSEY: Yes.

MS. O'BRIEN: So we see a consistency in that form being used for the various different packages. That's just one example. But what I'm understanding for you saying –

MR. HUSSEY: (Inaudible.)

MS. O'BRIEN: – is that when you had all of the people coming in from SNC there was no consistency in their documents, so one person on one package may be taking a different approach than someone on another package.

MR. HUSSEY: Correct.

MS. O'BRIEN: Okay.

MR. HUSSEY: That's correct, and they were – so those templates that you saw, they're templates that we developed when, again, you know, I got involved, as I said, in a soft integration with them. I just had no choice. The work wasn't getting done. So, you know, we would put those headings in those documents and we would ensure that when somebody on SNC side, as well as ours, who were reviewing these, they were looking at a consistent document and all the relevant information. We weren't getting that before. It was done different styles. It was brief. It missed stuff. So we came up with those templates.

MS. O'BRIEN: Okay. And we are talking about Nalcor –

MR. HUSSEY: Yes.

MS. O'BRIEN: – consultants working for Nalcor.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay.

With respect to getting the right people and resources, I'm going to bring up a further exhibit, P-02131, tab 46 for you.

MR. HUSSEY: Okay.

MS. O'BRIEN: So this is an email for you. We've blacked out individual people's names –

MR. HUSSEY: Sure.

MS. O'BRIEN: – because it's not about the individual people here we're talking about, it's just about the issue that was arising.

So this is very early on. This is February 9, 2011.

MR. HUSSEY: Yeah.

MS. O'BRIEN: So the – that's the same month that the contract with SNC was signed. It's between you and Mr. Hendry – Ian Hendry. Who is Mr. Hendry?

MR. HUSSEY: He was SNC's supply chain manager or procurement and contracts manager. He's – he was, I guess, equivalent to me.

MS. O'BRIEN: Okay. And –

MR. HUSSEY: And this was early because when we issued the letter of intent, they started mobilizing some people. So he was one of the first ones to come to St. John's. And these three people that I talked about, I think one or two of them came, like, in January in order to start working on their deliverables and what they anticipated. So that's why it's so early.

MS. O'BRIEN: Okay. So even before the contract was awarded, you talked about the letter of award coming and that would have started some work happening.

MR. HUSSEY: Yes.

MS. O'BRIEN: That's –

MR. HUSSEY: Yes.

MS. O'BRIEN: – similar –

MR. HUSSEY: We had –

MS. O'BRIEN: – to a limited notice to proceed, I guess.

MR. HUSSEY: Exactly. And we had a big job to get the mobilization, get the office set up, so that's why these key folks came in.

MS. O'BRIEN: Okay.

And so I'm not going to go through this email in detail –

MR. HUSSEY: No.

MS. O'BRIEN: – but it's talking about the same, you know, the evidence that we're talking about right now. And was it clear to you, even at the bid stage, that SNC were struggling to find the right people?

MR. HUSSEY: Yes. I think I may have mentioned to you in my interview with you – I'll give you my example. When we were putting this bid together and putting it out around that time in 2009, Hebron was out on the – for bidding for EPCM for their project and, you know, a lot of us didn't know whether this project was going to go or not.

So I was approached by the three bidders for the topsides on Hebron and – to go in this similar role. And I said to them – I said: Look, I'm not going to be exclusive to either one of you. ExxonMobil know me and if you want to put me in, you can put me in all three. And I'm sure if ExxonMobil sees it they'll understand, you know, my position.

And so, anyway, make a long story short, one of – the bidder who was successful, you know, they came to me and said we won the job, we want you to come with us. And so I thought about it long and hard and we were through this – through the RFP and I made the decision that I wasn't going to leave this project, I had too much invested in it and I believed in it and –

MS. O'BRIEN: And by this project meaning the Lower Churchill Project?

MR. HUSSEY: I'm – Lower Churchill, yes.

So I declined and I got a couple of phone calls, you know, trying to – why won't you come. So my example to you is in the bidding stage these companies put people forward and people's circumstances change and mine changed in that I said, no, I want to stay and finish what I started here. And that's what happened at SNC. That's one aspect of it.

The other aspect is these guys don't have a bunch of contracts and procurement people sitting in the wings sitting around waiting for projects. They had people out in other projects and they weren't able to free them up to come so, therefore, you're not getting guys that I knew for sure who were out there working for them who had worked for me in the past who would be, you know, senior, experienced people.

So they couldn't get those, but two of the three people that I said to you, I guess – I don't know if it was luck – those two people were freed up from a job in Dubai and they came here and worked. And they worked on Hibernia and Terra Nova with me, so they were okay with working in Newfoundland.

So then you get the other side of it whereby, you know, one of the requirements that they do during bidding is, you know, people are sending résumés looking for work. So they took some of the résumés of folks who applied and we would call those project hires. And that's where, I think, you – in our discussion, some of those folks they put forward never had – they had procurement experience but not project procurement experience and the processes that we use. So, some of those were questionable.

And I said okay, you know, I know the process, I know what – how they get people. So what they put into the bid, I talked about it and verified it with them. And I knew that if they got awarded then there would be qualified people and – that would be coming.

So it's just that it took longer. Some of the folks that were in the RFP didn't want to come. Some were – just never had the qualifications. Some did. And then it just meant that they had to go get more people and they had the problem that they had.

MS. O'BRIEN: Okay. I'm just gonna put some of that back to you and make sure we have clarity –

MR. HUSSEY: Okay.

MS. O'BRIEN: – in it because it's a lot of information.

MR. HUSSEY: Yeah.

MS. O'BRIEN: And for people who are not already familiar with it, it could be the first time they're hearing. So when people – when companies put in proposals in response to an RFP –

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: – what I'm understanding is they often name the key – on certain roles, key – they actually give the names –

MR. HUSSEY: Yes.

MS. O'BRIEN: – of the people that they're planning to, you know, bring forward to build their team.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay. And from what I'm hearing from you is that, obviously, before they put someone's name there, they check with that person and say we're putting in this bid, can we put in your name as our – the person we're going to put in for our supply chain lead for example.

MR. HUSSEY: Yes. The key roles they would do that. Yeah.

MS. O'BRIEN: For key roles. And the person that they contact, you said – you gave an example where you were used for that – you may say – you said you might tell them, yes but non-exclusive, meaning that if another bidder for that same project comes to you and also wants to use your name, you could say yes to them too.

MR. HUSSEY: Yes. What happens is, in someone in my position and my experience they would want to have me exclusive to them because that would give them an advantage in that position. And so that's what they prefer to have.

In my case, you know, I guess, I'm known in the oil industry and I worked with a lot of those guys, I hired a lot of those guys, so they knew who I was. And it wouldn't – from my perspective, it wouldn't harm me to be in three bids, but each of those three companies said look, okay we'll accept, you know, the fact that you want to go all three. So it depends on the circumstance and the person.

MS. O'BRIEN: Okay, I understand. And we're using you as an example –

MR. HUSSEY: I know.

MS. O'BRIEN: – but I understand that this is very common –

MR. HUSSEY: It's industry practice.

MS. O'BRIEN: – in this industry –

MR. HUSSEY: Yes, it is.

MS. O'BRIEN: Industry practice.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay so, then, when ultimately the successful proponent gets the contract award, they may go to – to Pat Hussey in this example –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – and say, well great, we're willing to bring you on and Mr. Pat Hussey may say actually, no, I'm very happy where I am and I don't want to go.

MR. HUSSEY: Yeah. Right.

MS. O'BRIEN: And you did talk about that a lot of people – because there was a requirement, as we know, that a lot of the services under the EPCM take place within this province.

MR. HUSSEY: Yes.

MS. O'BRIEN: That was part of the benefit strategy.

MR. HUSSEY: Yes, it was.

MS. O'BRIEN: And so when it came down to it a lot of people were not willing to relocate in to this province.

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay.

And I take it it's somewhat common in the industry that when the bids ultimately get awarded that the proponent is not able to bring forward all the people that they had said they would in their proposal.

MR. HUSSEY: That's correct. But what it does as well though, it frees up the people that were probably carried in the other bids to go with the successful bidder.

MS. O'BRIEN: Okay.

MR. HUSSEY: That happens in the industry a lot.

MS. O'BRIEN: Okay.

And I think Keith Dodson gave us some evidence last week talking about this. So if this is sort of common in the industry, you have a lot of projects going –

MR. HUSSEY: Yes.

MS. O'BRIEN: – you're saying – I think you just alluded to it too, it's not like SNC-Lavalin would have had a lot of these key people on their payroll –

MR. HUSSEY: Yes.

MS. O'BRIEN: – just waiting for the next project. So if you're at a busy time, there's a lot of other opportunities for people who have these skills –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and who have a reputation for being good in that area.

MR. HUSSEY: Yes.

MS. O'BRIEN: It can be – when it goes, it can be a challenge to get those people in.

MR. HUSSEY: Correct.

MS. O'BRIEN: Okay.

Now, we do know that there – in the SNC-Lavalin contract and in other contracts we've seen as well, that the contracts actually have provisions whereby there's liquidated damages if the key personnel don't come on.

MR. HUSSEY: Yes.

MS. O'BRIEN: And just people may often refer to LDs –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and just to be clear for that for people hearing it. So this is – it's an assessment of damages that the contractor would be charged –

MR. HUSSEY: Yes.

MS. O'BRIEN: – by Nalcor in this case, if they said they were bringing on Pat Hussey –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – and ultimately Pat Hussey didn't show up.

MR. HUSSEY: Yes, that's correct.

MS. O'BRIEN: Okay. And you had a provision like that in the SNC-Lavalin contract?

MR. HUSSEY: Yes, we did.

MS. O'BRIEN: Okay. Did you ever – did Nalcor Energy ever claim any liquidated damages from SNC-Lavalin?

MR. HUSSEY: No.

MS. O'BRIEN: Okay. But that wasn't because they were able to bring everyone they said they were.

MR. HUSSEY: No, no. It's – we didn't claim them because – again, some of the things I explained to you. You know, if a person has got a – I mean, one person – I think a family member were sick or whatever and didn't want to come here, you know, you're not going to charge liquidated damage. That's a personal thing and it happens all the time. And, you know, and some of the people they put forward were probably better than the ones they nominated. So, you know, guys like Ron and others would make that determination.

MS. O'BRIEN: Ron Power?

MR. HUSSEY: Ron Power, yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: And so, from that perspective, you know, we were happy to get the more qualified person, as an example. And then –

MS. O'BRIEN: But I understand – sorry to interrupt.

MR. HUSSEY: Yeah.

MS. O'BRIEN: But I understand for SNC-Lavalin, in the early stages, it was a significant problem –

MR. HUSSEY: Yes.

MS. O'BRIEN: – that they weren't able to resource – they weren't able to bring in the resources that you believed –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – they needed.

MR. HUSSEY: We focused on getting the resources rather than apply liquidated damages and get into, you know, into that spat.

MS. O'BRIEN: Okay.

MR. HUSSEY: (Inaudible.)

MS. O'BRIEN: So they weren't able to bring in – so what I understand from you is you started to assist them with that –

MR. HUSSEY: Correct, we did.

MS. O'BRIEN: – and reach out to your contacts and see if you could find people to –

MR. HUSSEY: We did that throughout the whole organization. All of us on the Nalcor side who knew people or, you know, we encouraged them – like, we went out and used, like, AMEC and companies like that. We just spread it out wide in order to try to get the resources.

MS. O'BRIEN: Okay. And that email we've just looked at, P-02131, addresses some of these issues. Again, I'm not going to go through it.

MR. HUSSEY: Sure.

MS. O'BRIEN: But I think it certainly speaks to this point.

One of the other things you just said there and I just want to make sure it's clear. When SNC was bringing in people to fill its org chart they would provide résumés to Nalcor. And you, on the project team, doing the oversight to that, you would have the ability to review those résumés and, ultimately, if the person was going to come on the project, you would have to authorize that. And by "you," I mean Nalcor would have to authorize that.

MR. HUSSEY: Yes, that's correct. Yeah.

MS. O'BRIEN: Okay.

MR. HUSSEY: And we also had the right, if we wanted to, to have an interview with that person. Whether we flew them to St. John's to interview face to face or we did a phone interview, we had that option as well.

MS. O'BRIEN: Okay. And one of the acronyms that we see in the documents a fair bit is a PAA –

MR. HUSSEY: Yes.

MS. O'BRIEN: – which I understand is a personnel authorization approval.

MR. HUSSEY: Yes, it is.

MS. O'BRIEN: And so that would be the document that Nalcor would issue if they approved for the person to come on the project. Is that correct?

MR. HUSSEY: It was actually issued – yes, it was issued with all the information with regards to the person, the cost and all that kind of good stuff and it would be – it would be signed off.

MS. O'BRIEN: Okay.

And we've heard some evidence that, with respect to the benefits strategy, that the – ultimately, the requirement that the activities all take place within this province was relaxed.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: That was – we know with respect to the engineering work, did that affect the procurement or did procurement have to take place in this province throughout?

MR. HUSSEY: No – the procurement had to be in the province and the people that it was in Montreal were the specialist engineers for like, HVDC and some of the civil work. If there was a specialist on geotech or whatever they were in Montreal and that didn't affect the procurement at all.

MS. O'BRIEN: Okay.

And, the final issue that I'd like to go through there that you just alluded to, or you – not – you did more than allude to, you said – you talked about it in your evidence, about the problems with SNC had to do with the disconnect between the engineering deliverables and the procurement process. And I'm going to get you to go over that in a little more detail.

MR. HUSSEY: Sure.

MS. O'BRIEN: I'm going to start you with P-02082, that's tab 4 of your book. And then we're going to move to another exhibit at tab 28 following that, Mr. Hussey, but we'll start with tab 4, P-02082.

And we're not going to expect people to be able to read all the fine print here –

MR. HUSSEY: No.

MS. O'BRIEN: – but can you just explain to us generally what this is and what it's showing.

MR. HUSSEY: Sure.

This is a PM+ report which SNC used to track the procurement process and anything that affected the process in order to bid and award a contract in time to meet either construction date or the required on-site date for materials.

And, again, as I said, I'm quite familiar with this document. I worked with it on previous projects and I've used it on other projects in an Excel spreadsheet form. I actually first came into this kind of a document during my Hibernia days.

So, this is where – so, I think one of the documents you're going to show is – this here is based on a couple of things. It's got a number of different milestones which – when you get your EOI out and you get your bidders list, and you get to – your scope of work from the engineering, you get your RFP, you get it out, you bid, you evaluate, you award.

But what it's predicated on is a couple of key dates, and this gets into – the scheduling is, you would get the overall schedule for the project and then that would give you the dates when construction would start, or the site need date for some of the equipment. So, you would take those dates, you would take the delivery time on the materials, for instance, you would back that up, then you'd take your time of your process and that would tell you when you got to start your complete procurement process.

And that helps as well to stagger your work because you can't put 116 packages out on the street at the one time. You don't need them, number one. So that's the kind of information that's needed to go into creating this document. So –

MS. O'BRIEN: And it's hard to see here, but I'll just –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – each row here is a – for a unique contract package and it has the – on the top, the columns cover the various milestones and dates that that package is gonna hit certain milestones –

MR. HUSSEY: That's correct.

MS. O'BRIEN: – in the plan. Okay.

MR. HUSSEY: Yeah. It's very – that's why I'm sort of skipping over it. I'm –

MS. O'BRIEN: Yeah.

MR. HUSSEY: – gonna hit the one which caused the problem for me. And this has a schedule and a forecast and actual date for achieving each one of these different milestones.

So the – where I – I attended these meetings, obviously. And so the engineers and the buyers would be in the room discussing this, and the first thing – not – we'll skip over to the scope of work. And so, you sit there and Ian Hendry was running the meeting and, you know, he'd ask the engineer, well, you're supposed to have your scope of work done by April 1 – March 1. And the engineer would look at him with a blank look on his face – what do you mean? He wasn't aware of the schedule and he wasn't aware that he had to produce a deliverable to allow this procurement effort to happen.

So that was okay. I said – I sat there and I watched this and then I said, okay, there's something going on that's – so the second week or the third week, finally I got to the point, I said, there's something wrong here. And I stopped the meeting and I said, do you guys know that you're supposed to do this in order to support the schedule? Nope, we didn't know about it.

So there was a disconnect and that's why I said earlier the Hydro group and – didn't work with these tools and were not aware of it. So they had a real bad start getting off, setting up the project and this was one example of it which led to – I had to again jump in and I started to run these meetings. And it gets into this integration – soft integration.

And, you know, I made them accountable for their deliverables because things were starting to slip and, you know, there's room in here – 'cause I approved the durations in here from Ian Hendry – there's room in there for some slippage, but you can't slip the kind of – you know, a month or two and you're gonna be in trouble. So I had to fix it right away and so that's – that, again, was another sign to me there was – this wasn't going right.

MS. O'BRIEN: Okay.

And if we can go to tab 28 for you – P-02103, please, Madam Clerk.

I believe that this document is also relevant. Can you explain that, please?

MR. HUSSEY: Yes, it's – why I was referring to it is – this is a list of all the packages and it's the – again, the list of master package dictionary list and what it – it's the contract list as well.

MS. O'BRIEN: And I'm just going to point out it's – this one is – this is a changing live document. This one is – this version is May 16 of 2012.

MR. HUSSEY: Exactly, yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: So what's in here – and you can't see it on the diagram, but it says: Package dictionary issued. So it's telling us that the package dictionary is what's the status of those, whether they're done or not done. And this one here, you can see most of them are done – again, subject to change. But what's important is – on the other side, it gives you the construction schedule from the overall project schedule, it gives you the delivery dates or the material supply dates. And that was driven off of the actual manufacturing time as well.

And so if you – and they got the award date in here. So these two columns on the construction-need date and the material delivery manufacturing times, you would end up with when you needed to award the contract, which is one of the columns on that CPN report. And so that's why this is important. And one of the first things you get from your planners and schedulers is the construction schedule of when they need it. And that drives procurement.

MS. O'BRIEN: Okay.

MR. HUSSEY: And if you're slipping, then you're gonna have a negative effect on the project.

MS. O'BRIEN: I'm probably going to be a bit repetitive here but, you know, it – there's a good deal of common sense to this. Before you put a proposal out and you tell people this is the work – the scope of work we're expecting you to perform, your engineering group has to have completed their engineering on that and to actually create the scope of work.

MR. HUSSEY: Yes.

MS. O'BRIEN: So you can't go out to the market until you have that.

MR. HUSSEY: Correct.

MS. O'BRIEN: And certainly, when you get into contracts that have – where you're doing free-issues of material for example, if Nalcor is responsible to procure that material in advance, well, you need to make sure that the – you've worked with whoever you've got the contract out to –

MR. HUSSEY: Yes.

MS. O'BRIEN: – buy the material. You get it bought and you have it there to be there on time when the –

MR. HUSSEY: Taking the transportation (inaudible) –

MS. O'BRIEN: – contractor needs it.

MR. HUSSEY: – yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yeah.

MS. O'BRIEN: Good. That's great.

So what I'm understanding, this was you – in 2012, you were seeing a real problem with SNC-Lavalin's coordination between its procurement people, its engineering people, and there was – some dates were starting to get missed.

Is that correct?

MR. HUSSEY: Well, no the – yeah, the dates were being missed but again, we got this early enough that, you know, you're able to make up the time with it that it didn't impact, you know, anything, any contract being late or anything. It's just that we saw it early.

And so, as we got into the start to get into this and like – I think I may have mentioned the fourth quarter of 2011 into 2012 when we got into, again, the early construction packages that were key, you could see it. Then, you know, it – we put it in place and they – the engineers finally got a schedule for their deliverables that matched up with the overall procurement schedule –

MS. O'BRIEN: Okay.

MR. HUSSEY: – and a project schedule.

MS. O'BRIEN: So, my next question for you – you've already answered it at least in part. And that was gonna be:
What action did you take when you were – you've seen all these problems with SNC-Lavalin? Before I get to that, did we cover, in terms of the procurement piece and SNC-Lavalin's execution of the procurement piece, have we now covered what you felt were the major issues?

MR. HUSSEY: I think so, yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yup.

MS. O'BRIEN: So, in terms of what you did, so you've talked about you were getting more and more involved in this throughout 2012?

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay, and you've described just that for us.

We've also heard other evidence that there was, at a broader, a higher level, perhaps, with SNC-Lavalin, there was some team effectiveness work done with Deloitte –

MR. HUSSEY: Yes.

MS. O'BRIEN: – that we've already had evidence on. I think Derek Owen gave some evidence on that and some others did as well.

Commissioner, just for your – to help you link those pieces together, at P-00522 is a report of a cold eyes review that had been done for SNC-Lavalin readiness leading up to Gate 3.

Did you raise any – were you raising this concern with SNC-Lavalin? Can you tell us about that? And what response, if any, you got?

MR. HUSSEY: Yeah, for sure.

They – Derek Owen – there was a guy, Gendreau, and another individual, and one was – I think two or one of them were SNC, and Derek Owen was an outside consultant. And yeah, they interviewed me and I explained this all to them. And I think – I know the document you're referring to; I can't remember everything there but, I mean, what I said they recognize from their own assessment. And the SNC guy was actually, you know, he was shocked to see it because, again, I think he had a mines and energy background, and he knew those procedures and everything were there.

So, we started to see some action from that side but, as I said to you on my experience on the Sable project, they'll give you the procedures, but they still need to be adapted to the project that was taking place and our benefits agreements and the processes that were in place. So they needed tweaking. And, so, I took that on, and my team, and we developed those.

MS. O'BRIEN: Okay.

And so this all culminates – can we please bring up P-02132, please? Tab 47 for you, Mr. Hussey.

So, I believe this is dated October 5, 2012. And I believe that this is the announcement – it's an organizational announcement for supply chain. And I believe this is when you – it's announced that you were essentially formally becoming the most senior person on the procurement.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay.

And Ed Over is listed here as taking over the role of senior advisor commercial strategies. Can you just please explain who Ed Over is? And what this organizational change meant for him?

MR. HUSSEY: Sure. As I said earlier – I'll repeat it again – Ian Hendry was the procurement and contracts manager for SNC, and he left the project. And then they brought in another individual on a part-time basis until they could find someone else.

So they – I'm not sure if they offered – I had met – one guy came to work on one of the packages, and he was an experienced guy. And I said, if you can get him, I said, this guy will – anyway, he was on a job down in Panama and he wasn't coming to Newfoundland.

So anyway, they proposed Ed Over to us. Ed was from Ontario Hydro. He was a vice-president level in their commercial department. He had experience in hydro and in contracts, but he didn't have any megaproject experience with regard to the types of processes and what we had to do at that detailed level. But, you know, we were at a point where we needed someone, so we accepted Ed to come in. But it was – Ed wasn't – he wasn't knowledgeable in the megaproject processes whatever. So he struggled a bit with that and things still didn't improve with him there.

But, again, that was the soft – he came, I think, in late 2011 – that was the soft – I was already involved, and the soft transition I talk about into integration.

But when we did this, Ed had some experience that we wanted to keep on the project. So as his title says there, he was a senior advisor on commercial strategies and he reported directly to Lance Clarke. And what we did is we took the top 14 contracts or the top 10 contracts, and Ed took responsibility for delivery of those contracts, to go through the award – the bidding and award process. And that, like, was, like the Astaldi contract, turbines and generators.

So that took a load off of me because I couldn't get involved in that detail with everything else I was taking on. So Ed came in and he was a – he did a good job in that area for sure.

MS. O'BRIEN: Okay.

And, Commissioner, I'm not gonna bring us there, but just for your information, the slide deck, it's one of the PMT slide decks. I believe it's the one that deals specifically with SNC-Lavalin, P-00877. At page or slide 18 of that presentation, there is a list of turnover and some of the key, you know, numbers of people in and out of some of the key SNC-Lavalin positions, and procurement manager is there. And I think that ties to Mr. Hussey's evidence that he just gave about the turnover in that position.

I'm about to leave the topic of SNC-Lavalin Inc.; have I missed anything from a procurement perspective that you think is important for the Commissioner to know about?

MR. HUSSEY: No. No, I think you've covered everything.

MS. O'BRIEN: Okay.

I'm going to go into my final area of questioning with you, Mr. Hussey, and that has to do with benefits. So I understand that there were three agreements involving benefits that had to be followed and considered in the procurement strategy. And I'm going to just introduce those at a high level. And I'm going to give you some exhibit numbers, Commissioner.

One is the IBA with the Innu Nation.

MR. HUSSEY: Correct.

MS. O'BRIEN: And that's been entered. It's P-00300, a summary at P-00298, and that was the one I gave a revised summary at P-02135 today.

We also have what's called the Lower Churchill Construction Projects Benefits Strategy, sometimes just referred to as the benefits strategy –

MR. HUSSEY: Yes.

MS. O'BRIEN: – or I've heard it also referred to the construction benefits strategy. Commissioner, that has already been entered into evidence, quite some time ago as P-00035.

And the final document that we really haven't heard much about is an MOU with the Government of Nova Scotia regarding industrial and employment benefits with respect to the Maritime Link Project. That also, Commissioner, has been entered into evidence as P-00044. And before I get into some of the details of these agreements, Mr. Hussey, am I correct? Did you have to work with all three of those agreements?

MR. HUSSEY: Yes, we did.

MS. O'BRIEN: Okay.

And to explain how these documents work together, at tab 31 of your book, P-02006, please, Madam Clerk.

Oh sorry, P-02106, I may have misspoken.

Okay, a little bit smaller, please. Yeah, thanks.

Okay, so, Mr. Hussey, I know this is taken from the instruction to bidders on some of your – of the RFPs. Can you just explain to us what this appendix A11 is?

MR. HUSSEY: Right.

This is in part 1 of the RFP document, again, instructions to bidders. And so this is a questionnaire, just like other disciplines and functions that we had that went out in all of our bid packages for – the Provincial Benefits Questionnaire is what we called it. But it covers the three benefits agreement – or the MOU that you – two plus the MOU you talked about just a few seconds ago.

So what this document did is it outlined our requirements under those three different benefits strategies: the Newfoundland Province, the IBA and the MOU.

MS. O'BRIEN: Okay. I'm just going to maybe take you to the –

MR. HUSSEY: Sure.

MS. O'BRIEN: – MOU first.

MR. HUSSEY: Yup.

MS. O'BRIEN: Page 2, Madam Clerk. And at the bottom, I believe, here at the bottom of the page there. This is a description of that MOU –

MR. HUSSEY: Yes.

MS. O'BRIEN: – with Nova Scotia.

MR. HUSSEY: Yes, it was.

MS. O'BRIEN: Okay.

MR. HUSSEY: Basically, from a procurement perspective, what the MOU outlined for us is that we had to give Nova Scotia companies, suppliers timely information on the bidding opportunities that were available on the Lower Churchill Project, give them notice so that they could participate. We also had to conduct a supplier information workshop as well. And if any bidders from Nova Scotia bid, then we would have to give them a debrief. These are similar to what's in the Newfoundland one, as well. It's just what the – with this agreement, it covered employment and construction on the Maritime Link. But from our perspective, this was a requirement, from a procurement (inaudible), on our job to Nova Scotia suppliers.

MS. O'BRIEN: That's right. So this gave benefits to Newfoundlanders and Labradorians on the Maritime Link Project. And despite the fact that the MOU just mentions the Maritime Link in its title –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – there was a reciprocal obligation with respect to the Muskrat Falls generation and the Labrador-Island Link as well.

MR. HUSSEY: Yeah. And that's what the lead-in says to this, right here, yes.

MS. O'BRIEN: Okay.

And then taking us through it a bit, I think if we go to page 3 –

THE COMMISSIONER: Just before we move from that, just so I understand this. So are you saying that, whether it was the Maritime Link or the LIL or the generation plant or whatever, there was some sort of reciprocal agreements that Nova Scotia, Newfoundland bidders would be told; Newfoundland, Nova Scotia employees would be hired; companies would be considered, that sort of thing?

MR. HUSSEY: That's what I understand, Commissioner, yes.

THE COMMISSIONER: Okay. So it's not just the – just the link; it's – it applies to the whole project?

MR. HUSSEY: Yes, from what I understand.

MS. O'BRIEN: And going forward to page 3 – and sorry, Commissioner, if you read the section at the bottom of page 2, when you get a chance, it will make that, I think, a little bit clearer for you. It's the best summary I've found of it so far –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – at least.

Okay, page 3, we get here, I think, into some of the requirements of the benefits strategy, so that's within our province. And if you could just take us through – you probably already have at some point. But what are the key features of that benefits strategy?

MR. HUSSEY: I think the key feature, as I just described for the MOU in 2.1, on the contract and procurement side of it, is given full and fair opportunity. It's based on international competitive bidding, but you make the Newfoundland suppliers aware of the opportunities – hence the website we had. We made a lot of presentations to the supply community as well.

We tried, where possible, to package some of the – size the packages that could take advantage of some of the capabilities. But again, it had to match up with how we broke the project down, and there were companies that were capable of doing that. We also, on the website, published our key contacts for procurement and, you know, fielded lots of questions on that.

Then if we get into the employment side of it, we – again, this is part of the IBA. Employment went to qualified and experienced members of the Innu Nation first, qualified and experienced residence of Labrador, qualified and experienced residence of Newfoundland, and then other Canada and finally qualified and experienced non-Canadians, and you see some of that because of specialists or whatever.

MS. O'BRIEN: So it's important, I think, to note here the MOU with Nova Scotia certainly required that certain things be done to make sure that there was an opportunity given to Nova Scotia and companies in Nova Scotia and individuals as described here, but that there was not a requirement that – there's no special hiring priority for Nova Scotians here. They would fall in to qualified and experienced Canadians.

MR. HUSSEY: I would think so. I didn't see anything when I was looking at this.

MS. O'BRIEN: Okay, yeah.

And going on here, we do see there are – the – I believe this is covered in the benefits strategy. There are some requirements there for gender equity and diversity as well.

MR. HUSSEY: Yes, it is, yeah.

MS. O'BRIEN: And a requirement that contractors would have to give reports to Nalcor with respect to their implementation of the benefits requirements.

MR. HUSSEY: That's right. You'll see, in the back of this document, the bidders are to fill out a table that we have here given that information. And then – I'll just jump ahead on you a second – that would go into the contract. But as – from a reporting perspective, then the team that's with the benefits group, they would be responsible. We set up a software system where all the information can be fed into it in order to generate the reports.

So, that information came in on invoices, and also I think the suppliers had some input into it. Again, I wasn't directly daily involved with it; that was the benefits group. But we had a system for gathering the data because we had a requirement to do this reporting both under the IBA and the provincial benefits agreements as well.

MS. O'BRIEN: Okay.

And ultimately this document that we're looking at went out with the proposals and the instructions-to-bidder portion. Ultimately a lot of this material will get rolled into the contract –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and I understand if we looked at Exhibit P-02108 – there's no need to bring it up, Madam Clerk – tab 3 of your binder, that would show this would – ultimately this material would get rolled into an exhibit to the actual contracts, is that correct?

MR. HUSSEY: What was the –?

MS. O'BRIEN: Tab 33.

MR. HUSSEY: Thirty-three, okay. Yes.

Yes, that's correct.

MS. O'BRIEN: Okay.

MR. HUSSEY: And as I said, this outlines the commitments that the contractors have made and, you know, what's expected of them and the – and they had to abide by the obligations, especially with the IBA and the Newfoundland benefit strategy. And then the table that was attached would be the completed table that we saw from the part one.

MS. O'BRIEN: Okay.

And now, speaking of the IBA, can we please bring up P-02127? I'm not sure if I have the right – I don't believe I have that as an exhibit in your book, or I at least don't have it tabbed here, but I think we can work with this.

Chapter 4 of the IBA document addressed procurement, is that –

MR. HUSSEY: I'm sorry, which tab?

MS. O'BRIEN: I don't have a tab for you –

MR. HUSSEY: Oh, you have – okay, go ahead.

MS. O'BRIEN: – so I apologize –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – you're going to have to look at the screen.

MR. HUSSEY: No problem.

MS. O'BRIEN: Chapter 4 of the IBA dealt with procurement, is that correct?

MR. HUSSEY: That's correct.

MS. O'BRIEN: Okay.

Can we go to page 11 here? And what we have here is a slide deck that is attached to this email and I'm just going to go – yeah, I'm just going to go – just to show what this is. This was – this here – what I'm in here is a LCP presentation on the – on chapter 4 of the IBA that was given on November 2, 2011, and I'm just using this as a guide –

MR. HUSSEY: Okay.

MS. O'BRIEN: – for you to bring us through some of the pieces of it. Sorry, Madam Clerk, page 11 again.

So, I think this here – the – what we set out here is the objectives, which will speak for themselves, but I understand that there was participation targets here. So if you could just explain what those were?

MR. HUSSEY: Yes.

In the IBA agreement, these targets were set out for Gull Island and Muskrat Falls, and it was an overall target of $400 million cumulative value of contracts awarded to Innu businesses.

MS. O'BRIEN: Okay.

MR. HUSSEY: And so for Gull Island it was broken down to $266 million, and Muskrat Falls is $134 million.

MS. O'BRIEN: Okay, and we'll get to the – those – where that ended up –

MR. HUSSEY: Mmm.

MS. O'BRIEN: – in a few minutes.

Can we go to page 21 please, now? So, this talks about qualification – for a business to qualify as an Innu business, and we had some evidence yesterday from Clem Kuyper who talked about the Innu business registry –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and her responsibility for that.

Page 22? Again, this goes on here on the qualifications. And we heard a little bit about first-bid or set-aside contracts yesterday, so the next slide I'm gonna take you to is slide 32. So, it's slide 32 and it'll be the next page as well, slide 33, that covers it – these first-bidding opportunities. I've just got this up more or less as a guide for you, Mr. Hussey.

Can you please explain to the Commissioner how this – these first-bid opportunities worked?

MR. HUSSEY: What do you mean how they worked – how we bid them? Not how they –

MS. O'BRIEN: What are they, what were they –

MR. HUSSEY: Okay.

MS. O'BRIEN: – what was the point of them, and –

MR. HUSSEY: Sure.

MS. O'BRIEN: – how did that function?

MR. HUSSEY: I – it was part of the IBA negotiations between Nalcor and the Innu Nation. And, again, that was happening before I got there, but the – this was a list that was agreed upon through the negotiation, and these were the contracts that were to be bid to Innu businesses first, and not open bidding to – as per the rest of our process. And so we had to work with the Innu Nation, through Clem and the IBDC, in order to get the list of companies, list of bidders, for those particular packages.

And so they had the registry, and we worked closely back and forth with her on that because there was some discrepancies in the early days. People were coming to us to say: I'm an Innu business. And the IBDC was the keeper of the registry, and if they weren't on their list then there was a problem. So we had a couple of those situations, which IBDC and Clem and her team would identify, and then we would get the list from them as part of the bid list for these different packages that were going up to bid.

And so we followed – we – so they were qualified Innu businesses according to their criteria. So then what we had to do is similar to what I described earlier; we had to send out a bidder-selection questionnaire to them to see if they met our requirements. And, you know, I won't go to the detail again, but we only had one situation where one of the companies that they offered to us did not qualify to bid, and I think it was a medical company. And that was fine. That was accepted when, you know, you look at the documentation, they never had the capability to provide what service we were looking for.

So, other than that situation, every other bid list that they gave us was acceptable and passed the criteria.

MS. O'BRIEN: Okay.

And to assist us with this, I'm going to bring us to an exhibit that we looked at with Ms. Kuyper yesterday – P-02110, and specifically page 3.02110. I definitely have the number right 'cause I'm looking at it on the exhibit – not my own notes.

UNIDENTIFIED SPEAKER: (Inaudible.)

MS. O'BRIEN: If you go to yesterday's collection for the Innu Nation, Madam Clerk, that may –

CLERK: 2110?

MS. O'BRIEN: 2110.

CLERK: (Inaudible.)

MS. O'BRIEN: All right. Page 3, please.

So, this is a document we looked at yesterday. So this sets out – these are the contracts that were identified to be Innu first-bid contracts.

MR. HUSSEY: Correct.

MS. O'BRIEN: And I just – I think it's – you've said it, but I just want to make sure it's clear that these contracts – it was agreed that Innu companies would have the right of first bid.

MR. HUSSEY: Yes.

MS. O'BRIEN: That did not necessarily mean they would get awarded to an Innu business because they had to qualify and meet Nalcor's requirements for the contract in order to be successful.

MR. HUSSEY: Correct.

MS. O'BRIEN: Okay.

And when we go over this list, I think it says, you know, where you had multiple bidders and, I guess, if it doesn't say multiple that might be you only had a single qualified –

MR. HUSSEY: And it was a small contract too (inaudible).

MS. O'BRIEN: Okay.

And yes, and we see some packages that were ultimately not put out for proposals. So even though there were packages identified as Innu first bids, if Nalcor – for whatever its other business reasons – decided it wasn't going to go to market with that particular package or change, that there was no obligation on Nalcor to do that. Is that correct?

MR. HUSSEY: I think I should explain it to you –

MS. O'BRIEN: Please do.

MR. HUSSEY: – 'cause I was here for some of Clem's testimony yesterday and I heard this and so I can put context around this.

These are – this is a list of packages that was agreed throughout the long negotiations with them. And so, at that time, we didn't know what the strategy was, how we were going to execute or what have you, but as we moved along these four in particular, Nalcor was not buying these types of materials; it was the contractors who were going to be buying it.

So that's why you've got the no there and no bid lists. And I think what was missed yesterday is you'll see on the column here, it says: Not bid – site contractors responsible – this is: Did Innu business submit bids. Site contractors responsible for their own needs and then over – on the other – so let me just stay there for a second.

So we had this discussion with the Innu nation and the IBDC and with their legal representatives who negotiated the IBA, and it was agreed that this was not Nalcor's responsibility; we were not going to bid it because we weren't buying these materials. We let the contractors who were working on site buy their own materials.

And so, you know, when they negotiated, it probably would have been something that they used – I'm going to use Voisey's Bay as an example – but it wasn't an approach that we were using on this project. And, again, I think in some of the documentation you've seen that that was discussed and agreed that the IBA benefits didn't flow down to the contractors like Astaldi and IKC-ONE and these folks.

But what we did do, because this was a – the IBA was confidential and it wasn't published. And a lot of the Innu businesses struggled with that and they never saw it and they didn't understand. So, you know, I was trying to explain this to them. And so the – what we did – what we agreed to do is Nalcor issued a letter to all of the contractors reinforcing the IBA, reinforcing our commitments and asking them to give Innu companies an opportunity to bid on any of these requirements.

Another thing that's in the IBA, if a contractor has a standing offer that their company has with another company, they don't have to abandon that and go out and bid it to an Innu business, you know, you can't – there's contracts in place, so you let those run their course. But there were Innu businesses that provided some of these four items through contracts, subcontracts with the construction contractors on site. And in – you look at janitorial supplies as an example. Labrador Catering was in – they were doing the catering for the camp and they're an Innu business, so I think they bought supplies from Innu businesses.

And on the far column you'll see the note in there. Whenever Nalcor needed some things for our marshalling yard or for our site services group on the Muskrat Falls site, we also went to Innu businesses to get safety or office supplies or what have you. So we still tried – even though they negotiated those in there, they weren't contracted directly by us. We tried to ensure there was some kind of full and fair opportunity for them to provide into the subcontract opportunities.

MS. O'BRIEN: Okay.

And if we could go to page 13, please, Madam Clerk.

So I understand this is a listing, at least as of the date of this – the creation of this document, which was, I think, going up through to 2016 – of other contracts and purchase orders with Innu businesses in addition to the ones that we looked aside that were the Innu first-bid opportunities.

MR. HUSSEY: Correct.

We made it quite clear to the Innu and the Innu businesses and IBDC that they could bid on other packages as well 'cause it was open, competitive bidding. And as you can see from this list, there were some of those companies that were successful and they were included in the overall cumulative value of contracts awarded to – with Innu content.

MS. O'BRIEN: Okay.

And a few moments ago we reviewed – there was a target of – for Muskrat Falls Project of $134 million. Did you meet that target?

MR. HUSSEY: Yes, we did.

MS. O'BRIEN: Okay.

And can you give us – I know you have some data, at least, as of the end of 2016. Can you give us an estimate of how many dollars' worth of contracts had been awarded to Innu businesses?

MR. HUSSEY: We were over $500 million and I think if I looked at a later report, it was like $575 million of cumulative value contracts awarded to Innu businesses through their joint venture partnerships with the non-Aboriginal company.

MS. O'BRIEN: Okay.

Commissioner, we're just at around 12:30. I do have a little bit more to cover with Mr. Hussey – not very much at all; I'm on my final topic – so it shouldn't take me very long to clue up after the lunch break.

THE COMMISSIONER: (Inaudible.)

Okay, so we'll take our break now and come back at – should 2 o'clock be fine?

MS. O'BRIEN: Yes.

THE COMMISSIONER: Okay, we'll come back at 2 then.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

Ms. O'Brien.

MS. O'BRIEN: Thank you, Commissioner.

Mr. Hussey, we were looking at – I'm going to ask Madam Clerk to bring it up again – P-02110, and if we can go to page 3. We were talking about this earlier and we had some evidence already from Ms. Kuyper with respect to the Innu partnerships in these businesses. I do understand that some of – one of the Innu business, in particular, the IDLP is a little bit different than some of the others, and could you just explain that for the Commissioner, please?

MR. HUSSEY: Sure, no problem.

The IDLP is the Innu Development Limited Partnership and my understanding is that it's set up and the benefits from that partnership is – goes directly to the two band councils for Sheshatshiu and Natuashish. And so any joint ventures that they have, again, the funds go there and are directed to those band councils. Whereas the other businesses – Innu businesses are individuals with a non-Aboriginal partner, and in some cases I've seen these individual Innu have got a business set up as well in a joint venture with that non-Aboriginal partner.

MS. O'BRIEN: Okay.

And I understand that some of the larger packages went to partnerships of which the IDLP was the Innu business. So – and just to confirm: That would be the Labrador Catering Limited Partnership?

MR. HUSSEY: Yes.

MS. O'BRIEN: And the Innu Mikun Limited, which is the partnership with the PAL Airlines.

MR. HUSSEY: Correct.

MS. O'BRIEN: And, I believe, there was even one from the non – you know, from the regular bidding list, not the Innu-first bid list, which would be the IKC-ONE contract for the earthworks.

MR. HUSSEY: That's correct. And I'm – just one other one. I saw there that for fuel, Woodward's, I think – no, that's an individual; it's not the IDLP.

MS. O'BRIEN: Okay.

MR. HUSSEY: Okay.

MS. O'BRIEN: Did the – when we – when you look at the – I'm trying to get a sense of whether the – we know you had DG3 estimates for each of these packages and we know that from Grant Thornton's work and otherwise through our own work, some of the contracts, when they were ultimately awarded, came in higher than what the DG3 estimate was; some came in lower.

MR. HUSSEY: Yeah.

MS. O'BRIEN: But on – in the global amount, globally they were higher than the DG3 estimate.

Was there any distinction with the contracts that were let to Innu business? In other words, did you see any effect of – in terms of the pricing on the Innu businesses' partnerships?

MR. HUSSEY: The only one that I could – I know for certain, would be the camp. The other ones, I don't think – because, like, the services ones would've been, like, reimbursable, so the only one that comes to mind is the camp. I think the catering was fine, that was in budget. But the camp in particular because I know that I personally was asked to get involved to see if we could drive out some price somewhere and that's the reason why that one was high.

MS. O'BRIEN: Okay. So can you just give us a little more detail on that? So why – it was coming in – explain why it was – you believed this had a relationship as to why – the Innu Partnership had some relationship to why you believe it came in high?

MR. HUSSEY: I think some of it was – a couple of things probably. If I look back and we were looking at the time we had an estimate of a cost per room and I'm thinking – I could be off but I'm just – that it was, let's say, $60,000 a room, say. And the estimate came in higher than that. But when we, I think – let me back up. It was maybe high 50s, low 60s. And then when we did some benchmarking, then we saw that it was up from the estimate. So they probably had a problem with the estimate. And then that's one of the bids that we only had two bidders and the – a couple of the bidders that you would expected would've joint ventured and bid – they had talked about they would and we visited one of their plants. But they could never come to an agreement, so we ended up with just the two bidders. I don't know if that was because we had a limited bid list, but I know there was some market conditions that contributed to some of the price difference.

MS. O'BRIEN: When you say, you know it was some market conditions, can you be a little more specific?

MR. HUSSEY: Yeah, it was some benchmark – it was some other benchmark data that I can recollect when I was preparing that I saw a document that had the estimate that we had, and then it had some benchmarking data which was higher than the estimate and that's why I say it.

MS. O'BRIEN: So that leads you to believe that maybe the estimate was too low.

MR. HUSSEY: Yes.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yeah.

MS. O'BRIEN: And then did the bids that come in, come in higher again than the benchmarking data?

MR. HUSSEY: Yeah, but not significantly higher, especially when we did the cost opportunity review trying to drive out some cost. It wasn't substantial what we got, but again it closed that gap.

MS. O'BRIEN: I'm not finding your answer to be very clear. I don't know if it's just me. I'd asked you whether the IBA –

MR. HUSSEY: Oh.

MS. O'BRIEN: – and the agreement to give, you know, certain bid opportunities to Innu businesses had any effect in your view on the ultimate prices of the contract.

MR. HUSSEY: Okay.

MS. O'BRIEN: You said, yes, you believe, at least for the camp –

MR. HUSSEY: Yes.

MS. O'BRIEN: – but then you've given an answer that –

MR. HUSSEY: Sure.

MS. O'BRIEN: – I'm not understanding.

MR. HUSSEY: I understand. I understand what you're asking.

There was an issue overall that we had with these IBA first-bid contracts. And it was about suppliers were coming to us and they were saying: Look, if we've got to bid these, there's going to be a cost and there's going to be a premium. And we said: Well, we're not paying premiums. We've given presentations. We've addressed the issue in presentations to the Innu Nation, Innu businesses that the project was not paying premium for benefits. And what – our answer to everybody was you have to figure it out and you have to find a way to be competitive, because even though they were first-bid opportunities, they had to be competitive with, you know, the estimate or this benchmarking data that I'm talking about.

So we were clear and people basically understood that, and maybe that's the reason why some of the bidders couldn't come to an agreement. But we did figure that there was a, probably, a 2 to 5 per cent premium on – in the bids that we used to calculate – you know, if you look at the cumulative value of the contracts awarded – how much was going to the Innu through IDLP or the individuals.

MS. O'BRIEN: Okay.

So I'm just going to make sure that I'm understanding your evidence clearly. When ultimately you calculated it, you figured there might have been around somewhere between a 2 to 5 per cent premium on these bids given to the fact that there was going to be a profit sharing –

MR. HUSSEY: Yes.

MS. O'BRIEN: – with the Innu partners. That was fine with Nalcor I –

MR. HUSSEY: Yes.

We knew there was gonna be a cost. I mean, every project I worked on, it got a benefits agreement you know there's a cost but it's generally factored into the bids and we don't see it. In a particular, you know, case we saw what the range was gonna be, and we said that's fine, that's acceptable.

MS. O'BRIEN: Okay.

So that was fine. If someone had come in and you felt there was a much larger premium on, like, say a 15 per cent premium, what I'm hearing with you is that would not have been okay with Nalcor?

MR. HUSSEY: That's correct.

We have, if you read the chapter 4 closely, we have – there's provisions in there that we could go for a second round of bidding. If the bids came in and, you know, they didn't meet the – any of the criteria, even when you pre-qualified them – but if the bids were way higher or we didn't think that upon evaluation that they never met the criteria from a manufacturing perspective or whatever, we had a right to go out and go a second round of bidding. That second round of bidding would have also included letting the – the Innu businesses bid again, but then you had to negotiate with them.

So in my world, that – we call that almost a second round of bidding and, you know – for two things – the process was – I didn't have any input into that when I reviewed the – it was already agreed to. It would have been a schedule delay for sure if we had to go in with the process we have and go out and qualify bidders. But in this particular case, you know, it was something that was okay.

MS. O'BRIEN: So you never had to go –

MR. HUSSEY: No, we never did it.

MS. O'BRIEN: – out for that second round. Okay.

MR. HUSSEY: We never did it, no.

MS. O'BRIEN: And did you have any involvement in the DG3 estimates? Do you have any knowledge about what was included in the DG3 estimates?

MR. HUSSEY: No, what my involvement – again, that was by the project controls, cost control team. My involvement was, say, before – well, DG3, it would have been SNC doing the estimate along with, you know, some other folks that you heard. The only thing from my perspective is when the bids were coming in, we – part of the process was this bid opening report I mentioned. And I got all of those bid opening reports, or most of them, and I reviewed them from the perspective was the process followed and whatever.

So I saw the estimate was on there and I saw the proposal number that the bidders included on our – I'm going to call it our cover letter. And that's not always truly indicative of what the bid is because you've got to get under the hood and see if they bid a complete package or not. But it gave me an idea of we were over budget or not, and so I saw – if there was any significant overages between the budget and the bids that were coming in before evaluation, I knew that and I advised Jason Kean and – because he was Ron's deputy – and Lance Clarke, you know, you give them an idea of, like, this is what's happening.

MS. O'BRIEN: Okay. All right.

I want to take you – we heard, yesterday, evidence from former grand chief Anastasia Qupee as well as Clem Kuyper. I understand you know Ms. Kuyper –

MR. HUSSEY: Yes.

MS. O'BRIEN: – obviously –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – through work. Did you have an opportunity to listen to their testimony?

MR. HUSSEY: I listened yesterday morning until lunchtime when the – when we broke for lunch.

MS. O'BRIEN: Okay. I'm just going to put to you some of the information that they gave us and get your response to that.

One of the issues that they raised was that – and this is – has to do with the hiring protocol. I do know that you dealt with procurement, not hiring of individuals; but I'm going to put the questions to you anyway and you answer as best you can, or if you're not able to answer, that's fine.

One of the issues raised is that they would get – you know, they could be delayed in getting notified that there were positions available. There was a three-day turnaround to provide potential candidates for any position, and sometimes if – they weren't getting notified on day one so, ultimately, they had a shorter window. And that, in some cases, might have meant that a qualified Innu candidate was not provided for the job.

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: Can you give us any information on that from Nalcor's perspective?

MR. HUSSEY: As I said to you during my interview with you, I was responsible for the procurement side of it. But because of my involvement – and others were – looked after the labour and the hiring and that process. But I was, again, approached on – any time I was up here and I was visiting or meeting or giving presentations I was always approached with any problems that was occurring on the project. They would come to me, or if Ron was up here or Paul Harrington or Gilbert, we all got the same type of, you know, they would come to us because we were, you know, the faces of the project.

So, I was aware that there were some issues with hiring. I can remember two incidents where someone mentioned it to me. I couldn't help them or answer them; what I did is I took that back to the office. And the process you just outlined and Clem outlined yesterday, in answering your questions during my interview, I got that information from Maria Moran and Bob White and I provided it back. So what I did is I just brought back to the office and I told them: Look, here is a complaint I heard. You need to do something about it or look into it or contact someone.

And then also, at the time, Brian Crawley was managing. I think the – yeah, the Innu lady reported to Brian. And then since he left the project, Kevin Burt is looking after – I think he's Kevin Burt – is looking after the benefits group.

So, I mean, so to point you somewhere if you were looking at someone to ask to get more detail on that, that I can't provide, from your interview schedule, probably Gilbert would be the best one to answer to that because he was a big part of the IBA negotiations and he's up at site and he – so I just can't answer your question other than what you described and what I told you.

MS. O'BRIEN: Okay. So Gilbert being Gilbert Bennett?

MR. HUSSEY: Gilbert Bennett, yes.

MS. O'BRIEN: And you just mentioned two people: Maria Moran, whose name, I think, we saw earlier in an email –

MR. HUSSEY: Yes.

MS. O'BRIEN: – and Bob White. And I understand they were Nalcor employees who were working with the – liaison with the Innu with respect to the hiring –

MR. HUSSEY: Yes. And also –

MS. O'BRIEN: – and (inaudible).

MR. HUSSEY: – Bob was heavily involved in the training program – the Labrador Aboriginal training program. They got funding from, I think, the provincial government, the federal government – or maybe it's the feds – and he was coordinating that and heavily involved in that.

MS. O'BRIEN: Okay.

Your answer to my next couple of questions may be the same, that there's someone better to ask the question to – perhaps Gilbert Bennett – but I'll put them to you just in case. One of the other complaints that we heard was that sometimes the qualifications for the people were coming in with really high qualifications – you know, five years, you know, experience necessary for a cleaner, 10 years for, you know, to operate a cement truck. Do you – were you aware that those – that the Innu Nation was having those concerns with how it was working?

MR. HUSSEY: Someone mentioned that to me, again, when I was up here, and I just brought it back to the office.

MS. O'BRIEN: Okay.

MR. HUSSEY: But I was aware of it, yes.

MS. O'BRIEN: Okay.

Likewise with the training programs that you just referenced, you know, that sometimes people would be trained but then when the qualifications came out, they were – also required experience.

MR. HUSSEY: I heard all those complaints.

MS. O'BRIEN: Okay.

MR. HUSSEY: Yeah.

MS. O'BRIEN: Ms. Kuyper also testified that she believed that not necessarily all job postings were provided to the IBDC and also expressions of interest.

MR. HUSSEY: Yeah.

MS. O'BRIEN: So, I know jobs – I think it'll probably be the same –

MR. HUSSEY: Yes.

MS. O'BRIEN: – answer from you, to –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – talk to someone else, but the expressions of interest, I think you would be the one to answer that –

MR. HUSSEY: Yeah.

MS. O'BRIEN: – so could you please.

MR. HUSSEY: I nodded my head – I thought that's what you were gonna say – but yeah, from the job postings, I'd point you towards Gilbert if he's the only witness that you've got of the names I mentioned.

Yes. On the job postings, what she mentioned was that the non-16 designated packages – the other open packages, as we call them – she wasn't getting notification of those. That wasn't part of our commitments under the IBA to give her those – that information on those packages. But we did advise her on a number of occasions and all of my presentations here in Labrador and to the Innu about subcontract opportunities through either bidding direct on those packages – and they were all listed on the website. And I also – we listed who the bidders were for all the packages.

Normally you don't do that, but we said, in order to live up to all these three agreements, there was no harm in putting the bid list out there. So we published the bid list so that they could seek out subcontract opportunities if they didn't win the main contract because there was, you know, in my mind, there's work there that some of the smaller companies or medium-sized companies could definitely get work – not definitely, but there could be opportunities there for them.

MS. O'BRIEN: Okay.

MR. HUSSEY: So we point them that way and you know, there – and I – again, I checked when – with one of my ex staff who's since retired that I know he was in contact with Clem quite a bit. As I was getting busier, he sort of took the file day-to-day with her and they were in contact, but it wasn't a regular we're sending it to you. But he was making her aware and she knew about the website.

And not just Clem, I mean, she did a tremendous job. The businesses should have had some responsibility as well to check the website and to see what the opportunities were. And most of them, you know, were doing that. It just – we needed to give it a lot of coaching.

MS. O'BRIEN: Okay.

A couple of other points raised and I think it may fall into the first category, as I have to check with someone else. But we heard evidence about Innu workers particularly from Sheshatshiu not being able to stay in the camp, long bus routes that eventually had to – they did some work to shorten up the routes. Were you familiar with those issues previously?

MR. HUSSEY: Yes, yeah. I – after I heard that I went back to the office and I asked a question there to Roy Byrne– you heard his name – and Ron Power was there, and we discussed it. And what it was, the – Sheshatshiu was in an area which was considered local and so therefore just like, you know, folks in North West River and Goose Bay, they were picked up and bussed to the site.

So they didn't fall into the category that would stay at the camp, other than the catering, because of their schedules and being for – getting the meals and what have you. But – so when that got explained and people understood that, the issue of the long bus ride was addressed whereby again, Clem said yesterday instead of getting on a bus in Sheshatshiu and coming to Goose Bay and doing two or three stops, which is what the bus does in Goose Bay, we changed the policy and put bussing directly from the Sheshatshiu into the camp, which reduced the travel time I think close to a half an hour maybe.

MS. O'BRIEN: And am I correct that the issue with the camps was that at times there was a shortage of beds at the camp to accommodate even what was – what you needed for the other contractors and people who weren't living in the local catchment area.

MR. HUSSEY: I'm not 100 per cent sure about that but we started off with a starter camp when we started the earlier construction. We bought a used camp from Manitoba Hydro off one of their projects, and we installed that and then we had the main camp installed. And so that gave us roughly, I think 15 – 1450 – about 1,750 rooms maybe. I'm not sure if that – the shortage of rooms was the reason for that. I couldn't answer that question.

And then, as the schedule slipped and we had multiple contractors in there and we should have had enough beds to manage it all, we bought another camp and put in there 480 beds. So we had in – that was in – I'm gonna say 2016 or '17, I'm not sure – there was, you know, enough beds. But I can't say if that was a reason why they couldn't stay in a camp.

MS. O'BRIEN: Okay, thank you. And one last question I have for you going back to some of the earlier – your earlier testimony. We talked a bit about SNC-Lavalin and how they had trouble getting the resources and getting the people that they needed, particularly at those, you know, higher-level, supervisory –

MR. HUSSEY: Mm-hmm.

MS. O'BRIEN: – key positions. We talked also about the switch to the integrated management team.

When you switched to the integrated management team, did you have any difficulty – you, Nalcor, the larger you – did Nalcor have any difficulty in filling some of those key positions on the integrated management team?

MR. HUSSEY: No. What we did – so when SNC had the EPCM contract, it was their job to resource up their side of the project and get the people. So when we integrated, what we did then is we opened up the sources of where we could get resources. And, I mean, we went everywhere that we knew where there were people through – again, Hatch provided some people, AMEC. We – more agencies started showing up in St. John's, so we used them. We reached out to people that we knew from previous jobs.

And SNC were always given the position and the job, and they could fill it as well. And they provided résumés, and they were all looked at together and the best person was picked for the job.

MS. O'BRIEN: Okay.

MR. HUSSEY: And we managed to staff up and get where we are now.

MS. O'BRIEN: Okay. Thank you, Mr. Hussey. Those are my questions for you. I'm sure other counsel will have questions as well. Thank you.

MR. HUSSEY: Okay.

THE COMMISSIONER: All right. The Province of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: Good day, Mr. Hussey. My name, as you know, is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition. And as you probably know, the coalition is a group of individuals who for many years have been critics and observers of the Muskrat Falls Project.

MR. HUSSEY: Yes.

MR. BUDDEN: So I have a few questions for you today, probably 25 minutes or a half hour. And I'm going to be jumping around a bit because my – Ms. O'Brien was very comprehensive so I'm just touching on different areas that I would like to, for my own reasons, pursue a bit.

MR. HUSSEY: Mm-hmm.

MR. BUDDEN: The first one is, as we know from your evidence and from other evidence we've heard, you, as with many members of the project management team – your background was in oil and gas rather than hydroelectric generation.

MR. HUSSEY: Mm-hmm.

MR. BUDDEN: And, obviously, I would assume in procurement and your other fields of expertise, there's a lot of overlap between what you had been doing in oil and gas and what you would have had to do when you came to the Lower Churchill Project. But I would assume, as well, there would have been differences – areas that would be new or unfamiliar to you.

And I guess what I'm wondering, generally – and I don't need a long answer, but just briefly – what would be some of those new areas of expertise that you were encountering? And what did you do to either acquire the knowledge yourself or bridge the gaps in your knowledge?

MR. HUSSEY: Sure.

I think you'll – I'll answer it two parts. First of all most of the functional responsibilities or functions in departments, they cross over every project, like you said, whether it's cost controls, scheduling, safety, procurement. Those are skills you take everywhere with you. I mean, I was in oil and gas but I worked on the Vale job.

So to answer your question, when I started in 1980 with Mobil I didn't know a piece of drill pipe from a piece of plastic pipe. So what you have to do is you have to learn that. And so, you know, when I joined Lower Churchill Project – you heard earlier there was lots of people here with lots of knowledge and we had a lot of vendors coming in and so what I did is I educated myself. And what I needed to know, more than anything, is what this equipment or what was the process of, you know – I won't say pouring concrete because that's definitely not my expertise, but I had to learn, you know, the hydro business. What was a turbine and generator? What was a transmission tower?

And some of the things I did is I attended all of those sessions with the engineers because you got to work closely with the engineers. So I learned from the suppliers that came in giving presentations. I travelled – you heard that I travelled to Iceland and I walked that powerhouse from top to bottom and saw the equipment first-hand. I visited a number of manufacturing plants for, like, the transmission towers and I saw how those were manufactured. And I actually was very hands-on with the acquisition of the towers because we ran into some problems with the supplier and – not for quality or anything. And so I was there on a regular basis.

One of the first trips I took from – with Hydro and a couple of their engineers, the transmission engineer, I went to Cleveland, Ohio, to a tower hardware manufacturer who ended up being one of our suppliers. And the last example I'll give you is I actually went to General Cable's plant in Quebec and saw how they made the conductor.

So that's the kind of things that I did and I did that throughout my whole career as I went from drilling equipment to topsides fabrication equipment, process equipment.

MR. BUDDEN: Sure.

I guess my follow-up to that is your background is commerce just like mine is in law, so I would suggest to you while you may get a tour of a power plant, just as I might, you're not looking at it through the eyes of an engineer. And while in the oil and gas sector you obviously worked your way up through –

MR. HUSSEY: Mm-hmm.

MR. BUDDEN: – as you – experience grew your positions of – your positions became more significant in the project. This project, however, you're coming in really at a very high level –

MR. HUSSEY: Sure.

MR. BUDDEN: – with no real background at all in transmission or hydroelectric generation, any of that stuff.

Do you feel that you – or I guess, how long did it take you to feel comfortable doing what you're doing?

MR. HUSSEY: I can answer that quite easily. You know, I talked before about teamwork. I don't – I'm not an engineer but I had engineers side by side with me. Where my expertise comes is in the manufacturing of this equipment. I know how things get manufactured. I know what goes into it. I know about their ordering of raw materials, their design, their supplier management. You know, that's what I bring to the table. And the engineer is there to understand the technical part and give me a briefing at the level that I need to understand that.

So, you know, I wouldn't say I wasn't an expert but I wasn't disadvantaged and I was – spent 2007 until 2011 we awarded the contract and we started so in those four, five years, you know, I learned quite a bit. Did I know it all? Not on your life.

MR. BUDDEN: Okay.

Well, let's move on. I just have a couple of questions on a totally different topic.

In your interview you – some of the questions were about whether you ever used personal or non-Nalcor email to communicate with respect to project business. And I gather the answer was that wasn't something that you did.

MR. HUSSEY: No.

MR. BUDDEN: You obviously were dealing with other members of the project team. Was it something that happened commonly, something that rarely or something that never happened that you would deal with other members of the project team other than through the Nalcor email?

MR. HUSSEY: It was –

MR. BUDDEN: On both sides.

MR. HUSSEY: Yeah.

There were some people that used their personal emails and sent me emails but sent it to my Nalcor address. I mean, I worked a lot, and I don't – I live close by the office. Instead of sending emails and work at home, I went to work, I didn't work from home. And so, you know, I didn't often, but I got emails from people on their personal email, yes.

MR. BUDDEN: Okay.

There are, of course, many communication options other than email. There's –

MR. HUSSEY: Mmm.

MR. BUDDEN: – texting, for instance, there's various non-email apps.

MR. HUSSEY: Mmm.

MR. BUDDEN: Was it common for project member – members of the project management team to communicate by texting? Now I'm – you know, I'm not talking about going out for dinner arrangements, I'm talking about project business.

MR. HUSSEY: Yeah, but it wasn't detailed. And texting is – it's not – it's – I don't use it as from a detail perspective. If I was out on a transmission line out in the West Coast and, you know, I didn't have a computer with me but I could get cellphone, I would text them and say, you know, everything is going okay, you know, something like that. But I never used it from doing business per se, but I did use texting, yes.

MR. BUDDEN: Okay.

And was that common within the project management –

MR. HUSSEY: I think so.

MR. BUDDEN: – team?

MR. HUSSEY: Yes, yeah.

MR. BUDDEN: Okay, thank you.

The – you're of course aware, as everybody in this room is aware, that at sanction the capital cost estimate for Muskrat Falls was approximately $6.2 billion. The – in the gas and oil, obviously, there's – megaprojects go through a somewhat similar sanction experience –

MR. HUSSEY: Yes.

MR. BUDDEN: – or some equivalent of the DG process. And I guess my question for you is, at sanction – in the gas and oil industry which is your background – at sanction, how much of the project costs would typically be based on contract values rather than on estimates? And you can talk in terms of percentages if you – if that's what you're most comfortable with.

MR. HUSSEY: I would say a vast majority. I can't put a percentage on it because it's a combination. There is the estimate – and I talked earlier about some early works and packages. On any project that I worked on, in order to maintain a schedule that you've got, you've got to award bid and award some contracts before the project was sanctioned. And, so, from that perspective, you know, you had approved funds to go do that.

As to put a percentage on it, I'd be guessing, but it is, you know, common that you are getting actual numbers before you get it sanctioned, and you're – you have to use the estimate. I think that that's the question you're asking me.

MR. BUDDEN: I guess – well, let's move to my next question. It's – I'm really interested in how the situation at – on this project, on the Muskrat Falls Project, compared to what you would typically have observed in the gas and oil industry in terms of how much at sanction, how much of the project would be based on actual contracts rather than on estimates.

MR. HUSSEY: Mmm.

I'll make one statement to you. You know, I'm not involved in putting the estimates together; that's the cost control people or whatever, but all I can – I can just answer the same way, Mr. Budden – is that, you know, I can't give you a percentage, but all I can say is that we do get actual contracts in that we have to place in order to maintain a schedule. And generally, in projects I've worked on, that's happened before sanction but I'm not sure even of the timeline when I was on that project and how long it was between sanction, so I'm not sure.

MR. BUDDEN: So –

MR. HUSSEY: I don't think I'm answering your question but I–

MR. BUDDEN: Not quite but I think we're getting there.

MR. HUSSEY: Yeah.

MR. BUDDEN: So, in the oil and gas business, in your experience, at sanction generally the costs are based on actual contracts rather than on estimates. Did I get that correct?

MR. HUSSEY: Some, I said. No, you don't – there's no – it's like if I go back to one of the PwC recommendations; they said we should go out and bid every single contract before sanction and have them all in place. Then, you got cost certainty. I've never seen that happen in my whole – in my career, you know, that – you're going to spend a lot of money and so it's never been done –

MR. BUDDEN: Okay.

MR. HUSSEY: – in mine. So, I can't – I think what you're saying is, you know, it's mostly the contracts are bid and you know the numbers; that's not true.

MR. BUDDEN: Okay, what I'm getting at is how does Muskrat Falls compare to the norms of what you observed in the oil and gas industry, based on this criteria?

MR. HUSSEY: When you say norms, are you trying – if you're trying to get a percentage I can't answer it, but what we did on this job with some of the packages and – that were awarded and were executed, work was started – that happens on projects. I think maybe – I'm not sure what – if I understand your question, but if there was – there were bids that were in and were being evaluated before sanction that weren't awarded.

MR. BUDDEN: Okay.

MR. HUSSEY: So, you know, you had those numbers that you could have – and I said earlier, you know, we get those bid-opening reports and we have an idea of what the contractors are proposing and we knew, and I knew and I advised people that some of those contract values, the estimates were – the bids were higher than the estimates.

MR. BUDDEN: Okay.

I'm not proposing to get down in the weeds on the $6.2 billion, but I do want to know – well, firstly, do you feel you have the knowledge to answer my question? And again my question is: How does Muskrat Falls at sanction compare to oil and gas projects at sanction on this criteria – contracts, bid and awarded on the one hand, and estimates on the other hand?

MR. HUSSEY: I don't know I can answer that.

MR. BUDDEN: Okay.

You lack the knowledge to answer it?

MR. HUSSEY: Lack the knowledge, yeah. I – no, I can't answer that.

MR. BUDDEN: Okay.

The – of course, what we've learned from Grant Thornton – now, we can haul the quote up here, but we all know it, page 12 – that between sanction and – you know where I'm going with this –

MR. HUSSEY: Yeah.

MR. BUDDEN: – between sanction and financial close, when the bids actually came in, they were a fair bit higher than had been estimated. Were you surprised by that?

MR. HUSSEY: Say that again?

MR. BUDDEN: Okay.

MR. HUSSEY: Just –

MR. BUDDEN: As you know, I believe –

MR. HUSSEY: Yes.

MR. BUDDEN: – from the –

MR. HUSSEY: Yeah.

MR. BUDDEN: – Grant Thornton report, and if not we can go to it, but between sanction and financial close, which was about 10.5 or 11 months later –

MR. HUSSEY: Yeah.

MR. BUDDEN: – the estimates – when the estimates were compared to the actual contract bids that were coming in, the bids were higher by and large than had been anticipated – had been estimated. I'd suggest to you that's what the evidence is, generalizing.

MR. HUSSEY: Mmm.

MR. BUDDEN: And I'm asking you: Were you aware of that at the time and were you surprised by it?

MR. HUSSEY: Well, that's – I guess I just answered your question earlier in that I knew from the bids that were received that some of the bids were higher than the estimate. I advised the people of that and then it was –

MR. BUDDEN: The people – not to interrupt but, the people?

MR. HUSSEY: Oh, I'm sorry. Jason Kean and Lance Clarke –

MR. BUDDEN: Okay.

MR. HUSSEY: – in – as a case, and as we moved along the evaluation process, you know, the management group were brought in and given updates. They didn't know who the bidders were 'cause we used A, B, C or one, two, three or whatever. So people were aware that the bid prices were higher than the estimates and then it's up to those folks to decide – you know, I don't make the decision on financial close. I just provide information. And then it's –

MR. BUDDEN: Sure.

I guess I'm asking you, you know, given your senior position in the project, were you surprised at that trend line?

MR. HUSSEY: I don't know if I would say I'm surprised because, you know, there was some packages which, you know, they were either under or equal or a little bit over, but some of the packages were substantially over the estimate and that surprised me, yes.

MR. BUDDEN: Okay.

MR. HUSSEY: Because, you know, it's – you know, where did that gap come from?

MR. BUDDEN: Okay, and where did you think it came from?

MR. HUSSEY: I think it was a combination. It was a combination of the marketplace and a combination of the estimate was probably low.

MR. BUDDEN: Okay.

To what do you attribute the estimate probably being low?

MR. HUSSEY: I don't know. I didn't do the estimate, as you know.

MR. BUDDEN: Mm-hmm.

MR. HUSSEY: That was SNC. I wasn't involved. I'm giving you an opinion now.

MR. BUDDEN: Okay. Fair enough.

The – I believe it's Exhibit P-02095; I won't call it up. Hopefully we'll move along a bit. But at that time, as I understand it, which is 2008, the project contracting strategy was to accommodate financial close requirements – and this is a key part – by having most major contracts completed in advance of project sanction – is your recollection as to what the strategy was at that time?

MR. HUSSEY: I wrote down financial close –

MR. BUDDEN: Okay.

MR. HUSSEY: – I am sorry, can you just repeat –

MR. BUDDEN: Of course.

MR. HUSSEY: I may have misunderstood.

MR. BUDDEN: Sure, the key words following financial close –

MR. HUSSEY: Yes.

MR. BUDDEN: – were to – having most major contracts completed in advance of project sanction, so that's the essence of it. That was the strategy, to have most major contracts completed in advance of project sanction. Was that your understanding?

MR. HUSSEY: Again, the only place I saw that was in a report that PwC stated that, to have all the contracts in place prior to sanction.

MR. BUDDEN: That wasn't your understanding of the project management team's strategy in, say, 2008?

MR. HUSSEY: The project management team never –

MR. BUDDEN: Sure, of the – I may be using the terminology imprecisely. Was that your understanding of the strategy – the Nalcor strategy, say, as of 2008?

MR. HUSSEY: The Nalcor strategy was to have all the contracts in place before sanction?

MR. BUDDEN: It – was that your – or not all of them but to have the major ones.

MR. HUSSEY: No. No.

MR. BUDDEN: Was that your understanding of the strategy?

MR. HUSSEY: No, that was never a strategy that I was aware of, no.

MR. BUDDEN: Okay, fair enough.

THE COMMISSIONER: Mr. Budden, can you take me to where you are on 02095 (inaudible) – ?

MR. BUDDEN: I think it might be page 33, but I don't have the precise quote. But I do have it in my notes and I wasn't able to call it up when it came up in direct –

THE COMMISSIONER: It's at tab 18. I know it's at tab 18 in the booklet. And you said it was page 33?

MR. BUDDEN: I thought it was page 33, but I – again …

Ah, yes. It would be the third bullet down, so perhaps I'll just read that to you. "Develop contract strategies & contract plans with schedule to accommodate financial close requirements (Financial Close may require most contracts to be complete by project sanction)."

MR. HUSSEY: Yeah, I understand what you're asking now. This has to do – again, it comes back to "Financial Close may require." This was some information – I go back to the PwC work that was done and a presentation I think they gave whereby they said the financial – the lenders would want to have all contracts completed by that – that's where this statement is tied to right here. But again – and I'll go back to an email that's – that I saw which Gilbert Bennett wrote to and – or it was responded to, to this item and said, you know, as I said, that's impossible for this project to put all these contracts in place before sanction (inaudible) –

MR. BUDDEN: Understood, but –

MR. HUSSEY: Yeah.

MR. BUDDEN: – again, we're not talking all the contracts, but we're talking just as a guiding principle. And I'm asking you is that your understanding of the guiding principle as you were approaching sanction?

MR. HUSSEY: Yeah, it said financial close may require most contracts. That was not a guiding principle that we took. This was back in 2008.

MR. BUDDEN: Okay.

MR. HUSSEY: It wasn't that, to my knowledge.

MR. BUDDEN: Okay, fair enough.

MR. HUSSEY: And I, you know –

MR. BUDDEN: That's your answer then.

MR. HUSSEY: Yeah.

MR. BUDDEN: Yeah.

The – I'd like to – I have some questions about the contract 0007 which, of course, ultimately became the Astaldi contract for the powerhouse, the slipway and so forth which, again, was obviously – I think we're all agreed – was the largest single contract for the project. So you're with me there.

MR. HUSSEY: Mmm.

MR. BUDDEN: Okay.

And I understand, as well, that a lot of the front-end engineering for that would've – would have been completed at the time of sanction. Am I correct on that?

MR. HUSSEY: I'm not sure what level of engineering was done, but SNC were obviously working on that, yes. That –

MR. BUDDEN: Okay, sure.

MR. HUSSEY: That would have to be a question to ask someone technically.

MR. BUDDEN: Okay, fair enough.

I guess I'm asking you any awareness that you would've had as to why that particular contract, which is really the central contract of the whole project – why that may not have been moved along farther than it was as of sanction.

MR. HUSSEY: I think we talked earlier about my involvement and what I was responsible for, and we talked about Ed Over, when I took over as supply chain manager. And that was one of the seven packages or eight packages I mentioned this morning that he was involved with.

With everything else I had on my plate, I was not involved in the detail with the Astaldi contract. So I can't answer your question because I just wasn't involved in it, and I'll only be making assumptions which I am not going to do.

MR. BUDDEN: That's fair enough.

No, I'm not asking you to.

MR. HUSSEY: No, I know.

MR. BUDDEN: And we'll hear from other witnesses, so …

MR. HUSSEY: Yeah, sure, and that's–

MR. BUDDEN: So you're –

MR. HUSSEY: – what I'm saying.

MR. BUDDEN: – the first up –

MR. HUSSEY: Oh, I know.

MR. BUDDEN: – so you get the question.

MR. HUSSEY: But – yeah, yeah.

MR. BUDDEN: The – I'd like to – a few questions, I guess, fill in my knowledge gap about the bid evaluation process for that same contract. And my understanding is that there obviously would've been the initial response to a call for expressions of interest and so forth.

What I'm wondering about, and we haven't really heard, how did Astaldi end up on the scene? By what process, to your understanding, did Astaldi end up as one of the original bidders?

MR. HUSSEY: Again, I – I'm just going to say that Mr. Over handled that whole process. They were – I'm not sure if they responded. They were identified as targeted companies. I'll – I'd have to go back and refer to documents. Off the top of my head I can't give you an answer. I'm not going to assume one or the other.

MR. BUDDEN: Okay.

And can you tell us a bit more, perhaps, about the process that led to the final four bidders being preapproved.

MR. HUSSEY: Again, the final four bidders being –

MR. BUDDEN: Sure. Astaldi –

MR. HUSSEY: – approved?

MR. BUDDEN: – and the other three.

MR. HUSSEY: Yeah, I mean, I'll give you the high level of what I gave you this morning. You know, there was obviously bidder selection questionnaires that came in. They were evaluated against a criteria and those four companies were picked to be on the bid list.

MR. BUDDEN: Okay, sure.

MR. HUSSEY: Any other detail, you'd have to refer to somebody else.

MR. BUDDEN: Okay, sure.

Perhaps, Madam Clerk, we could call up 02093 and it's page 4 that I would like to go to.

MR. HUSSEY: Where's that?

MR. BUDDEN: That is tab –

THE COMMISSIONER: Sixteen.

MR. BUDDEN: Tab 16 and it's page 4, Mr. Hussey.

MR. HUSSEY: Yeah.

MR. BUDDEN: Okay.

And I know this was covered this morning, so I just want to make sure I understand your evidence. So if we look to the fourth – rather, the second-last bullet down, which is the sixth bullet in the sequence and they talk about, "Analysis of Current Contractor Market; Current Trends … Smaller packages in this market work better."

And –

MR. HUSSEY: Which – I'm sorry, which –?

MR. BUDDEN: Page 4 of –

MR. HUSSEY: Page 4, okay.

MR. BUDDEN: – tab 16.

MR. HUSSEY: I gotcha, yeah.

MR. BUDDEN: Okay. Why don't you just take a second to look at it?

MR. HUSSEY: Which?

MR. BUDDEN: But it's the second-last bullet point I'm interested in.

MR. HUSSEY: "Smaller packages in this market work better"?

MR. BUDDEN: Yes.

MR. HUSSEY: Okay.

MR. BUDDEN: Okay.

And I guess, obviously, the Astaldi – this is – you know, contract 0007 was not a small package, it was a large package.

MR. HUSSEY: Mmm.

MR. BUDDEN: And I'm just wondering the – and, again, you covered it a bit this morning, but it leads into another question or two. What was the rationale, I guess, for moving from a – from this position to the position of, ultimately, of – that brings us to contract 0007?

MR. HUSSEY: Again, to my recollection, you have to look at – you'd have to go back to the work done by the package team. And, again, that was heavily led by SNC and the – there was the decision to include all of those components in the one package versus breaking it out.

And one of the things that you look at – and I think Mr. Lemay mentioned it in one of his statements – that, you know, if you combine and have multiple contractors in a certain space, you're going to have interface issues, you're going to have claims issues, you're going to have risks and you get into a sort of a blame culture

I'm sure that would have been one of the factors but, again, you'd have to go back to the evaluation process and the team, what they did and what they decided.

MR. BUDDEN: Okay.

MR. HUSSEY: I just don't have that detail.

MR. BUDDEN: Sure.

Okay, so we have a circumstance – I guess just to wrap it up – where this exhibit speaks, at this point the philosophy was smaller packages work better.

MR. HUSSEY: Sure, yeah. Sure.

MR. BUDDEN: But at some point that philosophy changed to a larger package works better.

MR. HUSSEY: Sure.

MR. BUDDEN: And you can't, sort of, walk us through the rationale there I take it?

MR. HUSSEY: The only thing I can give you is just like this was done in early 2018 and I discussed earlier about what the market was like and the market was hot and contractors were busy. And then, as we went –

MR. BUDDEN: 2008 you mean?

MR. HUSSEY: That's what I said. What did I say?

MR. BUDDEN: You said 2018 but never mind, yeah.

MR. HUSSEY: Oh, sorry, 2008.

Oh this was actually in '07.

MR. BUDDEN: Okay.

MR. HUSSEY: This was October of '07.

So between that time and the time that we awarded the EPCM contract and – the market changed from the perspective of capability and capacity and what have you. So that was one of the factors why you move away from the smaller packages.

And I'm just saying again that's just one of the factors that I could actually say to you. You're going to have to ask somebody else and review those documents.

MR. BUDDEN: Okay.

But I would suggest to you one consequence of going to a package of this size, a billion-dollar package, it really eliminates a lot of, sort of, medium-sized contractors, doesn't it? It really limits the field.

MR. HUSSEY: I don't know if its medium sized. Even, you know, if you broke this down into some of the other parts, they're substantial contracts as well. Again, it's all about the contractor capability and the market appetite for any contract.

I mean we've got contracts that are, you know, $300 or $400 million that you would get a contractor to take on. We got other ones a hundred, they won't even touch it. So it just varies.

MR. BUDDEN: Okay.

I'd like to move on to a couple of questions about transmission, or to a couple of sets of questions.

So firstly about the LTA, the link between the Muskrat Falls Project back to the Churchill Falls Project. And my understanding – Valard ultimately got that contract. I'm correct in that I assume?

MR. HUSSEY: Yes, yeah.

MR. BUDDEN: Okay.

And my understanding is it went through a process; I think there was something like 12 pre-approved contractors who were given RFPs. And out of that Valard emerged and was approved and received the contract.

MR. HUSSEY: Yes.

MR. BUDDEN: So I'm right so far.

MR. HUSSEY: That's correct, yeah.

MR. BUDDEN: Okay.

MR. HUSSEY: I'm not sure about the 12. It was a number; it could be 11 or 12. I'm not sure.

MR. BUDDEN: Nor am I.

MR. HUSSEY: It's – yeah.

MR. BUDDEN: It's around 12.

MR. HUSSEY: It's a high number, yeah.

MR. BUDDEN: Sure.

And do you recall the approximate value of that contract at the time it was awarded.

MR. HUSSEY: I think it was around $258, $260 million, around there.

MR. BUDDEN: Okay. And what was the final cost of that contract?

MR. HUSSEY: I can't recall.

MR. BUDDEN: Okay.

MR. HUSSEY: You know, no.

MR. BUDDEN: Sure. Would I be correct in assuming there was a significant overrun in that contract?

MR. HUSSEY: I'm not sure.

MR. BUDDEN: Okay.

MR. HUSSEY: And that's just because I don't have the number with me here to tell you.

MR. BUDDEN: Okay. Sure. Now, with regard to the LIL, which is, again, as we all know, the Labrador integrated link [sp. Labrador-Island Link], which is a link from Muskrat down to – across the Strait, down to Soldiers Pond.

MR. HUSSEY: Yes.

MR. BUDDEN: Again, my understanding is that this – and I may be wrong, so correct me if I am – my understanding, this was originally envisioned as four separate contracts and that at one point the RFPs for these contracts were even posted on a Nalcor website. Is that correct?

MR. HUSSEY: What was your last part about post on the website?

MR. BUDDEN: That there was originally four contracts envisioned and that the RFPs were actually posted on the Nalcor website. It got that far.

MR. HUSSEY: Yes. That was the original strategy. I'm not sure it was four – in my mind it comes into two or three sections which could have been broken down further, but, yes, it was broken down into segments, yes.

MR. BUDDEN: Okay. Can you just walk –?

MR. HUSSEY: But could I –

MR. BUDDEN: Sorry.

MR. HUSSEY: I'm just trying to recollect with it. I'm not sure if – we had an RFP prepared for it; we went through a process and there's documentation to it. There's a thousand-page document, actually, which the award recommendation was outlined. I think I heard or seen Grant Thornton's – their phase 1 and phase 2's bidder selection.

So we went out and we did the bidder selection. We identified people who approached us and targeted companies and went through the phase 1. And then from the phase 1, I think we reduced it down to another group. And it was the scope of work – and let's just say it was – whether it was three packages or two packages, I don't know; it was the scope of work.

MR. BUDDEN: Sure.

MR. HUSSEY: And I think then, through that phase 2 process – again, it's documented – that it was clear that there was only one company that could do it and even if it was broken down as well, the appetite wasn't there for the size of those packages. And –

MR. BUDDEN: Yet you say that – was that based on the response to the RFPs?

MR. HUSSEY: Yes.

MR. BUDDEN: Okay.

MR. HUSSEY: Based on the response, based on their financial ability. But one of the things that came quite clear with this one is that the – some of the companies that made it through phase 1 into phase 2, there was two international players, and, I mean, they just – they were entering the Canadian market and they didn't understand the Canadian conditions, the labour agreements, and their execution plan just was subpar for sure.

MR. BUDDEN: Okay.

MR. HUSSEY: And then –

MR. BUDDEN: Sounds like Astaldi.

MR. HUSSEY: Well, I'm speaking about this one because –

MR. BUDDEN: Fair enough.

MR. HUSSEY: – obviously I was involved with some of the negotiations with Jason and Lance and others. I gave them support in these contracts. I had a contract's administrator going through this bid – these bids. And actually while the DC line was going through this process, we were finalizing the actual award, the bid evaluation award of the LTA. I call it the AC bid. And it was clear in there we had enough information about the market that we continue on to go through the front-end process for the DC line, but we got to a point where we had a lot of information where it was recommended that we go with an open-book negotiation with Valard. And that's what we did.

MR. BUDDEN: Okay.

MR. HUSSEY: And –

MR. BUDDEN: So were you a part of that open-book negotiation yourself?

MR. HUSSEY: I – yeah, I was there as I just said. Jason Kean led this. Jason was the deputy project manager to Ron Power, but he was also taking responsibility for the C4. He was involved with this and, again, he was involved with gathering up the estimate and putting it together, and what have you, overall.

So he had that information and with the information from the bids that we got from the AC evaluation, we had a pretty good idea of what the bidder's basis were and what they were working. So that's what led to those negotiations and I was – I sat in on those and offered my help wherever I could to them.

MR. BUDDEN: Okay. So Mr. Kean would be the –

MR. HUSSEY: Yes.

MR. BUDDEN: Okay, but – okay.

MR. HUSSEY: Yeah.

MR. BUDDEN: Well, since you're here I'll just ask you a couple more questions and save most of it for him.

Was it an issue within those negotiations with Valard – I'm talking about now the LIL negotiations – whether Valard would walk away from claims arising out of the LTA contract? Was that an issue that was part of those negotiations?

MR. HUSSEY: I –

MR. BUDDEN: To your recollection.

MR. HUSSEY: No, well, the contract for the LTA wasn't awarded then. So it got awarded later, but I can't recollect that.

MR. BUDDEN: So the contract for the LIL preceded that of the LTA?

MR. HUSSEY: No, the LTA was the first one. That was –

MR. BUDDEN: Yes.

MR. HUSSEY: – the AC 319 so –

MR. BUDDEN: Yeah.

Just – because we're getting lost in terminology here. The LTA is the Muskrat Falls, Churchill Falls (inaudible) –

MR. HUSSEY: Yeah. We call it the AC transmission line but –

MR. BUDDEN: Fair enough.

MR. HUSSEY: – that's okay.

MR. BUDDEN: Yeah.

MR. HUSSEY: Yeah. Yeah.

MR. BUDDEN: So that was awarded first, wasn't it?

MR. HUSSEY: Yes, that was awarded first.

MR. BUDDEN: Okay. And, I guess, what I'm asking you: In the negotiations for the second line, the LIL, do you recall whether –

MR. HUSSEY: I –

MR. BUDDEN: – any overruns that Valard may have had from the LTA contract, whether they were a factor in the negotiations?

MR. HUSSEY: I can't recall that. You can ask Jason. I can't recall that.

MR. BUDDEN: You simply don't recall, okay.

MR. HUSSEY: Yeah.

MR. BUDDEN: Okay.

My last questions really are around the, I guess, the third party inspection and quality assurance part of your responsibilities. And I'm thinking in particular of the material which Nalcor supplied to Valard to build the LIL. So what – and of course, where I'm going with that, ultimately, is the proud-stranding issue. So just to recap, these were materials that Nalcor purchased –

MR. HUSSEY: Can I just interrupt for a second?

MR. BUDDEN: Okay.

MR. HUSSEY: The third party inspection was not my responsibility. That was part of the quality assurance team and we put – we had third party contracts in place and we would call upon these inspection service companies through the quality people who would go into these plants and do quality checks or what have you. And in some cases, the quality team members would go to manufacturing plants as well. I just wanted –

MR. BUDDEN: Sure, and –

MR. HUSSEY: – it wasn't my responsibility, I just want to let you know that.

MR. BUDDEN: Okay.

I understand the process worked, but it didn't fall under your – I mean, I realize it was contracted out, but ultimately was not – were you not the responsible person –

MR. HUSSEY: No.

MR. BUDDEN: – within the project management team?

MR. HUSSEY: No. I think I said earlier within my scope of work, sometimes they put inspection inside procurement's responsibility. And every project that I worked on I wouldn't take that responsibility. That was – to me, it was a – and I was first introduced to that on Hibernia with procurement there. And to me, that never fit within procurement, so I pushed it back out to quality; that's where it belongs.

MR. BUDDEN: So who of the project management team would've been responsible?

MR. HUSSEY: David Green is our quality manager.

MR. BUDDEN: Okay.

All right, so you really can't tell us anything about what went wrong on the project – on the proud-stranding issue?

MR. HUSSEY: No, I know of it, of course. And I was involved in getting the replacement and the modified conductor and stuff like that. But I wasn't involved in the actual inspection of it or nothing, no.

MR. BUDDEN: Okay. I know you weren't personally. I wasn't –

MR. HUSSEY: No, I know.

MR. BUDDEN: – yeah.

MR. HUSSEY: Yeah.

MR. BUDDEN: I guess the last couple of questions, are you – from that email, I'm thinking of P one, three – P-02131. Your relationship with Ian Hendry appeared to have been strained. At least it was at that point. Was it generally a difficult relationship, yours and his?

MR. HUSSEY: No, Ian Hendry was a mentor of mine.

MR. BUDDEN: Okay.

MR. HUSSEY: I worked for him on Hibernia and I worked for him on Sable. He called me up and said are you available. So Ian and I had a good relationship. That email that you saw, Ian was having problems with SNC as well. And I had to do my responsibilities with Nalcor, not because of my relation with Ian over the years. So I was going back and forth with him early in those days. And I knew he was struggling.

And what I did is I put it – and I say it there – I had to formally put my issues in writing to him. And I think he actually probably welcomed it because then he could use that and go to higher-ups at SNC to see that the client was frustrated with the lack of process in resourcing the job.

MR. BUDDEN: So you're saying the – you would agree there's a tone to this, but you're saying –

MR. HUSSEY: Oh, yeah.

MR. BUDDEN: – that's not indicative of your working relationship?

MR. HUSSEY: No, no.

MR. BUDDEN: Okay.

MR. HUSSEY: No.

MR. BUDDEN: So that wouldn't have complicated or otherwise –

MR. HUSSEY: No, no.

MR. BUDDEN: – caused problems for the project?

MR. HUSSEY: No. The tone there was a reference to somebody didn't want to work for me.

MR. BUDDEN: Fair enough.

MR. HUSSEY: And, you know, look, I make people accountable for their job. And so they weren't working for me, they were working for him. And I was the client looking at – and they all know me, they know my experience. And that's why – I'll tell you this – you talk about why I stayed on this project – I worked most of my construction on the contractor side. So I knew what contractors and how they behave. So I brought that to this job so that I could oversee them and try to stop any of the pitfalls. And that's why you see I was able to pick up where SNC were starting to go off the rails from a procurement and the engineering interface. It's not because I wanted the job. It's because I was doing the best thing for Nalcor. And I identified it because of my experience.

So the tone – Ian and I have had a great relationship. But I had to be the client. And so I did. And I think it helped him get some traction within the SNC world.

MR. BUDDEN: Okay.

Now, I guess, the last question I have really – or the last two related questions. You – in your interview you spoke of this being a very demanding job. I mean, you spoke of a series of 12-hour days, week after week, and really the whole procurement team working really, really hard. And I guess my question to you is: Were you under-resourced?

MR. HUSSEY: No. When I say under – you're not under-resourced. The problem was we couldn't get the number of people – we were under-resourced where we couldn't get them early when we needed them. So therefore, we needed to work the hours. But nobody was working the hours I was working. Because, again, I was not going to – it wasn't – this project wasn't going to fail because of my effort.

And so I could have sat back there and be the client and say: You got a problem, you got a problem. I don't operate that way. So I jumped in and I took on a lot of responsibility. And the two or three guys that worked on my oversight team, they chipped in as well. We had no choice.

MR. BUDDEN: Okay.

Did being stretched so thin on a personal level limit, in your opinion – now this is my last question – did it limit your effectiveness in any way fulfilling your roles on this project?

MR. HUSSEY: No. You obviously don't know me.

MR. BUDDEN: I don't.

MR. HUSSEY: I'm a workaholic, I can work – I've been getting four hours sleep for the last week, being prepared for this. I can go long stretches and I can endure a lot, and it doesn't affect my ability to do my job, not in the slightest.

MR. BUDDEN: Okay.

MR. HUSSEY: Okay.

MR. BUDDEN: Thank you.

THE COMMISSIONER: Thank you.

Edmund Martin?

MR. SMITH: No questions, Mr. Commissioner.

THE COMMISSIONER: All right.

Kathy Dunderdale?

MR. HEWITT: No questions, Commissioner.

THE COMMISSIONER: Former Provincial Government Officials – I don't think they're here.

Julia Mullaley, Charles Bown – not here. Robert Thompson's not here.

Consumer Advocate?

MR. HOGAN: Good afternoon, Mr. Hussey.

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

Just wanna turn back to the integrated team approach, which – that was Nalcor's preference at the very beginning, at this outset. Is that correct?

MR. HUSSEY: Yes, that's correct.

MR. HOGAN: And can you tell me why that was Nalcor's preference way back when?

MR. HUSSEY: Well, based on some of the work that we did with the marketplace, again –

but, as I stated there, we had lessons learned from projects from IPA's experience. We looked at some of the hydro projects and we looked at some of the projects in Newfoundland.

And, again, the team that was assembled there at that time had been involved in a number of different contracting models. And so, we were – there's – a couple of the team members were involved on a project with Husky where there was a program manager. And that didn't work out, and that company got released, or their role was reduced. And you got into, I think, an integrated team there or some version of it.

On the Terra Nova project, we had an alliance relationship. And that was an old UK model, which worked well the first couple of times, but then the contractors got – understood how it worked, so that wasn't that successful. So, it – and on Hibernia even, when we came back from topsides, Montreal, out –

MR. HOGAN: I – when you say we –

MR. HUSSEY: – no, I'm sorry, we –

MR. HOGAN: – I just – are you talking about Nalcor?

MR. HUSSEY: – talking about myself and in my own experience –

MR. HOGAN: Yeah, so I don't – I'm not asking –

MR. HUSSEY: – and some of the other –

MR. HOGAN: – about your experience. It was Nalcor's –

MR. HUSSEY: – of Nalcor?

MR. HOGAN: – it was Nalcor's preference to have an integrated team at the outset.

So my question is: Why was it Nalcor's preference to go that route?

MR. HUSSEY: Because of the experience that I was just describing when I say we. The experience –

MR. HOGAN: Okay.

MR. HUSSEY: – that we describe. And some of the members of the project management team that were contracted by Nalcor had that experience. And, based on that, and some of the market conditions and some of the consultants and other people, that's where we came up – felt that the team that Nalcor had there, their own people, combined with an engineering contractor and a project support contractor, was the best way to go with an integrated model. And the market told us that on – they told us but then when we put out the EOI, they came back and we ended up with an EPCM.

MR. HOGAN: Just a couple of follow-up questions: Was the executive of Nalcor have any preference, Mr. Martin and Mr. Bennett? You have no knowledge of that?

MR. HUSSEY: No.

MR. HOGAN: Okay.

So answer me then if that was what everybody knew, this was historically what you knew but then when you actually went to market, you were told otherwise.

MR. HUSSEY: Went to market, we were told otherwise, yes.

MR. HOGAN: Okay.

So you're experience was – well, your experience is not, obviously, incorrect. It is what it is.

MR. HUSSEY: Yeah.

MR. HOGAN: But things had changed in the marketplace?

MR. HUSSEY: Yeah, basically. Again, I'm not looking at the documents, but what it was is the contractors weren't as busy. The work started to be complete on other projects, so they had people available. They wanted to use their own tools and their own processes and own procedures versus coming in and getting someone else's because they were comfortable with it. And I think – you know, there was a lot more knowledge about this project and that people wanted to be part of it, but they wanted to do it through the traditional EPCM model.

MR. HOGAN: They, you mean the bidder –

MR. HUSSEY: The contractors.

MR. HOGAN: – the contractors.

MR. HUSSEY: Yeah, yeah.

MR. HOGAN: When you – when the switch was made from the EPCM to the integrated team, can you explain why that was done rather than just replace SNC?

MR. HUSSEY: I think, you know, the problems with SNC and, you know, there were good people with SNC, the engineering was good. It was – it was them getting organized from my perspective and was from the senior management, the project management people. So, you know, there – and we never had – so, that could be solved, but it was painful, very painful. And the fact that the hydro didn't operate the rest of – some other sections of – divisions of SNC, but to change them out would have taken a lot of time and effort, another bidding round. And with the effort that was put in, I think it's a – it was the better solution.

MR. HOGAN: So was much analysis put into replacing SNC with someone else?

MR. HUSSEY: It was looked at, whether, you know, from a – I don't – was there a formal analysis? No, not that I'm aware of, but it was talked about and it's – it was decision was made: Stay with them and try to fix it.

MR. HOGAN: So you're not aware of any financial analysis that was done to determine whether you should switch –

MR. HUSSEY: No.

MR. HOGAN: – switch out SNC or switch to an integrated team?

MR. HUSSEY: No. Everybody knew that, you know, it would be a big schedule impact. And if you've got a schedule impact and you've got some part started, it would have been a cost impact.

MR. HOGAN: Okay.

So I'll just put this to you. I mean I think in your interview with Ms. O'Brien you said that Hatch was capable of doing this job.

MR. HUSSEY: Yes.

MR. HOGAN: (Inaudible) right?

MR. HUSSEY: Yeah.

MR. HOGAN: So you have a – you're in a position now where you're – the market is telling you that the EPCM approach is better.

MR. HUSSEY: Yeah.

MR. HOGAN: You're told – you know that you have another entity out there, Hatch, who's capable of doing this model.

MR. HUSSEY: Yes.

MR. HOGAN: So I guess I need to be explained why go to the model that you were told at the start was not the right choice.

MR. HUSSEY: We went and got Hatch people to come in and work on the team. We went to Hatch. We opened up the door. We just didn't go to bid and rebid it and bring Hatch in as an EPCM contractor because of what I just said to you. But we went and used Hatch people and brought them into the team.

MR. HOGAN: I guess what you're telling me is there was no financial analysis made, and the choice was to switch back to the model that was rejected at the outset?

MR. HUSSEY: Yeah.

MR. HOGAN: Okay. Thank you.

I just want to switch to the bid system analysis – I don't know if that's the right way to put it – the weighted system. You talked about that earlier today.

MR. HUSSEY: Yes.

MR. HOGAN: Is that system that you used on this project a typical system in terms of percentages allocated?

MR. HUSSEY: No. The system is what I've used on other projects. And the weightings that are given to the different components of that, of the evaluation criteria – and I said earlier to Ms. O'Brien, so you've got the top, like, technical, commercial, safety risk, environment benefits. You've got those and you apply a percentage to them. Some are pass or fail, like with quality or safety, but down below those it's broken down further. So it's – there's an awful lot of detail below that by the evaluation team for their particular section.

The values, in my experience, for each of those components would be based on what the package team comes up with and what's important. In some packages the technical is more important than the commercial, or, you know, it's factored a little bit lower, a little bit higher. That's up to the package team to come up with depending on the scope of work and the complexity and what have you.

MR. HOGAN: So you weren't involved with creating the system or that?

MR. HUSSEY: No, no – well, no, I wasn't involved. I created the process and that part of – and the weightings was part of our process. And the actual assign of what the values were, that would be to the package team.

MR. HOGAN: Okay. So each package could be different?

MR. HUSSEY: Yes, oh for –

MR. HOGAN: Or it was different?

MR. HUSSEY: Yes, for sure.

MR. HOGAN: Okay.

MR. HUSSEY: Yeah.

MR. HOGAN: I think we heard some evidence that certain packages – and I can't point directly to it, so – the lowest bid was going to be accepted just the way it was weighted?

MR. HUSSEY: I head those statements too. You know, my recollection is that, you know, from the scoring for the packages, you could come up – it wasn't the low bid would get it, it depended on how the scoring was – the weightings, I'm sorry. And –

MR. HOGAN: Oh I understand that, but I guess the evidence was because the scoring was so –

MR. HUSSEY: Well, yeah. I –

MR. HOGAN: – heavily towards the price.

MR. HUSSEY: I can't – yeah, you're talking about the Astaldi contract. I can't answer that question because I didn't set this – the weightings for that and so I can't answer that one. But my – on other packages that I can – that I was involved with, I mean, it wasn't set up that way.

MR. HOGAN: Can you generally think if most, if not all, of the bids that were accepted were actually the lowest price?

MR. HUSSEY: Not necessarily.

MR. HOGAN: Not necessarily?

MR. HUSSEY: No. I mean, it was based on a – you know, the principle is a best total value and so you take all those into play. You know, some guys could score, you know, high on technical and be low or high on the price and win it – or I flipped that around, I'm sorry. So it could go either way. It's – you come out with the best overall value –

MR. HOGAN: Nothing – you can't –

MR. HUSSEY: – you know.

MR. HOGAN: You can't remember that it was an ongoing thing, whether it was an effort, or –

MR. HUSSEY: No, no, no.

MR. HOGAN: – lowest bids were always accepted?

MR. HUSSEY: No, no.

MR. HOGAN: Okay.

MR. HUSSEY: No.

MR. HOGAN: In your interview you talked about a project delivery approach. Is that the same as a turnkey approach? Does that ring a bell?

MR. HUSSEY: I can't remember that.

MR. HOGAN: Maybe it was the company – and I'm not going to say it right – Bechtel, B-E-C-H –?

MR. HUSSEY: Oh yes – yeah, yeah, they were – yes. Yeah, they – it was – they had a – I think they called it a project manager approach –

MR. HOGAN: Okay.

MR. HUSSEY: – something like that. Basically – or, yeah, program manager, something like that whereby they basically would come in – as I mentioned, I think, the Husky project is where I heard that for the first time. On that project, they had this program manager approach, which is the contractor comes in, sits above, and takes over everything and goes out and I think bids it and gets the various contracts or whatever.

So that model, again, from the experience of some of the team and from some of the consultants, that doesn't work either because it adds a lot of cost to it, just similar to an EPC. And it causes a bunch of issues down below it I understand, but I had no experience with that model.

MR. HOGAN: So just in terms of that and the turnkey approach, I think you said you'd add a 30 per cent premium. That was –?

MR. HUSSEY: That's what we were told by IPA that – I think it was IPA or Westney or both, I'm not sure. They collect a lot of data and there was a 30-plus per cent factor they figured going with an EPC turnkey project.

MR. HOGAN: So the disadvantage of that is it could come in more expensive.

MR. HUSSEY: Yes.

MR. HOGAN: That's the premium.

MR. HUSSEY: Yeah.

MR. HOGAN: The advantages though, I would assume, is that your cost is fixed.

MR. HUSSEY: Not necessarily. Again, I've never been involved in an EPCM but listen to these experts, the fact that it's a lump sum doesn't mean you don't have claims or you don't have – you know, them coming after you for whatever –

MR. HOGAN: Was it –

MR. HUSSEY: – poor project description up front. But, again, I'm not an expert in that area, I haven't –

MR. HOGAN: Okay. Was much analysis put into that option or can you not say?

MR. HUSSEY: The analysis was based on – I think, if I look back, it was probably based on the advice that we were given from others –

MR. HOGAN: Oh –

MR. HUSSEY: – these experts, like Westney and IPA and these guys and this premium.

MR. HOGAN: Okay.

Now, there's – obviously, one of the first documents we looked at was your timeline going back, I think, to 2007.

MR. HUSSEY: Mm-hmm.

MR. HOGAN: So there's lots of activity, lots of work, lots of money spent before sanction. Correct?

MR. HUSSEY: Yes.

MR. HOGAN: My –

MR. HUSSEY: I don't know what your definition of lots is but, you know –

MR. HOGAN: Okay, that's not really the point of my question, so I'll just ask –

MR. HUSSEY: Okay.

MR. HOGAN: You are aware that in 2012, when sanction decision was made, it was compared to the Isolated Island Option. Are you aware of that?

MR. HUSSEY: From listening to this and understanding, you know, what I knew at that time, yeah, but –

MR. HOGAN: So you weren't working on that other option I understand?

MR. HUSSEY: No. No, that's what I was going to say. No.

MR. HOGAN: Were you aware of any other work that was going on with regards to the other option?

MR. HUSSEY: No, again, that wasn't in my wheelhouse at all.

MR. HOGAN: Okay.

When bidders came in, obviously I know you did some – or Nalcor would have done some creditworthiness checks on them and things like that. Do you know if there was any checks done on these bidders to see if they had been rejected anywhere else in the country?

MR. HUSSEY: Rejected from what, bidding, or rejected because of financing?

MR. HOGAN: Rejected for any reason.

MR. HUSSEY: For – no, the only thing I can recollect from the creditworthiness is they would look at outstanding claims or any suits and things like that, that affected the financial stability of the company.

MR. HOGAN: So it would just be an analysis of the companies as they come in as opposed to looking externally to see what any other entities might have thought about these bidders?

MR. HUSSEY: They – the creditworthiness guys use some of the Dun & Bradstreets and some other companies to check on them. That's the only thing I'm aware of.

MR. HOGAN: Who would I ask that question to if it's not you?

MR. HUSSEY: I'm not sure who your witness group is but if – I think I saw that Jim Meaney was potentially a witness, I could be wrong. If Jim is, Ms. O'Brien is –

MR. HOGAN: Yes, yes.

MR. HUSSEY: – he's the best guy to ask that question.

MR. HOGAN: Okay.

We've heard evidence over the last couple of weeks that at the time of sanction the environmental assessment was outstanding, geotechnical work hadn't been complete because of that.

So my question is, is why –

MR. HUSSEY: I'm sorry, I was just writing down a note here.

What was – can you start your question –

MR. HOGAN: (Inaudible.)

MR. HUSSEY: – again?

MR. HOGAN: We heard evidence that at the time of sanction, the environmental assessment hadn't been completed and, because of that, certain geotechnical work hadn't been done so data hadn't been collected.

MR. HUSSEY: Yup.

MR. HOGAN: So my question is, is why didn't you wait until that was done before going out –

MR. HUSSEY: I think you're gonna have to ask the decision-makers that question. I'm not the one.

MR. HOGAN: You were just done – did (inaudible) –

MR. HUSSEY: I just did my job. I was, you know, functional – I'm aware that EA wasn't done and no – but you have to ask –

MR. HOGAN: Was that –

MR. HUSSEY: – the (inaudible) –

MR. HOGAN: – an issue for you on the ground at the time, like, why aren't we waiting for the EA or –?

MR. HUSSEY: It was everybody's – was – you know, where's the EA? But, I mean, again, you're talking about guys at the working level talking about, you know, where – the EA's not done, but, again, that's not in my (inaudible) –

MR. HOGAN: So what was the concern of – on people saying where's the EA, where's the (inaudible) –?

MR. HUSSEY: Well, the thing is, if you don't have the EA you couldn't go in the field in certain areas and do work.

MR. HOGAN: Which is what happened.

MR. HUSSEY: Yes.

MR. HOGAN: Okay.

So people were aware of that at the time, obviously?

MR. HUSSEY: Yup.

MR. HOGAN: I think you said it was in April of 2010 you would've done a presentation to Mr. Bennett and Mr. Martin recommending SNC?

MR. HUSSEY: No.

MR. HOGAN: Do I have that right?

MR. HUSSEY: No, it's December 2010. That's when we finished the bid evaluation and did –

MR. HOGAN: December 2010.

MR. HUSSEY: Yup.

MR. HOGAN: Okay.

So at that point in time, did it include Gull Island? Or had Gull been dropped (inaudible)?

MR. HUSSEY: No, Gull had been dropped.

We put the – the bid went out in July and it was based on Gull Island and Muskrat, and we didn't know what the decision was. And I'm not sure when through the process – maybe when the bids – after the bids came in – that it switched to Muskrat Falls, but I'm not sure.

MR. HOGAN: So that's – I guess I wanna ask about that.

I think the evidence we heard was that when they went through DG2, Gull was still a part of the project, the Lower Churchill Project. So I guess when you went out with your bids, when – you know, with SNC, et cetera – that Gull was still part of the –

MR. HUSSEY: We –

MR. HOGAN: – plan was it?

MR. HUSSEY: We put – we put all the options in there because we had not gotten a decision so, you know, the team put all the options in there, including Gull, so that we had our bases covered, and we had pricing and what have you, and information, technical information, and then it changed to Muskrat.

MR. HOGAN: So it was never put out as Muskrat alone?

MR. HUSSEY: No.

Gull Island was in there. You heard Ms. O'Brien talk about the components, and Component 2 was Gull Island. So, Gull Island was in there. It wasn't –

MR. HOGAN: Okay. So then what happened? When you changed to just Muskrat, did you have to scramble and change your scopes and do all kinds of –

MR. HUSSEY: No, no.

MR. HOGAN: – work or –?

MR. HUSSEY: I'm sorry –

MR. HOGAN: (Inaudible.)

MR. HUSSEY: – no, no, I'm sorry. There was work done on Muskrat Falls. So, you know, we had all the information from the bid and we knew what that – what the scope was. And so we were able to make that. And I'm not sure of engineering – doing the level of studies and the work that we were doing, I – there may have been a program in the summer of 2010 that was doing some field studies. But I'm not sure.

MR. HOGAN: Okay.

Now, just back to SNC struggling to fill some of these roles. We've heard evidence from Grant Thornton that there was a worldwide shortage of labour, and we know that Hebron and Vale were ongoing at the time. Were people in – working on those projects? So that's a reason that SNC couldn't fill those the roles?

MR. HUSSEY: You're talking about the project team; you're not talking about craft labour or anything?

MR. HOGAN: Yeah.

MR. HUSSEY: Yeah.

MR. HOGAN: Well, the issues that – whoever SNC was trying to fill these roles with.

MR. HUSSEY: SNC were trying to fill them with engineers and project management people –

MR. HOGAN: Right.

MR. HUSSEY: – is what it was. As I said earlier, SNC and all these contractors, they have, you know, people working all over the world; they're on other jobs. They can't come.

I'm not sure. I know, again, a couple of cases where there was people that couldn't come because they were on other projects. But it's – again, the recruitment process that SNC goes with, can they clear people up – are people coming off other jobs in time for this? It was all in the play.

MR. HOGAN: So whenever people were doing the estimates, they would have been aware that SNC was struggling to fill roles.

MR. HUSSEY: I don't know if – what they would know if SNC was struggling. I'm sorry, I was skipping ahead too far. Yes, those guys would have – when they were sitting in the office, they knew there was issues going on, yes.

MR. HOGAN: I just asked that because when Mr. Budden was asking you about the estimates and you said that they were low and they could have been low for market reasons. Does – labour shortage included in that market reason?

MR. HUSSEY: Well, you're talking about two different things. Labour shortage is craft labour.

MR. HOGAN: Okay.

MR. HUSSEY: And I know nothing about that. I'm – again, I'm not an estimator.

MR. HOGAN: Okay.

MR. HUSSEY: I'm talking about SNC getting people to work on the project team, not out in the field pouring concrete.

MR. HOGAN: Okay. Last question I have was in relation to the contract packages. Do you know why the rating agencies would have been directing the size of the contract packages?

MR. HUSSEY: No. Again, you know, that wasn't in my wheelhouse. I just saw a report and I was involved in the PwC thing 'cause it's one of the first things when I – while I came on the job, and Lance Clarke thought that, you know, because if – they're talking about procurement, I should be there from a knowledge perspective on that, but I wasn't involved in – the – I just saw that the rating agencies wanted larger packages.

MR. HOGAN: Okay, thank you.

MR. HUSSEY: Okay.

THE COMMISSIONER: All right. I think we'll take our 10 minute break here now then.

CLERK: All rise.

Recess

THE COMMISSIONER: The Innu Nation.

MR. LUK: Good afternoon, Commissioner. Good afternoon, Mr. Hussey. My name is Senwung Luk, and I'm the lawyer for the Innu Nation.

So, I just have a very brief – I hope – set of questions for you. And it's in respect of what I remember you telling the Commission earlier this morning, or right after lunch, that – I think what you said was, people understood that there was a 2 to 5 per cent premium for contracts with Innu businesses. Is that an accurate reflection of what you told the Commission earlier?

MR. HUSSEY: What I said was that Nalcor – we saw on a bid that it was 2 to 5 per cent range, so we assumed that that was what kind of percentage could be built into the contracts. But we didn't know that because we had no knowledge of what the arrangements were between the joint venture partners, except in this incident that I saw.

MR. LUK: So, these companies, obviously, in their bids, they didn't include the price for the Innu partner in a line item or anything like that?

MR. HUSSEY: No, they –

MR. LUK: No.

MR. HUSSEY: – didn't, but it came out in the negotiations. I don't know if it was –

MR. LUK: Okay.

MR. HUSSEY: – it came out in negotiations.

MR. LUK: So, when you said earlier, Nalcor saw on a bid that this was the case, I assume you're referring to one particular bid.

MR. HUSSEY: Correct.

MR. LUK: So, is this – this is the camp contract that you're referring to, I assume?

MR. HUSSEY: Yes.

MR. LUK: And so when you said it – I think earlier this afternoon you mentioned something about benchmarks – that you had looked at benchmarks to arrive at this?

MR. HUSSEY: No, no.

MR. LUK: No.

MR. HUSSEY: What I said is we were talking about the estimate for that package and the –

MR. LUK: Yes.

MR. HUSSEY: – cost overrun. And so the estimating group – I got a benchmarking data of what the market was. Where this source came from I'm not sure, but it was in the documentation that I looked at.

MR. LUK: To your knowledge, has that benchmarking data been provided to the Commission?

MR. HUSSEY: I'm not sure.

MR. LUK: Have you seen it in your review of the record that you said you've been doing all week?

MR. HUSSEY: It's – I saw it, that's for sure. I don't know if it was in the package notes for the evaluation. I don't know where it came from.

MR. LUK: Okay.

So, just to clarify, you're speaking here just about one particular contract, the camp contract, on which you considered this benchmarking data.

MR. HUSSEY: I – you're – I'm not sure – what are you referring to – benchmarking data? Are you referring to the cost on the camp?

MR. LUK: I'm – oh, well, I guess that's my question to you, Mr. Hussey. Benchmarking was the word that I heard –

MR. HUSSEY: Yes.

MR. LUK: – you use, so –

MR. HUSSEY: Yeah, yeah.

MR. LUK: If, you know, if you want to explain –

MR. HUSSEY: I'm not understanding what your question is. Are you using the benchmark against the cost of the camp or are you referring to the 2 to 5 per cent? I'm not sure.

MR. LUK: So, just so that I'm understanding correctly, you looked at the price that was bid for the camp contract –

MR. HUSSEY: Yes.

MR. LUK: – and you compared that against some benchmarking data –

MR. HUSSEY: That's correct.

MR. LUK: – and through that process you arrived at some kind of estimate of 2 to 5 per cent?

MR. HUSSEY: No.

MR. LUK: Oh.

MR. HUSSEY: No, no, no. No, no, no.

That had nothing to do with the – the benchmarking data was just updated information on the estimate that Nalcor had.

MR. LUK: Okay.

MR. HUSSEY: That's all it was.

MR. LUK: Okay.

MR. HUSSEY: No, no. That had – that's why I asked you the question.

MR. LUK: I see.

MR. HUSSEY: Has nothing to do with –

MR. LUK: That's very helpful.

MR. HUSSEY: – 2 to 5 per cent.

What I said earlier is that we were made aware by all the different businesses that interacted with me about the IBA and joint venture with the Innu that there were cost implications. And they were indicating that to me all the way through. Where I got that 2 to 5 per cent is on one of the bids; in the negotiation it got shown to us.

MR. LUK: Okay, so that's – so the 2 to 5 per cent was with respect to just one – the camp contract – and you didn't hear that particular number with respect to any of the other contracts?

MR. HUSSEY: No.

We had no knowledge of – we wouldn't have any knowledge of the joint venture relationship and whatever the premiums companies – people were talking about, only that one contract; we saw it there.

MR. LUK: Now, so I've heard – you said that you heard your negotiating partners here, your counterparties, telling you that there was some price premium, perhaps –

MR. HUSSEY: They submitted it. It was in their – it was during the negotiations. It was a line item: Innu participation.

MR. LUK: So, I'm sorry. I had understood you to – said that it was not a line item before. So, maybe I –

MR. HUSSEY: No, it – that's what I'm saying to you. It wasn't a line item in the bids, in any of the bids. It was in the evaluation of the bids and negotiation. We were – we had a meeting trying to see where we can knock out costs and one of the issues that came up from that contract, though I didn't –

MR. LUK: Okay.

MR. HUSSEY: – it was that there was an Innu cost in there. And he – when he submitted the revised pricing with the deductions, it was in there as a line item.

MR. LUK: So, you're now speaking – when you saw this line item, it's in respect of one particular contract –

MR. HUSSEY: Yes.

MR. LUK: – the camp contract.

MR. HUSSEY: Yes.

MR. LUK: And –

MR. HUSSEY: And one particular bidder.

MR. LUK: – one particular bidder. Did you see this line item during negotiations with other –?

MR. HUSSEY: No.

MR. LUK: No.

MR. HUSSEY: No, no, I – no.

MR. LUK: So, did – during these negotiations with this counterparty, did you make any attempt to determine the accuracy of what your counterparty was telling you – that this was the cost of having –

MR. HUSSEY: No, it's just what he put in –

MR. LUK: – it –

MR. HUSSEY: – he put in writing.

MR. LUK: Okay.

So, when you – I – what I understood you to be saying was that you said that at the end of the day, in aggregate, you're estimating a 2 to 5 per cent premium, as a result.

MR. HUSSEY: Exactly, yes.

We're just estimating.

MR. LUK: And that's based on one line item from one counterparty –

MR. HUSSEY: Mmm.

MR. LUK: – that put it in writing to you –

MR. HUSSEY: Yes.

MR. LUK: – during the camp contracts.

MR. HUSSEY: Yes.

MR. LUK: Did you ever commission any reports or audits or –

MR. HUSSEY: No.

MR. LUK: – anything of that nature?

Sorry –

MR. HUSSEY: Not that I'm aware of, no.

MR. LUK: Okay.

So, is it fair to say that the existence of any premium at all is just based on your estimation?

MR. HUSSEY: It's based on what we were told – that the suppliers were – had to pay something to the Innu businesses. And the estimate that we put on – so the cumulative value of all the contracts is what it was, and then that 2 to 5 per cent is what we used as what we thought maybe it could be. It could have been more; it could be less, but again –

MR. LUK: Yes.

MR. HUSSEY: – we always made the statement that we weren't paying the premium and they needed to look after it. And that's why we never saw the (inaudible). This showed up in their submission to us.

MR. LUK: Okay.

During – so what I heard you say was that the only place where the specific number of 2 to 5 per cent came up was during negotiations for that camp contract with one particular bidder.

During that negotiation, did you inquire as to what the non-Innu partner was making as a profit in –?

MR. HUSSEY: No.

MR. LUK: No.

MR. HUSSEY: We didn't get down into – we never go into that kind of detail – not, you know, with most of the contracts, we don't, no.

MR. LUK: Right.

So do you think it's remarkable that an Innu business would try to make money from a contract?

MR. HUSSEY: No, none whatsoever.

No, I mean that's why they joint venture.

MR. LUK: (Inaudible.)

MR. HUSSEY: That's not the issue at all. We're just saying we needed to make a statement that we weren't paying premiums. They had to figure it out. If that meant the non-Aboriginal partner had to reduce his profits or whatever, or the expectations; they had to figure it out. We didn't want to know and I wouldn't have known that number, only it came up in the negotiations.

MR. LUK: For that one contract?

MR. HUSSEY: Yes.

MR. LUK: Okay.

Now, my friend Ms. O'Brien took you to a slide deck earlier today regarding the initial engineering contract with SNC-Lavalin. I don't – I could bring that exhibit up, but I – there's just one simple – well, perhaps if we – Madam Clerk, can we go to P-02136, at page 9?

MS. O'BRIEN: Tab 51.

MR. LUK: Now, what I take from this slide is that the two finalists for this contract, being Hatch and SNC – both of them, their profits were approximately 10 per cent. And I don't think you remarked upon that fact when Ms. O'Brien took you through that this morning: is it fair to say that a 10 per cent profit is unremarkable?

MR. HUSSEY: What's your definition about remarkable?

MR. LUK: Well, I guess I'm asking for your opinion about that. I'm not the expert; you are.

MR. HUSSEY: I'm not the company bidding, but the 10 per cent in a contract of this size, you know, that seemed to be in line with some other percentages we saw. And we didn't see all these percentages; it's just we had to drill down into what this cost was to try to understand it because there was an anomaly there.

MR. LUK: So, is it fair to say that an Innu business trying to make profit is no more remarkable than SNC or Hatch trying to make a profit?

MR. HUSSEY: I agree with that.

MR. LUK: So, if we could go to, Madam Clerk, Exhibit P-02123.

And, I'm sorry; I only have the article number. The article number is 4.6.7. I think it's in the middle, towards the end.

So, if I could just contextualize for the Commissioner: My understanding is 4.6.7 contemplates that the Company, Nalcor, either directly or through contractors, if – "In the event that **Company** … is unable to successfully negotiate a satisfactory contract with an **Innu Business** under Section 4.6.5 or 4.6.6, **Company**, either directly or through **Contractor**, may initiate a competitive bid process or other procurement process."

Now, this is a provision that contemplates what happens after the preferential bidding process for Innu businesses, is that fair? There's a bid by the Innu business that they get the first right to bid, and then what 4.6.7 contemplates is a process of negotiation.

MR. HUSSEY: That's correct.

MR. LUK: Now, as a profit-seeking business, wouldn't you expect an Innu business to come in to you with a price that is probably the highest that it thinks that you will be able to take?

MR. HUSSEY: We were – the bidding entity was an Innu business which was a joint venture, and they put their bid in and we just treated that way, and yes, I mean, you would assume people make profit but – so I don't have a problem with that.

MR. LUK: Yes.

And then it's at Nalcor's discretion –

MR. HUSSEY: Yes.

MR. LUK: – to decide whether to try to negotiate that price down.

MR. HUSSEY: Yes.

MR. LUK: Was it your practice to try to push that price down?

MR. HUSSEY: If there were cases where the price was over our estimate, you know, through our negotiations, yeah, we would try to get it down. And even in clarifying the bid, sometimes there were things in there that was not required by the scope or whatever and there was a cost in there for that, we would negotiate that out as well.

MR. LUK: So at the end of the day when Nalcor signs on the dotted line, it's doing so as a willing payer of the price that it's agreeing to?

MR. HUSSEY: Yes, for sure.

MR. LUK: Okay.

MR. HUSSEY: Yeah.

MR. LUK: Thank you, Commissioner, those are my questions.

THE COMMISSIONER: Thank you, Mr. Luk.

All right Astaldi Canada, Inc.?

MR. BURGESS: Thank you, Commissioner.

Good afternoon, Mr. Hussey, my name is Paul Burgess.

MR. HUSSEY: Good afternoon.

MR. BURGESS: And I represent Astaldi Canada, Inc.

I want to go over, Mr. Hussey, with you many of – or some of the exhibits that you went through earlier with Ms. O'Brien. The first one, Madam Clerk, is Exhibit P-00887.

MS. O'BRIEN: Tab 10.

MR. BURGESS: And I'll be directing you, Mr. Hussey, to page 15. I just wanted you to see the front of that document so you're familiar with it. And I would ask you to turn to page 15, Sir, of that document.

MR. HUSSEY: Yeah, okay.

MR. BURGESS: If you go down to the bottom of that page where it says Execution Ideology, and the statement here is: "The growing ideology gap between the bid phase to that currently being presented by SNC; huge estimated person-hour gap." Can you tell me what reference it is to when it refers to "huge estimated person-hour gap"?

MR. HUSSEY: I think Ms. O'Brien showed a letter today which basically showed that they came in with a, I think, at the DG3 estimate with a 5.6-man-hour estimate for their EPCM contract versus what was bid at 2.5 and what was the basis of the bid.

MR. BURGESS: So that – that's referencing the SNC contract, not any other contracts. Is that correct?

MR. HUSSEY: Exactly. This is referencing SNC.

MR. BURGESS: Okay. Then if I could ask Madam Clerk, page 17, please. Mr. Hussey, page 17. And at the top bullet it indicates: "Several Key personnel listed in the Agreement did not mobilize to the project." And, Sir, would you agree with me that really what you – the problem there and what you need on this contract and any contract is the decision-makers need to be at the site where the decisions are being made. Is that correct?

MR. HUSSEY: I don't know if I can make that decision. Decision-makers – these folks right here would be – these folks would be in the office.

MR. BURGESS: Right. But it says there that it seems to take issue –

MR. HUSSEY: "… did not mobilize to the project." Does mobilizing to the project – most of these were in the St. John's office and the – I guess the construction managers would have to go to some site after – I know the construction managers – and Ron Power is probably a better one to talk about it – but the construction manager spent time in St. John's getting up to speed on the project and input into the strategies and what have you.

MR. BURGESS: Right. Okay. Then if I could turn you, and Madam Clerk, to Exhibit P-00888. And, Mr. Hussey, I don't know what tab that is.

MR. HUSSEY: Five. So that's 11, I guess. Tab 11?

MR. BURGESS: And it's page 16 that I want to refer you to.

MR. HUSSEY: Okay.

MR. BURGESS: And we see in the – when you get down to the bottom right-hand corner when you're getting into the – after the bid evaluation and award – it talks about preparing a contract award and issue. Now, in particular, I recognize that earlier you said you didn't have as much involvement with the Astaldi contract, but were you aware that after the evaluation and award to Astaldi and the actual award of the contract there was negotiations between Nalcor and Astaldi? Are you aware of that?

MR. HUSSEY: Just bring me back to the – are you talking about – was the – there was an LNTP or letter of award issued, and then they continued on negotiating the contract. Is that –?

MR. BURGESS: Right, so just for the purposes of the Commissioner, that's the limited notice to proceed in September of 2013.

MR. HUSSEY: Right.

MR. BURGESS: But before the contract was awarded in November of 2013 to Astaldi, there was a line-by-line analysis, I understand, conducted by Nalcor and a good-faith negotiation. Are you aware of that?

MR. HUSSEY: No, I – again, I'm gonna go back – I have no knowledge of it because I wasn't involved in the process. I am aware that we do issue LNTPs and then – you know, that's either to mobilize the contractor or, in the case of SNC, we issued them a letter of award, an LNTP, in December and we finished the contract in February.

MR. BURGESS: Right.

MR. HUSSEY: But as to Astaldi, I can't comment on it.

MR. BURGESS: Where – are you familiar with that LNTP contract though with Astaldi? Is that something you are familiar with?

MR. HUSSEY: No.

MR. BURGESS: Okay.

Next if I could turn to Exhibit 01942 please, Madam Clerk. And again, just the front page first so you can see that document, Mr. Hussey.

MR. HUSSEY: Which tab is that?

THE COMMISSIONER: What's the number again, sorry?

UNIDENTIFIED MALE SPEAKER: Overarching –

MR. BURGESS: 01942, Commissioner.

MS. O'BRIEN: Tab 38. It may not be – it may just be the first page.

MR. BURGESS: It's just the first page, yeah.

MR. HUSSEY: Yeah.

MR. BURGESS: And I want – if you could, Mr. Hussey, to turn to page 71.

MR. HUSSEY: I don't have it here.

THE COMMISSIONER: Just have a look at it on the screen.

MR. HUSSEY: It's on the screen.

MR. BURGESS: Okay, it's on the screen. So this is on – page 71 starts to deal with the contract package number CH0007. And if you turn the page, or if we go to page 72, in the first full paragraph or the – it starts off this scope of work. And if you continue over to the right hand side it says: "… while it is this contractor that will require the largest labour demand and likely face the greatest productivity risk challenges." What, if any, was your understanding of the greatest productivity risk challenges?

MR. HUSSEY: I can't answer that question. I'm not familiar to answer the question.

MR. BURGESS: Okay.

Next, Madam Clerk, Exhibit 02085.

MS. O'BRIEN: Tab 7.

THE COMMISSIONER: Tab 7, yeah.

MS. O'BRIEN: 02085.

MR. BURGESS: 02085. It's a one-page document, I believe. It's a rather simple and basic question, Commissioner. I don't know if you want me to wait for it to come up?

THE COMMISSIONER: Just wait. It should be up shortly.

MR. BURGESS: Okay.

THE COMMISSIONER: There you go.

MR. BURGESS: There we have it.

Mr. Hussey, just take me – I want to take you down to where it says: Powerhouse and Intake. If you see where the start of that is, would I be right in saying – can you tell me what date that contemplates the start? This is the schedule.

MR. HUSSEY: I – this is not my document. It's an extract from the Decision Gate 3 base of estimate. It was produced by, I guess, someone within the project controls. So I don't know what the basis – what the contemplated date – again, I'm going back to my involvement with CH0007, and, you know, I can't answer that question.

MR. BURGESS: Okay.

Madam Clerk, Exhibit 02105 next, please. It's Exhibit 02105.

THE COMMISSIONER: Tab 30.

MR. HUSSEY: Tab 30. Uh-huh.

MR. BURGESS: And I don't know if this document will assist you, Mr. Hussey, and I don't know if you know the information.

But my question is: With respect to the Astaldi contract, would you be aware of the levels of authority from the top down as to who could approve changes in the contract or the work?

MR. HUSSEY: This document talks about Mr. Martin delegating his authority, his AFE approval authority down to these levels of folks down to this – on here is – project director is Paul Harrington. And then as I understand it, it was delegated down to Ron Power and to the component managers.

MR. BURGESS: And do you know what that – those levels of authority would be in relation to the Astaldi contract, the CH0007?

MR. HUSSEY: Well, the CH0007, the – I think it was $2 million to the project manager and –

MR. BURGESS: Which was who?

MR. HUSSEY: Which – Scott O'Brien.

MR. BURGESS: Okay.

MR. HUSSEY: And I'm just struggling with Ron's – Ron would've been down from Paul Harrington. And –

MR. BURGESS: That's Ron Power I take it?

MR. HUSSEY: That's Ron Power, sorry, yes. And I'm not sure what Ron's – it's in between the $2 million, let's say, and the 35. I'm not sure what it is.

MR. BURGESS: Okay, and do you use 35 because there's another level of –?

MR. HUSSEY: That's Paul Harrington's, and Ron reports to Paul Harrington.

So Paul would – just like Ed Martin, Paul would've delegated his authority down, and he would've given it, authority – again, if my recollection is – to Ron, and then Ron would delegate down to the component manager at the time, which would be the C1, C3, C4 managers, which was $2 million. I'm thinking Ron is 25, but it could be lower than that. I'm just not sure.

MR. BURGESS: And who would know that information?

MR. HUSSEY: Well, if I had the right form, I would know it. I just can't – I can get that number. If you want, I can get it afterwards. I just can't remember.

MR. BURGESS: Well, perhaps if you could provide that to Commission –

MR. HUSSEY: Yeah. Sure.

MR. BURGESS: – counsel and then that can be passed –

MR. HUSSEY: There's –

MR. BURGESS: – along, please.

MR. HUSSEY: There's another one of these sheets which is delegated down from Paul Harrington to his direct reports.

MR. BURGESS: Okay.

All right. Thank you.

And last, Exhibit 02111, please.

MS. O'BRIEN: Tab 36.

MR. BURGESS: So, Mr. Hussey, five down is what I want to focus the questions on, which is the CH0007 contract with Astaldi.

MR. HUSSEY: Mm-hmm.

MR. BURGESS: Can you explain to me, first of all, the columns on the top? I see responsible manager, then I see responsible CA. What does CA stand for?

MR. HUSSEY: Contracts administrator.

MR. BURGESS: Okay.

MR. HUSSEY: And these – in this particular case, Ron Adamcyk was the contracts administrator that did the bidding process, the pre-award, and then Mel Melhem is the contracts administrator at Muskrat Falls site who administered the contract.

MR. BURGESS: Okay.

And how does their roles differ from the roles of the responsible manager who is, in this case, Mr. Over, who you've mentioned earlier?

MR. HUSSEY: Yeah. So what – the reason I did this is I wanted to make the split on responsibility from the overall manager, commercial manager, and that's why I said earlier that when we made the integrated team move, Mr. Over stayed on as senior commercial advisor and he took responsibility for these contracts in here. So he's the guy who led the whole Astaldi bid with other team members. There's – I think there was 25 people on that bid team, and so that's why I'm saying I can't answer your question 'cause Ed Over followed this all the way through.

MR. BURGESS: I understand.

And who does Mr. Over report to?

MR. HUSSEY: He reported up to Lance Clarke, the business services manager of commercial services. I think his title's changed.

MR. BURGESS: Okay.

Thank you, Mr. Hussey.

That's all my questions.

MR. HUSSEY: Okay.

THE COMMISSIONER: Former Nalcor Board Members?

MS. G. BEST: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Nobody here from the Construction Council, I don't believe.

Dwight Ball, Siobhan Coady?

All right.

And Nalcor Energy?

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

THE COMMISSIONER: Okay.

All right.

Counsel for Mr. Hussey?

MS. HUTCHINGS: No questions, Commissioner.

THE COMMISSIONER: No questions, okay. Thank you.

Redirect?

MS. O'BRIEN: No redirect.

THE COMMISSIONER: Okay.

I just have one question or maybe one, two.

You were involved in procurement. You've told us that you have a great deal of experience in this field and worked a number of projects. What does – how does schedule drive the price of a contract? Does it increase? So, if you have a – let's say you have an aggressive schedule, so you know what I'm getting at.

MR. HUSSEY: Yeah.

THE COMMISSIONER: How does it drive the price of your bids?

MR. HUSSEY: That's why I was hesitating. I was wondering what context you were asking …

THE COMMISSIONER: That's the context.

MR. HUSSEY: Yeah, okay.

Well, I don't know if it drives the price of the bids. I think what you would get is a schedule – means more resources put on to it in order to meet an aggressive schedule, probably in that regard, Commissioner. If –

THE COMMISSIONER: So, if that's the case, just take it a little bit farther. If more resources, is going to cost you more, isn't it?

MR. HUSSEY: Yes. That's what I'm saying that, yes, it would cost you more.

THE COMMISSIONER: Okay. All right.

I was just going to ask you as well: When you looked at this particular contract, did you have any view about – or this particular project – did you have any view about the issue of how the schedule might impact your work?

MR. HUSSEY: Commissioner, that's what I was trying to explain earlier with regards to how I would build up the procurement schedule. The schedule is what drives the procurement activity, because I've got to start it in sufficient time to get through the process in order to meet that schedule, that construction schedule around site-required date.

So with that, you need to know the schedule and that's why I pointed to the construction schedule on that list that Ms. O'Brien showed. That construction date is the important date, starting date for me, one of the important dates – that plus transportation and manufacturing time.

So I would need that schedule, so I could back it up and start the procurement process, which is what led to this project awarding the – we call it the early works packages. In order to meet that schedule, we had to get the road in, we had to do some clearing, we had to do some site prep work, we had to put in the camps, so we need to get – so that's what the schedule does to us – and that money was spent, as the Inquiry is aware of, prior to sanction. And those funds were approved as part of early works in order to move the project along.

THE COMMISSIONER: So, let me ask you this – and I don't know if you can answer this, but if you can, I'd appreciate it – if, at the time, the SNC contract – the EPCM contract was following through, if it was decided to go out and re-bid that work, how would that have impacted your job? And how would it have impacted the schedule?

MR. HUSSEY: Well, I guess we would have to do a new bidding event and to go out and find another contractor, which would have involved the process. Obviously the process – we had a lot of the work done, 'cause we put the RFP out, so it would be a shorter process than what we had, albeit we did the bidding from the issue of the bid to the award in six months.

I guess the only other – so that would be an impact. And then, if then we stopped doing the early works, then that would have been a cost impact as well. So with – I'm not sure how much of the work could have carried on with the engineering and the work that we already had in place.

THE COMMISSIONER: Okay.

MR. HUSSEY: To give you – you know, depending if we stopped, it would be a cost. But if we had enough to keep going, we would still spend money while we're trying to replace them through a process.

THE COMMISSIONER: All right. Good.

Thank you very much, Mr. Hussey. I appreciate your time this – today.

MR. HUSSEY: Thank you.

THE COMMISSIONER: So I think that's it for witnesses.

And we'll start back – and I believe we're next on Friday, the 15th of March.

MS. O'BRIEN: That's correct, with the worker's panel on that day.

THE COMMISSIONER: Okay.

All right. Thank you and safe travels.

CLERK: All rise.

This Commission of Inquiry is now concluded for the day.