



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 13

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

19 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.

I'm glad to see so many here early this morning and that everybody got the message. Before the next witness is called, I feel it's necessary to speak to the jurisdiction of this provincially called public Inquiry.

In my addendum to the interpretation decision made regarding this Inquiry's Terms of Reference and mandate that I released on February 7, 2019, I indicated that while I have no jurisdiction to investigate Canada's due diligence in providing its loan guarantee for the Muskrat Falls Project, I do need to investigate the work done by the independent engineer based upon testimony received during Phase 1 of the Inquiry regarding the reliance by the Government of Newfoundland and Labrador and some officials of that government and Nalcor on the work done by the independent engineer.

Therefore, it is important that the parties as well as the public understand the limitations this Commission of Inquiry has as regards to the federal government's actions in providing the federal loan guarantee. This Commission of Inquiry does not have the right to investigate Canada's reliance on the work of the independent engineer nor its actions taken as a result of that work. This Inquiry, however, can look into the work done by the independent engineer in order to assess any reliance upon this work by the Government of Newfoundland and Labrador and by Nalcor Energy.

So hopefully this clarifies, to some degree, the jurisdiction of this Inquiry and I think it's necessary that the public understand that there are some limitations on a provincially called Commission of Inquiry, and I wanted to bring those to everyone's attention this morning.

So having said that, Mr. Learmonth.

MR. LEARMONTH: I can also add to those preliminary – those comments that Mr. Argirov will confirm that he had no role to play whatsoever in Canada's decision-making process at all. He knows about the work that was prepared, but he was not part or privy to nor was the decision-making process followed by Canada communicated to him. So he wouldn't be able to answer those questions, as I understand it, even if he were able to be asked them.

The first point I'd like to make is that there are a number of exhibits – there's 10 volumes and I'd like to have the exhibits entered into evidence, if I may, before Mr. Argirov is sworn.

THE COMMISSIONER: All right.

MR. LEARMONTH: They are Exhibits P-02144 to P-02307, P-02318 to P-02320, P-00239 [sp. P-02329] and P-02338 to P-02341. Could they be entered into the record, please?

THE COMMISSIONER: Okay. The exhibit that you referred to just before 02338 to 02341 – what was that exhibit number?

MR. LEARMONTH: P-02329.

THE COMMISSIONER: 02329.

All right, those exhibits will be marked as entered.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Mr. Argirov, could you stand please.

MR. LEARMONTH: Yeah. He will be affirmed (inaudible).

THE COMMISSIONER: Okay. We'll ask that you be affirmed this morning.

MR. ARGIROV: Yes.

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. ARGIROV: I do.

CLERK: Please state your name.

MR. ARGIROV: Nik Argirov.

CLERK: Thank you.

THE COMMISSIONER: Can you spell your name, please?

MR. ARGIROV: N-I-K, A-R-G-I-R-O-V.

THE COMMISSIONER: Thank you.

You can be seated, Sir.

MR. ARGIROV: Thanks.

MR. LEARMONTH: Mr. Argirov, what is your occupation?

MR. ARGIROV: I'm a consulting engineer.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And I specialize in the field of hydro.

MR. LEARMONTH: Hydro. And where are you based?

MR. ARGIROV: I'm based in Vancouver, BC.

MR. LEARMONTH: Yeah. And Argirov Engineering Inc. is your company?

MR. ARGIROV: Correct.

MR. LEARMONTH: You're the sole owner, shareholder of it?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah. And how long has Argirov Engineering been in existence?

MR. ARGIROV: Close to four years.

MR. LEARMONTH: Four years. Yeah.

MR. ARGIROV: Short of a month or –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – something.

MR. LEARMONTH: Yeah. What is your educational background after high school?

MR. ARGIROV: Well, I have a structural engineering master's degree from the university of Bulgaria – Sofia.

MR. LEARMONTH: Yeah. And when did you obtain your master's degree in engineering from the university of Bulgaria?

MR. ARGIROV: 1980.

MR. LEARMONTH: 1980.

MR. ARGIROV: Yes.

MR. LEARMONTH: And did you go to work after you obtained your master's?

MR. ARGIROV: Yes.

MR. LEARMONTH: And where did you work at the beginning of your career?

MR. ARGIROV: I was working in Sofia in consulting firms.

MR. LEARMONTH: Yes. What type of work were you doing?

MR. ARGIROV: Oh, I was doing structural engineering work. Yes.

MR. LEARMONTH: Yes.

MR. ARGIROV: Exactly in my speciality.

MR. LEARMONTH: Yeah. And I understand that you moved to Canada in 1990 or –

MR. ARGIROV: Correct. Yes.

MR. LEARMONTH: – 1991. Is that correct?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah. And what – upon arriving in Canada, what type of work did you engage in?

MR. ARGIROV: I was working with a consulting firm, Acres International, and I was working in a hydro field –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – because Acres was one of the very well-established hydro consultants in Canada.

MR. LEARMONTH: Yes.

MR. ARGIROV: One of the leading, actually, at that time.

MR. LEARMONTH: And when you went to work with them, where – was it in Ontario?

MR. ARGIROV: No, it was two stories up from where we are.

MR. LEARMONTH: In the Beothuk –

MR. ARGIROV: My office was –

MR. LEARMONTH: –Building?

MR. ARGIROV: – in this building, yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: On the fifth floor.

MR. LEARMONTH: So your first work in Canada was in Newfoundland and Labrador.

MR. ARGIROV: It was Newfoundland and Labrador, yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: It was in St. John's here, and so I was with Acres for eight, seven years – 7½ years.

MR. LEARMONTH: So that would take us up to about 1998?

MR. ARGIROV: 1998 I moved to SNC-Lavalin. I was nine years with SNC-Lavalin. And then I started the office – I moved to Vancouver with SNC-Lavalin, and I started the office of MWH 2007, 2008 in Vancouver.

MR. LEARMONTH: Yes.

Now, MWH Canada, Inc. is the corporate entity that you worked for?

MR. ARGIROV: Correct, yes.

MR. LEARMONTH: And is that part of an international conglomerate?

MR. ARGIROV: Yes. MWH was American company.

MR. LEARMONTH: Yes.

MR. ARGIROV: With head office in Denver. It was a global, international company with 167 offices around the world – very well-established. Working in everything related to water.

MR. LEARMONTH: Yes.

MR. ARGIROV: Municipal and hydro.

MR. LEARMONTH: Okay.

Now, while you were work – living and working in Newfoundland –

MR. ARGIROV: Yes.

MR. LEARMONTH: – employed by Acres and then SNC-Lavalin, can you give us some idea about the type of projects that you worked on?

MR. ARGIROV: Sure, yes. I was the engineer for the rehab project of Abitibi-Price hydro facility in Grand Falls.

MR. LEARMONTH: And what type of an operation was that that you were in charge of?

MR. ARGIROV: This was a project –

MR. LEARMONTH: Yes.

MR. ARGIROV: – for rehabilitation of this facility.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So I was the lead engineer.

MR. LEARMONTH: Yes.

MR. ARGIROV: My name is still on the drawings and signatures and so on. So it was, for example, maybe of interest – that was the second

RCC dam in Canada that was constructed over there, and –

MR. LEARMONTH: Second RCC, yeah.

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Overflow spillway, and performs very well still.

MR. LEARMONTH: Yes.

MR. ARGIROV: So, then I was involved in the –

MR. LEARMONTH: Is it – just so people know, RCC is roller-compressed –

MR. ARGIROV: Compact.

MR. LEARMONTH: – concrete.

MR. ARGIROV: No –

MR. LEARMONTH: Compacted.

MR. ARGIROV: – roller-compacted concrete.

MR. LEARMONTH: Concrete.

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

MR. ARGIROV: The same as the dam, the main overspill – overflow spillway dam for Muskrat Falls Project.

MR. LEARMONTH: Yes.

MR. ARGIROV: Yeah.

MR. LEARMONTH: And that was the second one in Canada.

MR. ARGIROV: Yes, that was the second one in Canada –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – at that time.

MR. LEARMONTH: Okay.

MR. ARGIROV: Then I was involved in the rehabilitation of Bishop's Falls's hydro facilities. Then I did – I was the engineer for Star Lake project, I was the engineer for Rose Blanche hydro project, I did quite a bit of work for Deer Lake Power; I did replacement of two of their (inaudible) penstocks and some other work.

I was then the design manager and the engineering manager for Granite Canal project as well, and in between I did a lot of feasibility studies for small and bigger hydro in the province, in – on the Island, and also Labrador.

MR. LEARMONTH: Yes.

MR. ARGIROV: Projects like – they were not realized, but still they were on drafting boards.

MR. LEARMONTH: You did feasibility studies for those?

MR. ARGIROV: Yes, correct.

MR. LEARMONTH: All right.

Okay, well when you – so you left Newfoundland in what year?

MR. ARGIROV: Left Newfoundland 2004 –

MR. LEARMONTH: Yes.

MR. ARGIROV: – and I was still with SNC-Lavalin, and I was moved to Vancouver office –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – of the company, where I became the engineering manager for the head of division –

MR. LEARMONTH: Yes.

MR. ARGIROV: – in Vancouver.

MR. LEARMONTH: And what type of projects did you work on while still employed with SNC-Lavalin in Vancouver?

MR. ARGIROV: In Vancouver, still head of projects.

The first was Brilliant Dam expansion, where I was the engineering manager again – design manager, whatever you could call it. Then I was involved in international projects; one of them was Karebbe hydro development in Indonesia, and different studies as well.

And then 3½ years later I left the company.

MR. LEARMONTH: Yeah.

And then you opened up MH –

MR. ARGIROV: MWH –

MR. LEARMONTH: – MWH’s office –

MR. ARGIROV: – yes –

MR. LEARMONTH: – in Vancouver.

MR. ARGIROV: – in Vancouver.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yes, and that was – I was responsible for the operations of the company in BC, and also for hydro and dam business development and operations across the country, across Canada.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So, I was vice-president of the company and I was in charge of this office.

MR. LEARMONTH: Now, apart from working on hydro projects in the Province of Newfoundland and Labrador, have you worked on hydro projects in any other provinces, and if so, give us details?

MR. ARGIROV: Well, those were in BC, for example, that I mentioned: Brilliant Dam, then

Bear Hydro – another project in BC. Then – it’s called Stave Falls, which is BC Hydro project – those were refurbishment of spillway gates. Powell River dam, Ruskin Dam – those were BC Hydro projects that were at refurbishment or rehab stage.

MR. LEARMONTH: Yes.

MR. ARGIROV: White River Project, which is in Ontario.

MR. LEARMONTH: Yeah, what type of a project was White River?

MR. ARGIROV: Hydro.

MR. LEARMONTH: Hydro? A dam?

MR. ARGIROV: Hydro development. Two dams, two powerhouses, yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: It was northern Ontario.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So ... yeah.

MR. LEARMONTH: Yeah, so that’s – you have experience other than your work here in Newfoundland, then?

MR. ARGIROV: Oh correct, yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yes.

MR. LEARMONTH: Now, so you went to – you opened the office for MWH Canada, Inc. –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – in Vancouver. And you’ve told us the type of work that you did there. While employed at MWH Canada, I understand you had some contact with Nalcor. Is that correct?

MR. ARGIROV: Correct, yes.

MR. LEARMONTH: Yeah. Can you explain that please – that contact?

MR. ARGIROV: MWH was participating, or at least tried to participate in a bid for EPCM contractor.

MR. LEARMONTH: Yeah. That's the – for Muskrat Falls.

MR. ARGIROV: For Muskrat Falls, yes.

MR. LEARMONTH: That was the – the EPCM contract was eventually ordered – given to SNC –

MR. ARGIROV: SNC-Lavalin.

MR. LEARMONTH: – Lavalin –

MR. ARGIROV: Yes.

MR. LEARMONTH: – February 1, 2011. Is that the one you're referring to?

MR. ARGIROV: That's right, yeah.

MR. LEARMONTH: So MWH Canada submitted a bid for that?

MR. ARGIROV: Well, it was actually – we did not. We decided to be in joint venture with Black & Veatch. It was corporate decision. And Black & Veatch – at the last moment, we – I think the company submitted the – our part of the proposal to Black & Veatch and at the last moment Black & Veatch decided to go alone by themselves, without MWH, and they submitted bid only for the transmission assets part –

MR. LEARMONTH: Yes.

MR. ARGIROV: – of the project, and I guess they were not successful because of partial-only scope.

MR. LEARMONTH: All right. So that didn't go anywhere?

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

If you just turn to your book, volume 1. It's tab 4, Exhibit P-02147.

MR. ARGIROV: Okay.

MR. LEARMONTH: Have you got that, Mr. Argirov?

MR. ARGIROV: Yes.

MR. LEARMONTH: Is that a reference to the work that you just described, a proposal for the EPCM contract?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

MR. ARGIROV: Yeah, that's right. Yeah.

MR. LEARMONTH: Yeah.

So that was the extent of your relationship with Nalcor before being selected –

MR. ARGIROV: Correct.

MR. LEARMONTH: – as the independent engineer?

MR. ARGIROV: Yes, yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: That was all.

MR. LEARMONTH: Now, a couple of preliminary points. We hear this term "independent engineer" and there may be some perception that this was a name given to you for your role in this work. But can you confirm that an independent engineer, sometimes called a lender's engineer, is a common office held by – people are appointed to be independent engineers by lenders to do certain evaluation work on a project?

MR. ARGIROV: Correct. I confirm that.

MR. LEARMONTH: Yes.

And so there would be – you're not the only independent engineer in North America. There's

– as we speak, there could be hundreds of them.
Is that right?

MR. ARGIROV: I'm not the only one, for sure.

MR. LEARMONTH: Yeah, yeah.

But it's an office, it's not a name that was assigned –

MR. ARGIROV: Correct.

MR. LEARMONTH: – to you for this –

MR. ARGIROV: Oh, no. It is –

MR. LEARMONTH: – project.

Yeah.

MR. ARGIROV: – an office.

MR. LEARMONTH: Okay. That's very good.

And before we get into the documents (inaudible), I just want to put something to you – we'll be coming back to this, but it is an issue in that, you know, the position has been put forward by certain politicians who said, generally, that at sanctioning on December 17, 2012 and on the signing of the documents for financial close on November 29, that some form of reliance was placed on the due diligence and work carried out by Canada in relation to the Muskrat Falls Project, including the work of the independent engineer – you.

Now, do – can you comment on that, on whether you had any communications with the Government of Newfoundland at all prior to financial close on November 29 in relation to the Muskrat Falls Project?

MR. ARGIROV: No, I didn't have any.

MR. LEARMONTH: None?

MR. ARGIROV: None.

My only commitment was to Canada – or the independent engineer commitment, not just my personal –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – but the office –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – was only to Canada.

MR. LEARMONTH: Yeah.

At any time before financial close, did anyone in the Government of Newfoundland, whether at the political level or the civil service – bureaucracy level, ever ask you to provide them – you, as independent engineer, to provide them with any reports or commentary on the work that you were doing?

MR. ARGIROV: No.

MR. LEARMONTH: Never?

MR. ARGIROV: Never

MR. LEARMONTH: Okay.

Did you ever communicate to the Government of Newfoundland the scope of the work that you were doing as engineer for the Muskrat Falls Project?

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

I want you to look at volume 1, tab 5, which is Exhibit P-02148.

MR. ARGIROV: Okay.

MR. LEARMONTH: This is a – letters of invitation for the RFP, request for proposals, for the independent engineer which was issued a few months before February 2, 2012. Can you look through this document and see whether you can identify it? Just to assist you – I see that at the beginning, on page 2, there's a letter to Black & Veatch Canada. Then on page 8, MWH Canada received so – a letter.

So could you just explain this process? Also E3 Consulting, on page 5, was issued the request for proposal for the position of independent engineer. Can you describe how this process developed?

MR. ARGIROV: Well, this was the start of the RFP, request for proposals.

MR. LEARMONTH: Yes.

MR. ARGIROV: So it started procurement for identifying the independent engineer.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Can I just ask this?

MR. ARGIROV: Of course.

THE COMMISSIONER: I know this is a Nalcor request for proposals – is there – is that normal for the owner of the project to actually make the application? You’ve made the request for proposals?

MR. ARGIROV: Correct. Yes. Because at that time, the – Canada was – the time frame was such that Canada could not be involved directly. And the process was started by Nalcor because it is exactly this time frame was very important. So it could allow the independent engineer to do its due diligence before arriving with a final document which was submitted for financial close –

MR. LEARMONTH: Okay.

MR. ARGIROV: – time. And then Canada became involved directly through the reliance agreement – I believe it was a year later.

MR. LEARMONTH: This is June 2013 –

MR. ARGIROV: June.

MR. LEARMONTH: – I think.

MR. ARGIROV: Correct. When the reliance agreement was signed – that was the first one and then there was a – just expanded with all of the details because at June time, the final structure was not exactly established. And then November something –

MR. LEARMONTH: Twenty-ninth, yeah.

MR. ARGIROV: – 20 – no. Oh, okay.

MR. LEARMONTH: The second reliance agreement?

MR. ARGIROV: The second reliance agreement, yeah.

MR. LEARMONTH: Yeah –

MR. ARGIROV: That’s –

MR. LEARMONTH: – we’ll get into that.

MR. ARGIROV: Okay. Yeah.

MR. LEARMONTH: That was signed by all the Muskrat Falls entities that had been created.

MR. ARGIROV: Correct, yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: They were not –

MR. LEARMONTH: They didn’t exist in –

MR. ARGIROV: – in existence –

MR. LEARMONTH: – the time of the first one.

MR. ARGIROV: – back in June, yes.

MR. LEARMONTH: Correct. All right.

MR. ARGIROV: But it was important to establish the framework.

MR. LEARMONTH: Yeah.

And your work was paid for and continues to be paid for by Nalcor. Is that correct?

MR. ARGIROV: Oh, correct. Yeah.

MR. LEARMONTH: Now is this process whereby you’re first retained by Nalcor, you’re selected by Nalcor, and then it evolves into a situation where your client is the Government of Canada.

Is that an unusual process to follow in these circumstances?

MR. ARGIROV: No. Actually, it's very typical process.

MR. LEARMONTH: It's typical?

MR. ARGIROV: Yes.

But I also need to clarify: It did not evolve further to get my client to become Canada. Right from day one of signing the agreement with Nalcor, it was very clearly stated in this agreement that our client is Canada or the lenders.

MR. LEARMONTH: Yeah.

So it wasn't an evolution, it was like –

MR. ARGIROV: Not an evolution.

MR. LEARMONTH: – that way right from the word “go”.

MR. ARGIROV: It was, absolutely – right from day one.

MR. LEARMONTH: All right.

There's a – at tab 6 of volume 1 – or book 1, Exhibit P-02149.

MR. ARGIROV: Okay.

MR. LEARMONTH: There's a – it's an email March 20, 2012, from James Meaney of Nalcor to Lance Clarke and Ross Beckwith and Philip Bursey, all of Hydro, asking that the SOW, I guess the scope of work, from the IE, so that: “Can you send me the final SOW from the IE EOI / RFP....Province has asked to review. Thanks, Jim.”

Were you aware of this until you saw this in the documents? That Mr. Meaney was communicating that the province had asked to receive the scope of work?

MR. ARGIROV: No.

MR. LEARMONTH: No.

MR. ARGIROV: That's –

MR. LEARMONTH: That wasn't something that you were –

MR. ARGIROV: No.

MR. LEARMONTH: – aware of?

MR. ARGIROV: That was not communicated, though –

MR. LEARMONTH: Okay.

MR. ARGIROV: – to any of the bidders.

MR. LEARMONTH: Al right.

MR. ARGIROV: It's internal.

MR. LEARMONTH: Okay.

And the scope of work that is attached to this series of emails in Exhibit-02149, it begins on page 4.

MR. ARGIROV: Yes.

MR. LEARMONTH: Could you have a look through that, please? And – well actually, I'm going to bring you right to page 10 and page 11 of that document.

Page 10, under the heading Construction Schedule, it says: “The Independent Engineer will review the Project schedule and each of the construction schedules and determine whether adequate provisions have been made for design; equipment procurement, fabrication, shipment and installation ...” et cetera. And that's construction schedule, and then on page 11: “Task 5: Review Capital Budget ... Review the scope of supply and corresponding cost estimate...” et cetera “... Evaluate to what extent cost items, which are part of the total Project cost estimates, are based on estimates versus fixed pricing ...” et cetera.

So, there's a long list of items referred to on page 11, including – included in the scope is the review of contingencies and a large, long list of items. And that carries on to the top of page 12.

Now, can you explain your – the scope of work that, if the independent engineer actually carried out on this project – that's the first part – and

second, whether it conformed with the scope of work that I just referred to.

MR. ARGIROV: Yeah.

MR. LEARMONTH: What was your scope of work, as you understood it?

MR. ARGIROV: So, there were three phases in the engagement. And the first phase was evaluation and overview of the whole process of engineering, the design, whether the principles of the engineering and design methodologies were up to the standards. And then overview of schedule, cost pro forma, different contract execution – wherever that was at the time, if there were any – and also – exactly, the review of different existing, already-awarded contracts. We were never in a position to evaluate any contracts that were not yet fully awarded –

MR. LEARMONTH: Right.

MR. ARGIROV: – because that was fully understood right from the get-go – that sensitive, commercially-sensitive information cannot be made available to any other parties.

MR. LEARMONTH: Now, you said an overview of costs –

MR. ARGIROV: Sure.

MR. LEARMONTH: – what type of an overview would that be? In other words, would it be a detailed examination and review, would it be a high-level, or something in the middle, between those two –?

MR. ARGIROV: No, we never – that's the scope of work; I have to clarify.

We're – our mandate is not to do any detailed engagement, any detailed analysis on anything – not just cost but also it could be schedule, it could be engineering, it could be any aspect technical. It is just high overview – high-level overview – of wherever the – wherever we are examining to see if the principles are correct and, if there were standards, if the industry standards are followed or the good practice is followed.

So, that is our – was our mandate. And then the other thing is during construction, which is the following phase, which is still going, we monitor progress and every other aspects that could create potential risk. We identify risk and we inform Canada, which is our client, on all of these aspects of the project. And we perform site visits –

MR. LEARMONTH: Yes.

MR. ARGIROV: – to really get familiar, factually, with wherever the progress is – whether it's at this level or another. And also, I review monthly every available contractor's report. We have a material contracts list that was established right from the beginning, which are important contracts that we have to monitor.

MR. LEARMONTH: Yes.

MR. ARGIROV: There are many other, smaller contract –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – (inaudible) still large, but did not, under our purview ...

MR. LEARMONTH: Yeah.

So, if someone were to – sorry did you finish? Did I cut you off?

MR. ARGIROV: No, please.

MR. LEARMONTH: Okay.

So if someone were to say to you: Mr. Argirov, under the terms of your engagement, you were supposed to do a detailed review of the cost estimates and the contingencies, conduct a risk assessment – a detailed work on those topics. What would your answer be to that question?

MR. ARGIROV: No, that's not our mandate.

MR. LEARMONTH: Okay.

The next exhibit I want to turn to is tab 7; it's Exhibit P-02150. This is a long document. It's Independent Engineer Lower Churchill ... Reference No. RFP LC-PM ... March 2012. What – can you just give us a brief summary of

the purpose of your preparing this report at this stage of the process?

MR. ARGIROV: Well, there was several draft levels of reporting which Canada was requiring and always required. Doesn't matter whether it was the initial – the first phase or the second phase, that's the process. And I think that was one of the drafts.

MR. LEARMONTH: Okay.

MR. ARGIROV: So in those drafts, we probably start with creating the format to see that's acceptable to our client and proceed further.

MR. LEARMONTH: Yeah.

Is that a standard type of document to prepare –

MR. ARGIROV: Yes.

MR. LEARMONTH: – in these circumstances?
Yes.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Okay.

Tab 8, Exhibit – book 1 – Exhibit P-02151 is a – email from Ross Beckwith at Nalcor. Mr. Beckwith's name appears throughout these – the early stages of these documents. Can you explain who Ross Beckwith was? What was his position at Nalcor, to your understanding?

MR. ARGIROV: Yes. He was leading the procurement process for the selection of independent engineer.

MR. LEARMONTH: Right.

The – just to get into the – touch on the contents, this is an email to you from Mr. Beckwith, referring to a bid clarification meeting in St. John's on Friday, May 4, 2012, and then there's a list of what you're going to – the agenda, what you're going to be discussing and so on. Once again, we're not going through the entire document. Is that a standard type of meeting to hold at this time during the selection process?

MR. ARGIROV: Oh, absolutely, absolutely.

MR. LEARMONTH: So that's just standard, is it?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

And did you attend the meeting?

MR. ARGIROV: I did.

MR. LEARMONTH: You did.

MR. ARGIROV: Yes.

MR. LEARMONTH: All right.

MR. ARGIROV: And we got stranded here because of fog for additional three days.

MR. LEARMONTH: Well, I mean, you remember it – maybe that's why you remember it.

MR. ARGIROV: I did remember that, yes.

MR. LEARMONTH: Yeah. Okay, anyway.

Next is tab 9 of the same volume 1. It's Exhibit P-02152. It's an email from Ross Beckwith to James Meaney, J. Matovich and Lance Clarke. This is a – can you identify this document? It's a – it's – at the top of it, it says "Bid Evaluation and Recommendation; Independent Engineer." Can you just take us through this and explain how this forms part of the process?

MR. ARGIROV: I don't know. I mean, this is developed by Nalcor, and it's their process of bid evaluation.

MR. LEARMONTH: Yeah.

But is that a – I know you wouldn't have been party to it because it was – they were assessing you among other – your company among other companies.

MR. ARGIROV: Yeah, and there's always –

MR. LEARMONTH: Is this a normal part of the process in selecting a contractor in response to a RFP?

MR. ARGIROV: Correct.

MR. LEARMONTH: All right.

Once again, I think volume 1, tab 10. There's another – it's Exhibit P-02153. It's another email from Ross Beckwith to James Meaney. I take it this is just a follow-up of the earlier bid evaluation process? Is that correct? Where there are rankings for technical evaluation, quality evaluation, health and safety and so on?

Yeah.

I know that you weren't – didn't have any input into this, but once again, is this part of the normal process that one would expect in – at this time in the selection process?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah, okay.

THE COMMISSIONER: Can we just get clarification on the first page of that, Mr. Learmonth, where Mr. Beckwith is talking about – he makes a comment: "Very little text is dedicated to O&M work and the DG3 budget verification exercise for the feds is not addressed at all."

What is that supposed to mean here?

MR. LEARMONTH: Can you answer that, Mr. Argirov?

MR. ARGIROV: Sorry, Commissioner, (inaudible) –

THE COMMISSIONER: So it's the second sentence on the first page. "Very little text is dedicated to O&M work and the DG3 budget verification exercise for the feds is not addressed at all."

MR. ARGIROV: Well, I guess that's some observation by Nalcor's team. But I cannot speculate further. O&M is the third phase of our engagement. That indicates operation and maintenance.

MR. LEARMONTH: So you can't provide any further clarification other than that, Mr. Argirov?

MR. ARGIROV: Not really. I don't know what, really, they mean by that.

MR. LEARMONTH: All right. But we can ask someone from Nalcor about that when they testify.

Now, next I want you to turn to book 2 – can you pick that up? Volume 2. And it's tab 32, Exhibit P-02174. And you can let me know when you find it.

MR. ARGIROV: Yes, I have it.

MR. LEARMONTH: Okay. So this is – I'm not as much concerned about the page 1, but this contains the contract. If you go to page 3, this is the agreement between Independent Engineer and Operating and Maintenance Services for Lower Churchill Project between Nalcor and MWH Canada.

MR. ARGIROV: Okay.

MR. LEARMONTH: And you can see that, on page 5, it's dated August 27, 2012.

MR. ARGIROV: Yes, (inaudible).

MR. LEARMONTH: Right.

MR. ARGIROV: Yeah.

MR. LEARMONTH: And I just say for the record that this exhibit, or this contract, is also found at volume 1, tab 16, P-02159, but I'm going to refer to this exhibit for the time being.

All right. Now, so this is the contract dated August 27, 2012, and so this is when you were – your company was successful in the bidding process and this – the result is this contract, is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, okay.

And can you just confirm that the execution page, page 26, that's where everyone signed off on this?

MR. ARGIROV: Correct.

MR. LEARMONTH: All right.

So even though, just to go over what you said before because it may be important, even though MWH Canada was contracting with Nalcor, that throughout your process was – your client was Canada?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And this is very much clarified in the scope of work.

MR. LEARMONTH: Yeah.

Can you just show what – show me where that's clarified?

THE COMMISSIONER: Page 29.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Page 29.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Client and Assignment.

MR. LEARMONTH: Okay.

MR. ARGIROV: Item 3.0.

MR. LEARMONTH: All right.

So it says, just on page 29, paragraph 3.0, I'll just read it into the record. Client and Assignment: "Contractor's client for each Project is not the Owner of that Project" – the owner being referred to as Nalcor, I think – "but, instead, the lenders, the hedge providers, the federal government as guarantor, and such other entities as may be involved in providing financing for, or financial guarantees in support of, each of the Projects (initially and collectively 'Client')."

So that confirms what you – your earlier evidence that that was the situation.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

You referred to Reliance Agreement earlier in your testimony. If you could just, in that same exhibit – that's P-02174 – if you could just turn to page 95.

MR. ARGIROV: Yes.

MR. LEARMONTH: Yes. Is that the Reliance Agreement that you're referring to?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

MR. ARGIROV: So that was the first one – June 2013, this.

MR. LEARMONTH: Yeah.

And that's between Nalcor and MWH Canada. And that's –

MR. ARGIROV: And Canada.

MR. LEARMONTH: Excuse me. And Canada. And that's – the reliance is that they – well, it speaks for itself, but you signed that on page 101, I believe –

MR. ARGIROV: Correct.

MR. LEARMONTH: – of the exhibit.

Is that a standard type of agreement in these situations?

MR. ARGIROV: Oh, yes.

MR. LEARMONTH: Yeah.

And what is the gist of it, if you can summarize? I know it speaks for itself, but what is the purpose of it, generally?

MR. ARGIROV: Well, this completely clarifies the frame of work and have no – any doubts that

Canada is the only entity that will rely on the work of the independent engineer.

THE COMMISSIONER: Probably better explained on page 103, the last paragraph?

MR. LEARMONTH: Okay, 103 is the detailed scope of work. Independent engineer – detailed scope of work, page 103 of the exhibit – is that what you’re referring to, Commissioner?

THE COMMISSIONER: Yes.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: The last paragraph.

MR. LEARMONTH: Yeah.

“Given the size, scope and complexity” Is that the paragraph you’re referring to? Yeah.

MR. ARGIROV: Yes, correct. That was the –

MR. LEARMONTH: So the last few –

MR. ARGIROV: – (inaudible) role of independent engineer.

MR. LEARMONTH: Yeah.

And it says at the bottom of that paragraph: “The Independent Engineer will then take instructions from and report directly to that Client in relation to that Project. The Independent Engineer will execute any assignments, novation” – et cetera. So, the client is clearly the lenders and the guarantor, which is –

MR. ARGIROV: The guarantor – federal government.

MR. LEARMONTH: – which is Canada.

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

Now if we go to – so we’ll just put that aside now, that’s volume 2. And we’ll turn back to volume 1, tab 10.

MR. ARGIROV: Okay, (inaudible).

MR. LEARMONTH: Exhibit P-02153.

MR. ARGIROV: Okay.

MR. LEARMONTH: So this was the bid evaluation that we referred to earlier. I’d like you to turn to page 4 of the – of this exhibit, P-02153, and read paragraph 2.4 under the heading “Provincial Government.”

MR. ARGIROV: “The provincial government determined in April that it has no requirement for involvement in the IE function relative to its role as the equity investor.”

MR. LEARMONTH: Yeah.

So that’s consistent or compatible with your understanding as to –

MR. ARGIROV: Correct.

MR. LEARMONTH: – whether you had any reporting requirements to Newfoundland and there were none, right?

MR. ARGIROV: That’s right.

MR. LEARMONTH: Yeah.

Volume 1, tab 11, Exhibit P-02154.

MR. ARGIROV: Yes.

MR. LEARMONTH: Do you have that? That’s a – there’s a reference here to Charles Bown who’s name – who has appeared here as a witness. He was a high-ranking official in the Department of Natural Resources for the Province of Newfoundland at the time.

In paragraph 3, James Meaney – in this September 12, 2012 email to Paul Harrington, Jason Kean and Lance Clarke – says: “As you may be aware, Ed, Charles and others from Nalcor/NL side were involved in discussions with very senior folks” – at – “NRCan/PMO earlier this week at Energy Ministers meetings in PEI. As part of those discussions, Canada now seem to be ... having the IE conduct a review of the DG ... capital costs as a condition precedent of re-engaging on FLG negotiations.”

Now, did you have any contact at all with Charles Bown? Have you ever met Charles Bown?

MR. ARGIROV: I met Charles Bown later on, 2000 – probably '16 or '17, when he was with the Oversight Committee.

MR. LEARMONTH: But until then, you had not –

MR. ARGIROV: No.

MR. LEARMONTH: – met with him or communicated with him?

MR. ARGIROV: No, I didn't know him.

MR. LEARMONTH: So the involvement that you had with the Government of Newfoundland, as I understand it, was in relation to the Oversight Committee –

MR. ARGIROV: Correct.

MR. LEARMONTH: – that was set up in or about March of 2014 – well, that was when it was established. Anyway, you can take that as being –

MR. ARGIROV: Okay.

MR. LEARMONTH: – correct. Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah. But no involvement before then?

MR. ARGIROV: No, no, not at all.

MR. LEARMONTH: All right.

MR. ARGIROV: But I didn't have involvement even at that time or after 2014 up until – I think it was '16 or something. Now, though – sorry, I have to correct myself. In every site visit, there is a presentation from the Oversight Committee.

MR. LEARMONTH: Yes.

MR. ARGIROV: So that is what – definitely, I could say: Yes, there was a contact –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – during the site visit.

MR. LEARMONTH: And that was when?

MR. ARGIROV: Perhaps was – I don't remember which one, the first or the second site visit in 2014, when the Oversight Committee members started to participate in those site visits.

MR. LEARMONTH: Yeah. But just on that point – and we're gonna get into your reports –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – later. The final one was December 30, 2013. I think there were six before that.

Are you saying that the Government of Newfoundland never asked to see those – the reports prior to the December 30, 2013 report?

MR. ARGIROV: Oh, I have no idea about this. They never asked me or MWH –

MR. LEARMONTH: Okay.

MR. ARGIROV: – because there was no relation between those two parties.

MR. LEARMONTH: All right.

Volume 1, tab 12, Exhibit-02155. This is an email from Ross Beckwith to James Meaney concern that – kickoff meeting. Did you attend a kickoff meeting in relation to MWH Canada's engagement as independent engineer? If you can just look through this and you can see the agenda and so on.

MR. ARGIROV: I might have. Most likely, I did.

MR. LEARMONTH: Okay.

MR. ARGIROV: I clearly don't remember but I – normally, I should have attended because that was the first –

MR. LEARMONTH: Yeah. Well –

MR. ARGIROV: – kickoff meeting.

MR. LEARMONTH: Actually –

MR. ARGIROV: Oh, yes.

MR. LEARMONTH: – if you turn to page 4 –

MR. ARGIROV: Yeah. Yeah. That’s right. Yeah.

MR. LEARMONTH: – you were in attendance along with Gerry Germain and Rey Hokenson.

MR. ARGIROV: Hokenson, yes.

MR. LEARMONTH: And I don’t see anyone there from the Province of Newfoundland. So, I guess – anyway, a kickoff meeting is a usual type of meeting – it just means you’re going to get the ball rolling or the –

MR. ARGIROV: Yes. That’s right. Yeah.

MR. LEARMONTH: It’s a normal phrase, is it?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

Tab 1 – excuse me – volume 1, tab 17, Exhibit P-02160.

MR. ARGIROV: Okay.

MR. LEARMONTH: This is an email from James Meaney to Charles Bown and others at Nalcor. You’re not on this, but it says in paragraph two, the email, at the bottom: “Consensus coming out of today’s session (including the view of MWH themselves) was them having access to MHI draft report through confidential data room”

So this is a reference to the fact that, I guess, MHI was seeking access to the Manitoba Hydro International report. Does that ring a bell?

MR. ARGIROV: Yes. I think that was the case.

MR. LEARMONTH: Okay. And why would you want to see it in October 2012 – the Manitoba Hydro International report?

MR. ARGIROV: I guess we were supposed to examine whatever information was available. And this was one report and it was definitely evaluating some part of the project –

MR. LEARMONTH: Yup.

MR. ARGIROV: – and we wanted to see this report.

MR. LEARMONTH: Yeah.

And you were aware of it because it was in public, right?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

And so, you – it was an expectation that you receive relevant reports from Nalcor?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yes.

MR. ARGIROV: Yeah, I mean, any data that was available.

MR. LEARMONTH: There’s a reference in that email to a BF. Do you know who BF is?

MR. ARGIROV: No.

MR. LEARMONTH: No.

MR. ARGIROV: Where is that? Sorry, if you could –

MR. LEARMONTH: It says, well, “Consensus ...” concerning – it’s right on – “Canada/BF.” Is that Blair Franklin?

MR. ARGIROV: Oh –

MR. LEARMONTH: (Inaudible.)

MR. ARGIROV: – yes.

MR. LEARMONTH: Yeah.

Blair Franklin was the financial advisor –

MR. ARGIROV: To Canada.

MR. LEARMONTH: – Canada retained, so BF is –

MR. ARGIROV: Correct. Yes.

MR. LEARMONTH: – Blair Franklin, okay.

MR. ARGIROV: Blair Franklin.

MR. LEARMONTH: Okay.

And then if we see – and go to tab 19 of the same volume 1, Exhibit P-02162. This is the approval was given by Charles Bown of Natural Resources to release the report to MWH, so I take it that you received the –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – report that the government had commissioned with Manitoba Hydro International, is that correct?

MR. ARGIROV: Yes, correct.

MR. LEARMONTH: Okay.

Now –

MR. ARGIROV: Oops.

MR. LEARMONTH: – we’re going to – I want to ask you some – you mentioned that you asked for the MHI report and I want to talk to you about the expectation you had for receiving relevant reports from Nalcor and up-to-date matters. I realize that – we’re going to get into this later, that – well, that at one point Ms. Manzer – in October 2015, there was a problem with disclosure and that it caused a big concern that Nalcor was not providing up-to-date information on cost estimates, et cetera, and that eventually the letter was written, which we’ll get into later –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – that – where Ms. Manzer said that if you don’t rectify the

situation, funds are cut off. It was a very strong, firm letter. Do you remember that?

MR. ARGIROV: Yes.

MR. LEARMONTH: And that was over a lack of disclosure, is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

And in relation to the, I think, in the – there was a revised AFE of – to \$7.65 billion in September 2015 and you didn’t find –

MR. ARGIROV: Correct.

MR. LEARMONTH: – out about it until the last minute, which put you in an awkward situation –

MR. ARGIROV: Yes.

MR. LEARMONTH: – is that correct?

MR. ARGIROV: Yes, correct.

MR. LEARMONTH: And – because it looked like you weren’t doing your job; that was your concern.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

And you were – I think you said you were very upset about this lack of disclosure.

MR. ARGIROV: Well, I was upset. I knew that there was increase; I was informed without affirmation, without figures. But I did not even expect that the amount will jump so high.

MR. LEARMONTH: Yeah.

Well anyway, so that’s just – so we’re going to get into that later, Mr. Argirov, I just wanted to bring up the –

MR. ARGIROV: Okay.

MR. LEARMONTH: – topic.

Now, you have read the Grant Thornton reports, is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Briefly.

MR. LEARMONTH: Yeah.

Now, the first one –

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: – the first Grant Thornton report was dated July 16, 2018. It's not in your book of documents, but I want you to bring it up.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Okay. If we go to page –

MS. O'BRIEN: It's P-00014, isn't it?

MR. LEARMONTH: Yeah, P-00014.

If we go to page 64 of this report – as you can see it's being brought up there.

MR. ARGIROV: Okay.

MR. LEARMONTH: Fifty-four of P-00014.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: Sixty-four.

UNIDENTIFIED FEMALE SPEAKER:
Sixty-four.

MR. LEARMONTH: So, if we go down to the bottom, you can see there's a – beginning at line 24, it says: "During a presentation from the LCP Project Team we were shown the following ..." This is a Risk Adjusted Schedule – "Suggests an 11 to 21 Month Delay for First Power." Okay?

And then we go up to the top of page 65 and it says – and by the way this was based on a risk assessment report prepared by Westney in September – in or around the middle of

September 2012, just immediately prior to sanction.

So it says on the top of page 65: "The above image notes that July 15, 2017 ... was a P1. This meant that there was a 99% chance that the schedule for first power would not be met. The LCP Project Team noted ... *there was a low probability that a mid-2017 First Power date would be met. As such, the PMT recommended to Nalcor Executive that a provisional schedule reserve allowance should be made to account for the difference between the target date and the probable date. Given the desire to achieve the best possible date, Nalcor Executive wanted to maintain the Target Milestone Schedule, and thus no schedule reserve allowance was made to accommodate the residual risk exposure ... in the QRA.*"

Now, this information was available to Nalcor, as I said, in September 2012. The evidence of MHI was it wasn't given to them – this information, this risk report. The evidence from the government is they never received it.

Did you receive this information at any time during MWH's engagement as independent engineer?

MR. ARGIROV: No.

MR. LEARMONTH: No?

MR. ARGIROV: You mean the –

MR. LEARMONTH: Well the fact that –

MR. ARGIROV: – report – the Westney report?

MR. LEARMONTH: Yeah.

MR. ARGIROV: No.

MR. LEARMONTH: You never did.

MR. ARGIROV: No.

MR. LEARMONTH: Do you believe that you should've been provided that?

MR. ARGIROV: Of course.

I guess, I mean this is part of what I mention – that every available documents or data that will provide information, additional light on the progress of the project –

MR. LEARMONTH: Yes.

MR. ARGIROV: – could be helpful.

MR. LEARMONTH: Yeah.

MR. ARGIROV: It doesn't mean that we cannot form our opinion –

MR. LEARMONTH: Right.

MR. ARGIROV: – without, but documents like this, if they exist, would've been helpful.

MR. LEARMONTH: Yeah.

Yeah, I'm not suggesting that if you had received this report then you would've automatically concluded that a P1 or, I think it was subsequently evaluated –

MR. ARGIROV: Okay.

MR. LEARMONTH: – to a P – I'm not suggesting that you would be bound in any way or influenced to accept it, but I'm suggesting to you that Nalcor should've provided this to you, together with their explanation, if they didn't believe that the contents were correct.

Is that a fair comment?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah, but you never received it.

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

Now, in the same risk assessment report that I referred to that was – the final version was presented to Nalcor in, or – in – around the middle of September. There was also a recommendation at P50 for a \$497-million figure for strategic risks, which were in management reserve.

Were you aware of that recommendation of Westney?

MR. ARGIROV: No.

MR. LEARMONTH: You weren't.

Well, once again, do you agree that Nalcor should've provided that to you for your review?

MR. ARGIROV: Yes, I do agree.

MR. LEARMONTH: Yeah, but you never got it.

MR. ARGIROV: No.

MR. LEARMONTH: No.

MR. ARGIROV: Never got it.

MR. LEARMONTH: Okay.

The – I now want to refer to the second Grant Thornton report, which was – excuse me – entitled Construction Phase, dated December 7, 2018, and once again if you could bring that up on the screen, I'd like to go to –

CLERK: Exhibit number?

MR. LEARMONTH: P-01677.

If you could turn to page 19, Mr. Argirov.

MR. ARGIROV: Is it here in my –

MR. LEARMONTH: No, there's –

MR. ARGIROV: Okay.

MR. LEARMONTH: – just the cover page is – just to save paper we didn't put it in the document –

MR. ARGIROV: Okay.

MR. LEARMONTH: – but it's being brought up on the screen, I think you can see it.

MR. ARGIROV: Okay.

MR. LEARMONTH: You got it, page 19?

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Yeah.

Now this is a – you’ve seen this before, have you – this page 19 – Mr. Argirov?

MR. ARGIROV: I believe I’ve seen it when I was flipping through the report. Yes.

MR. LEARMONTH: Yeah. Now the – there are a number of charts. In the chart under line 3, it shows a summary of the dates when certain estimates, reports, AFEs or whatever are recorded and made. And at the bottom of – under line 13, there’s a reference to a report – July 2013. So that’s well in advance of financial close.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: The project management team comments, quote: “*July 2013 Final Forecast Cost deck presented by Project team to CEO of ~\$7.0B.*”

And then in the next column “Communication to Executive”: “Email from Paul Harrington to Gilbert Bennett July 22, 2013 states ‘...*here is the deck that has been produced for you and Ed*’” and there’s a reference to “Excerpt from Presentation”: “*We are forecasting the FFC to be ~\$7.0B which is 12% beyond the DG3...*”

“*Exposure of mitigations are successful ... FFC would be reduced to \$6.8B.*”

Now –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – were you provided with this information at any time during your – during your engagement up to financial close?

MR. ARGIROV: No. ‘

MR. LEARMONTH: No?

MR. ARGIROV: No. Absolutely not.

MR. LEARMONTH: This was a final forecast cost and you didn’t receive it?

MR. ARGIROV: No.

MR. LEARMONTH: Do you agree that Nalcor should have provided this to you with this information for your review and assessment?

MR. ARGIROV: Sure. Yes. It was obviously available information –

MR. LEARMONTH: Yes.

MR. ARGIROV: – which would have helped in the review of the process and assessment.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So.

MR. LEARMONTH: And then if we turn –

MR. ARGIROV: I don’t know what else to say about this because I was not aware of anything like that.

MR. LEARMONTH: Yeah. And then, on page 20 –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – of the same Grant Thornton report, P-01677 –

MR. ARGIROV: Yeah. Yeah.

MR. LEARMONTH: – there are a number of different reports that are referred to. There is an August 2013 – speaks for himself, but it shows a consistency –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – I suggest, in the fact that the 6.2 billion figure that was used at sanction in December 2012, was in the distant past, based on this information.

Do you agree?

MR. ARGIROV: I do agree, yes. August 2013, yes.

MR. LEARMONTH: Yeah.

And then it goes up into even 2014. There's different reports, and they're all high, there's seven point – well, March 2014 – well, the AFE revised seven point – it wasn't revised, but 7.517, we're talking about figures over \$7 billion.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, and you were kept in the dark, you never knew this information.

MR. ARGIROV: No, this was – this \$7 billion information was never released to us.

MR. LEARMONTH: Okay.

And now we'll go into –

MR. ARGIROV: The information that was released was, think, 7.67, whatever –

MR. LEARMONTH: 7.65

MR. ARGIROV: – five, yes.

MR. LEARMONTH: Yeah, but that was in September 2015.

MR. ARGIROV: Correct, yes.

MR. LEARMONTH: Yeah, and that's what – the release, the receipt of that information is what prompted Ms. Manzer's very – the potent message she delivered that she'd be cutting off funds unless there was a –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – you know, unless the cost estimates were updated –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – generally.

MR. ARGIROV: Yeah, yeah, yeah.

MR. LEARMONTH: Yeah, okay.

MR. ARGIROV: But those were the forecasts here.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Okay.

MR. LEARMONTH: They're estimates, they're all estimates.

MR. ARGIROV: Yes.

MR. LEARMONTH: I mean they're not – you can call them, you know, management outlook, you can –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – call them revised estimates, you can call them final forecasts.

MR. ARGIROV: Sure, yeah.

MR. LEARMONTH: What's the –

MR. ARGIROV: Yeah, yeah.

MR. LEARMONTH: – difference? It's just –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – a name, right?

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: And likewise, an AFE, you know, there's some suggestion – there's something certain about that. But an AFE is just an estimate in time, isn't it?

MR. ARGIROV: Well, it is, but it's more defined.

MR. LEARMONTH: Yes.

But it's not, by any stretch –

MR. ARGIROV: It's not expanded.

MR. LEARMONTH: No.

No, but I mean, we have lots of AFEs and they keep on going up, up –

MR. ARGIROV: Correct.

MR. LEARMONTH: – and up.

So it's not as if an AFE has some lofty position

—

MR. ARGIROV: Final, no. That's right.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yeah, it's not.

MR. LEARMONTH: But a final — isn't a final forecast cost the same thing? It's a — it's the best estimate that —

MR. ARGIROV: The best estimate at the moment.

MR. LEARMONTH: — can be made at the time.

MR. ARGIROV: Yes.

MR. LEARMONTH: So, the only difference between that in substance — I'm not talking name — between that and an AFE is that an AFE is an authorization to expend the money —

MR. ARGIROV: Correct.

MR. LEARMONTH: — once it's been estimated.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah. Okay.

And — okay, so 22, and then page 23 there's other information.

So this was never provided to you by Nalcor, none of the information —

MR. ARGIROV: No.

MR. LEARMONTH: — I referred to earlier.

And I know this is referred to in your December 30 report and possibly earlier than that, but I'd like you to turn to page 12 of that exhibit, P-01677.

MR. ARGIROV: Hmm.

MR. LEARMONTH: Page 12.

THE COMMISSIONER: It's on the screen.

MR. ARGIROV: Oh, it's on the screen. Okay.

MR. LEARMONTH: Okay.

And this is, I'm quoting: "As indicated above, prior to financial close, bids were received from contractors whom ultimately were hired which collectively, exceeded the DG3 budget by approximately \$600 million, a twenty five percent (25%) overage. The amount of this overage exceeded the DG3 tactical contingency amount (\$368 million) by over \$230 million. Hence, prior to financial close, Nalcor should have been aware that the contingency amount included in the DG3 budget was insufficient. Furthermore, Nalcor should have known that by April 2013 when the CH0007 bids were received (four months after sanctioning) that the DG3 contingency amount was exhausted.

Accordingly, Nalcor knew that the remaining budget of \$4.2 billion (\$5.8 billion which is base plus escalation, less \$1.6 billion subtotal of DG3 budget at April 2013) after the consideration of CH0007 did not have any contingency remaining."

Was that information provided to you at any time up 'til financial close on November 19?

MR. ARGIROV: No.

MR. LEARMONTH: No.

MR. ARGIROV: No.

MR. LEARMONTH: Because this is before you were, you know, this is April 2013.

MR. ARGIROV: Yes.

MR. LEARMONTH: Well before financial close.

MR. ARGIROV: Yes.

MR. LEARMONTH: And you didn't know about that when you were retained. Is that right?

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: Well, you didn't know about that —

MR. ARGIROV: I was retained, but I didn't know.

MR. LEARMONTH: Yeah, you didn't. There was no statement or document –

MR. ARGIROV: No.

MR. LEARMONTH: Yeah.

MR. ARGIROV: This was not communicated to us.

MR. LEARMONTH: Yeah. And once again, do you not agree that it should have been communicated to you as being relevant information that you should've been in a – you would –

MR. ARGIROV: Sure.

MR. LEARMONTH: – be in a position to –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – assess?

MR. ARGIROV: Yeah,

MR. LEARMONTH: Yeah

MR. ARGIROV: I kind of, I'm bad with figures, but I don't understand what the 25 per cent – but probably that's not important.

MR. LEARMONTH: Okay.

MR. ARGIROV: Just wondering where this figure comes, 25 per cent to of what?

MR. LEARMONTH: I think Grant Thornton provided a review of it. I couldn't give it to you verbatim but–

MR. ARGIROV: Oh, okay, yeah.

MR. LEARMONTH: – yeah, but anyway.

MR. ARGIROV: Okay.

MR. LEARMONTH: Yeah. Okay.

Who did you deal with at Nalcor in your capacity as independent engineer? What are the

names of the – name of the person or persons that you were in communication with at Nalcor, in terms of providing information to you?

MR. ARGIROV: Jim Meaney –

MR. LEARMONTH: Jim Meaney?

MR. ARGIROV: – was the – Jim Meaney was the point of contact, which was established right from day one.

MR. LEARMONTH: And he never gave you this information that I just referred to?

MR. ARGIROV: No.

MR. LEARMONTH: No. In the DG2 report or the – excuse me, in the Grant Thornton first report or the second report, he never communicated this information to you?

MR. ARGIROV: No.

You mean the Grant Thornton reports?

MR. LEARMONTH: Yeah, the – all of the information that we referred to –

MR. ARGIROV: Oh, the information that was listed, no. No.

MR. LEARMONTH: – in the Grant Thornton – he never told you about it?

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

And that was James Meaney, was it?

MR. ARGIROV: Well, he was the point of contact for the independent engineer at that time.

MR. LEARMONTH: All right.

MR. ARGIROV: Which changed afterwards.

MR. LEARMONTH: Yeah, and after it changed in the sense that there was another gentleman, Steve Pellerin?

MR. ARGIROV: Steve Pellerin, yes, became the point of contact.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And he still remains.

MR. LEARMONTH: But was that after financial close?

MR. ARGIROV: Yes.

MR. LEARMONTH: Because he's an engineer and I –

MR. ARGIROV: Correct, yes.

MR. LEARMONTH: – understand Mr. Meaney is a financial person.

MR. ARGIROV: Yes, and Mr. Meaney became a lot more involved with the company and he became vice-president of Finance, so his position really was not adequate to be engaged with – probably with us as the point of contact.

MR. LEARMONTH: Okay.

Now, in the – I'd like you to tell us what your level, or how you assess the level of your experience, expertise and competence in analyzing cost estimates and contingencies?

MR. ARGIROV: You're asking about –

MR. LEARMONTH: Yeah, what do you know about –?

MR. ARGIROV: – my personal –?

MR. LEARMONTH: Yeah – yes, personal.

MR. ARGIROV: Oh, my personal. No, I'm not – that's not my background.

MR. LEARMONTH: It's not?

MR. ARGIROV: I'm not – no.

MR. LEARMONTH: Yeah.

MR. ARGIROV: I'm not a cost estimator nor scheduler.

MR. LEARMONTH: Yeah.

MR. ARGIROV: That's never been in my background or experience.

MR. LEARMONTH: And likewise for contingencies; it's not your –

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, I mean, you know what they mean obviously.

MR. ARGIROV: I do, of course.

MR. LEARMONTH: But you wouldn't hold yourself out as having –

MR. ARGIROV: No.

MR. LEARMONTH: – much expertise in that, or any expertise in that?

MR. ARGIROV: No.

MR. LEARMONTH: Those subjects. No?

MR. ARGIROV: No.

MR. LEARMONTH: No, okay.

Now, who on MWH's team had the expertise that I just described –

MR. ARGIROV: Well –

MR. LEARMONTH: – in contingencies, cost estimates, risk assessments and so on. Who –?

MR. ARGIROV: Okay, the project manager for the first phase was a gentleman whose name is Rey Hokenson, and he was very experienced. And he had done numerous independent engineer assignments over the years. He was at the time already 78 years old. So, he was leading the activities at this phase, and also he had a team of experts in every field possible that was required, and for – particularly for cost and schedule, it was Jim Loucks.

MR. LEARMONTH: Yes.

MR. ARGIROV: And Jim Loucks was based in one of the offices in California.

MR. LEARMONTH: Yeah.

And Mr. –

MR. ARGIROV: Hokenson?

MR. LEARMONTH: – Hokenson was in Washington?

MR. ARGIROV: Seattle.

MR. LEARMONTH: Seattle, Washington?

MR. ARGIROV: Seattle, Washington, yeah.

MR. LEARMONTH: So, they were contractual –?

MR. ARGIROV: No, no, they were employees of –

MR. LEARMONTH: Oh.

MR. ARGIROV: – MWH.

MR. LEARMONTH: They were employees of MWH.

MR. ARGIROV: Yes.

MR. LEARMONTH: All right.

MR. ARGIROV: Yeah.

MR. LEARMONTH: So they're the two persons who would have been –

MR. ARGIROV: Yeah, they were involved in this phase, the first phase, but it was not just them. I mean, we had a team of additional 45 people from Seattle, from Chicago and even one from Ontario.

MR. LEARMONTH: Yeah.

So, and would they be involved in the assessment, or – I know it was high level, but still the high-level assessment of contingencies, risks and cost estimates?

MR. ARGIROV: Oh, no. That was mainly Mr. Hokenson and Mr. Loucks.

MR. LEARMONTH: Okay, so what did the – the people you just referred to, what did they do? Are they QA/QC people?

MR. ARGIROV: Oh no, QA/QC was – one direct person was the vice-president of Washington operations in Seattle.

MR. LEARMONTH: Yeah.

MR. ARGIROV: He was the manager of this and the note (inaudible) –

MR. LEARMONTH: Did he have any involvement in reviewing the work of Mr. Hokenson and Mr. Loucks?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Oh, yeah. Oh, he was the one that was directly with them. He was their manager.

MR. LEARMONTH: Yeah, and he's a senior person?

MR. ARGIROV: Oh yeah, absolutely.

MR. LEARMONTH: And what was his name?

MR. ARGIROV: Howard Lee.

MR. LEARMONTH: Howard Lee.

MR. ARGIROV: Yeah.

MR. LEARMONTH: He's a senior –

MR. ARGIROV: Yes, he is senior and he actually remained for the – during the second phase, he was QA as well.

MR. LEARMONTH: Yeah.

MR. ARGIROV: QA/QC.

MR. LEARMONTH: Okay.

MR. ARGIROV: Yeah.

MR. LEARMONTH: So those – so am I correct in saying that your knowledge of the review of the cost estimates and contingencies is limited?

MR. ARGIROV: Very limited, yes.

MR. LEARMONTH: Yeah.

And am I correct that Mr. Hokenson and Mr. Loucks are both out of – outside Canada and not available to provide evidence?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah. Okay.

Now, the – tab 26, Exhibit P-02168. That's in volume 2.

MR. ARGIROV: Yes.

MR. LEARMONTH: Can you identify this document – or, well, it's P-02168. It's an email from Paul Harrington to Jason Kean, James Meaney. And it's – on page 3, there's – a heading is: "Nalcor Energy's Responses to MWH's Comments to DG3 Cost and Schedule Review."

MR. ARGIROV: Okay.

MR. LEARMONTH: And I just want you to – are you familiar with this document?

MR. ARGIROV: Not completely. I don't remember it, so ...

MR. LEARMONTH: You don't remember it.

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

Okay, on page 3, MWH Comment 2. So this is –

MR. ARGIROV: Yeah, I see.

MR. LEARMONTH: – responding to a comment that was made in – MWH's comments on the DG3 cost and schedule review. And this is an early stage – well, it's March 4, 2013. So, MWH Comment 2, right in the middle of the page: "As noted in Table 2, pg. 15, the 7% indicated P50 'estimate contingency' is considered aggressive or low by a factor of 100% relative to legacy experience with similar projects. While the project benefits from a robust analytical risk analysis effort and some ..." price fixing, "... the low contingency recommendation is considered non-customary

and undermines confidence for the cost opinion. The issue is flagged as critical for reconciliation."

And then there's, you know, Mr. – I think it's Mr. Harrington replies in some manner. And he says at the bottom of the page: "In this regard, a P50 Estimate Contingency is considered appropriate and aligns with the basis of all other inputs into the CPW modeling."

Now, are you familiar with this P? We've had a lot of evidence and, you know, P50, P75, P80 – you know, do you – what's the extent of your experience in doing – dealing with this P-factor in probabilistic determinations?

MR. ARGIROV: I'm only generally aware of these P-factors.

MR. LEARMONTH: (Inaudible.)

MR. ARGIROV: That's – well, those are probabilities.

MR. LEARMONTH: Yes. Yeah.

MR. ARGIROV: Whether it's a 50 per cent probability or 75 or 30 per cent (inaudible) in a realm of risk evaluation, I guess.

MR. LEARMONTH: Which is not your field –

MR. ARGIROV: No.

MR. LEARMONTH: – of expertise. Is that correct?

MR. ARGIROV: No. Correct.

MR. LEARMONTH: Yeah. But okay. Well, anyway – the bottom line – the bottom three lines from Mr. Harrington's response on page 3 of Exhibit P-02168: "In addition to the contingency for tactical risks there is a further escalation allowance which when combined is considered to be a 'growth allowance' which allows 720" – et cetera.

But an escalation allowance has nothing to do with risk assessment, does it?

MR. ARGIROV: Generally, should be separate.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Escalation is escalation; it is expected. It's still related to risk because you don't know whether escalation will happen at exactly the same fashion, but normally, I think, it is provided as separate item.

MR. LEARMONTH: A separate item.

MR. ARGIROV: Yes.

MR. LEARMONTH: Not mixed up with tactical risk?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah. Okay.

Then on page 4 of this Exhibit P-02168, there's a reference to management reserve. In your course of dealing as independent engineer on this project up to the point of financial close, did you have any discussion or did you receive any information in – with respect to this management reserve context – that comment?

MR. ARGIROV: I didn't have personally any discussion with anybody from any of the team at Nalcor or wherever, but it is expected that there is a management reserve.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And I think the teams' understanding at that time was the management reserve is available and it is part of the equity provision that the Government of Newfoundland provides.

MR. LEARMONTH: Yeah. And, of course, you were aware that the Government of Newfoundland had provided an unlimited guarantee, that commitment to put – do whatever contingent equity –

MR. ARGIROV: Correct.

MR. LEARMONTH: – was required.

MR. ARGIROV: That's right. Yeah.

MR. LEARMONTH: Yeah. Now do you know if this management reserve was ever quantified? In other words, was there an assessment done of what would be required in the management reserve, and a figure of \$500 million has come up and the money was set aside? Do you have any knowledge about that?

MR. ARGIROV: No.

MR. LEARMONTH: No.

MR. ARGIROV: Besides what you mentioned earlier by Westney that they had – I evaluated something for strategic risk, but I'm not sure if they managed – they call it management reserve.

MR. LEARMONTH: Yeah.

MR. ARGIROV: It was certain risk.

MR. LEARMONTH: But you weren't aware of –

MR. ARGIROV: No, I was not. We were not aware of –

MR. LEARMONTH: You're not aware of it. No.

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

Tab 29, volume 2 – it's Exhibit P-02171.

On – this is an email from James Meaney, June 13, 2013 to Derrick Sturge, Gerald Cahill, Gilbert Bennett and a number of other officials and legal counsel at Nalcor. And there at page 2, 3 and 4.

We're talking about LCP – at the bottom of page 2, towards the bottom: “[attachment ‘LCP Governance & Controls Presentation for GNL ...’” And this was an email from James Meaney to Laurie Skinner, on page 2, dated May 8, 2013.

Did you have any involvement in this at all?

MR. ARGIROV: No.

MR. LEARMONTH: Nothing.

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

Tab 31 are – there's an email June 14, 2013 from Peter Madden to James Meaney, Friday, June 14, 2013. Exhibit P-02173.

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay, now these are comments. Can you describe what this document is, on page 3 to 21? These are comments by Nalcor on some of the work that you were doing.

MR. ARGIROV: Sure, yeah. It appears that – “Comments on MWH Draft IE Report,” yeah.

MR. LEARMONTH: Okay.

Now, what is the – you've been independent engineer on more than one occasion, is that correct?

MR. ARGIROV: Yes, I've been a (inaudible) –

MR. LEARMONTH: Yeah.

One issue that has come up from time to time is the extent to which it's, you know, permissible for – in this situation – Nalcor to provide comments and feedbacks on draft documents that have been prepared by you as independent engineer.

In other words – I'll give you an example – that you prepare a draft report and then you send it to them for their review and comments. What is the – is there a protocol or, you know, some expectations you have as to the right of the – in this situation, Nalcor – to provide comments and whether those comments should be confined to factual errors or general conclusions. I'd like you to speak to that if you could, based on your experience.

MR. ARGIROV: Yes. So, draft reports have several purposes. One of them is confirmation of factual data; the other one is probably certain redaction of commercially sensitive information if it is somehow in place in a report. And this is the prerogative of the developer because that's what we expect to have for the final report, to

have all of the factual information corrected, or to be correct.

MR. LEARMONTH: Yes.

MR. ARGIROV: And the other is to have a – if there is a commercially sensitive information, of course, we don't want to spill this out to public or –

MR. LEARMONTH: So –

MR. ARGIROV: – parties.

MR. LEARMONTH: – so, I'm sorry, did I – did I interrupt you?

MR. ARGIROV: No. And then the other thing, the draft reports are – paying mainly also for Canada to see first if the format is correct and the expected information is there. And to be aware of anything that we comment on –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – and also to know that the final report is coming –

MR. LEARMONTH: Yes.

MR. ARGIROV: – so we're on schedule.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So that's the typical reasons for draft reports, particularly in this case, but also across the industry and every other field, so I would say.

MR. LEARMONTH: Yeah.

So you invite comments, now is it – is it acceptable, based on your experience to – for the developer or Nalcor in this situation to restrict their comments to factual errors? Or is it also permissible for them to, you know, argue against some conclusions that you have made or language that you have chosen? Is there any protocol or any sort of –

MR. ARGIROV: No, there is no –

MR. LEARMONTH: – industry – industry standard for that?

MR. ARGIROV: – no, there is no such things, I mean, they can comment whatever they want; it's just a question of what we accept.

MR. LEARMONTH: Yup.

MR. ARGIROV: And it is our mandate to get factual information confirmed.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So, of course, there would be certain opinions expressed and could be argument between both sides until final conclusion is clarified. But it's mainly on a factual side that we want to have confirmation.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And it doesn't mean that we would accept that something else from developer.

MR. LEARMONTH: Yeah.

But, so, it is acceptable – I'll give you an example. Is – would it be acceptable if you're sending me a draft report and I say: Mr. Argirov, you've said our schedule is aggressive. I disagree with you. It's a very reasonable assessment and I'd ask you to change your language to reflect our position on that.

Is that acceptable?

MR. ARGIROV: Oh yes, because it's question of opinion –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – in this case.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And you have the rights to express your opinion, of course.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And then we evaluate whether your opinion is based on factual information or not.

MR. LEARMONTH: Yeah. Okay, because, you know, and this point has come up and I'm sure people want to know what the – what your view is on this, that when we see a series of, you know, like a draft report come out and then there's comments back from another side and then the report is changed and it looks more favourable for the developer, there may be a suggestion in some people's minds that the developer is really playing much too big a role in the writing of the report, and that the – well, the independent engineer in this case is really being dictated to, to some degree, by the developer, in a way that limits the objectivity of the report.

That's – I just put that position to you, or that point to you, and ask for your comment on it.

MR. ARGIROV: No, this is not the case, and it's absolutely not acceptable practice, and will not be accepted.

The question is this: in communications like this, a lot of times we ask for additional analysis that were not provided or additional information that was not provided. And the developer has the chance – sometimes even we challenge them to provide some information that is not – if there was a gap of information, for example, we expect to receive something and we don't see it.

So, we could challenge them in this report and ask them to address such issues. So sometimes they will respond, for example: Okay, we take your comments under advisement and we have done so and so to satisfy them.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And then this completely acceptable thing.

MR. LEARMONTH: Yeah, yeah.

So may challenge them by, like, for example, putting something in there that you know is gonna get their attention?

MR. ARGIROV: Oh, absolutely. Yeah.

MR. LEARMONTH: Like, okay –

MR. ARGIROV: That's right, yeah.

MR. LEARMONTH: – so maybe going, maybe stretching it a little bit, say look –

MR. ARGIROV: Sure –

MR. LEARMONTH: – we’ve –

MR. ARGIROV: – that’s because at the moment when we put in something, if we don’t have enough information, we have to make more generic assumptions.

MR. LEARMONTH: Right.

MR. ARGIROV: And they could extend their range of possibilities that we’re evaluating and we mentioned about.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So it is up to them to provide more direct and functional – factual information for us to make the right conclusion.

MR. LEARMONTH: Right.

And during your work on this project, right from the beginning right up to today, have you ever felt that Nalcor was putting undue pressure on you or trying to intimidate you or trying to – going too far in trying to persuade you to change your report to suit their comments? Did you – have you ever felt like that?

MR. ARGIROV: Not at all.

MR. LEARMONTH: Not at all.

MR. ARGIROV: Not at all.

MR. LEARMONTH: Okay.

MR. ARGIROV: I don’t see even the logic for this. I’m not working for Nalcor, I work for Canada and my main objective is to provide the most factual information to Canada.

MR. LEARMONTH: Right.

MR. ARGIROV: And I’m not going to risk anything for following some suggestions or if at all.

MR. LEARMONTH: Yeah.

MR. ARGIROV: But I haven’t seen anything like this, though.

MR. LEARMONTH: So if there’s a – if there are changes in your report from one draft to another –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – it may have been based on further information that you got from Nalcor?

MR. ARGIROV: Correct.

MR. LEARMONTH: Or your further reassessment –

MR. ARGIROV: Further – yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Further discussion in a team and internal conclusions –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – my team will make.

MR. LEARMONTH: I suppose it could’ve been further reviewed by, you know, the senior people doing risk analysis –

MR. ARGIROV: Yes, that’s right. Yeah.

MR. LEARMONTH: – or whatever it may be.

MR. ARGIROV: It’s still the company has the level of QA/QC review.

MR. LEARMONTH: The next exhibit I want to turn to is at tab 34 of volume 3. It’s exhibit P-02176.

MR. ARGIROV: Volume 3.

MR. LEARMONTH: Now this is a – it’s an email, July 18, 2013, from Lance Clarke to Jason Kean, copied to Mr. Harrington, Gilbert Bennett and Brian Crawley. And I take it that there was a draft report. There – the first draft report, according to my records, was prepared in March 2013 and it was a very preliminary document – we’ll get into that later – but it didn’t have anything on cost estimates.

Likewise, the July report didn't have much of any on cost estimates. So I presume that Mr. Harrington – we'll get clarification as referring to the July 2013 draft report.

And if you turn to this exhibit, P-02176, page 2 and 3, now, Mr. Harrington is replying to Mr. Meaney at the bottom of page 2:

"Jim

"I will review the full report but as you" can "say that will take some days regarding the extract below.

"The IE seems to be saying ..." et cetera.

Now, if you could just read page 2 and page 3, I'm going to ask you, like, is this the type of comment that you feel is constructive and helpful, or are you critical of the nature of these points?

MR. ARGIROV: Well, I guess Mr. Harrington here presents his own opinion –

MR. LEARMONTH: Yes.

MR. ARGIROV: – on something. So it's nothing atypical.

MR. LEARMONTH: Yeah. So you don't see anything wrong with that, with him –?

MR. ARGIROV: No, no.

MR. LEARMONTH: He can say whatever he wants.

MR. ARGIROV: Absolutely.

MR. LEARMONTH: It's up to you whether you accept it or not.

MR. ARGIROV: Correct.

MR. LEARMONTH: Is that correct?

MR. ARGIROV: Absolutely.

MR. LEARMONTH: And just to make sure, this – the practices that you're describing now and the flow of communications and that, this isn't – these comments aren't restricted to just

this project, this is what you believe to be an industry standard. Is that correct?

MR. ARGIROV: Oh, absolutely. Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah, yeah.

If we go to – in the same book – tab 35.

MR. ARGIROV: Yes.

MR. LEARMONTH: If we go to page 3, this is just August 12, 2013, I think, and Nalcor – someone is preparing or assisting someone in government to prepare a response to the media with respect to an ATIPPA, Access to Information request.

THE COMMISSIONER: 02177.

MR. LEARMONTH: P-02177, yeah.

MR. ARGIROV: Yes.

MR. LEARMONTH: And at page 5, Diana Quinton, the Government of Newfoundland, to Karen O'Neill says: "Thanks Karen. Are you okay with this response?"

And the response is: "The independent engineer contract is between Nalcor and the independent engineer (MWH Canada ... The independent engineer does not present documents directly to the Government of Newfoundland and Labrador. As of July 30 ... (the date the ATIPP request ... the Department of Natural Resources did not have" – any – "records from the independent engineer. It is the department's understanding that the independent engineer has not yet completed their report. For more information, please contact Nalcor directly."

Is that compatible with your understanding of the, well, we'll say absence of a relationship between MWH and the Government of Newfoundland?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, okay.

Now, before we turn to the next exhibit, I'd like to get your –

THE COMMISSIONER: Well actually, that's not quite correct, is it?

MR. LEARMONTH: Well –

THE COMMISSIONER: Based upon what I heard earlier is you don't have a contract with Nalcor.

MR. ARGIROV: Well, there is a factual contract with Nalcor. In the contract, the client is established to be Canada and the lenders.

THE COMMISSIONER: Right.

MR. LEARMONTH: Well, I mean, Nalcor pays you, so there's a contractual obligation to pay you.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah. And this is a standard type of arrangement is it?

MR. ARGIROV: Yes, yeah.

MR. LEARMONTH: Okay.

Now, there – we referred to Rey Hokenson, who was the project manager or project director –

MR. ARGIROV: Correct.

MR. LEARMONTH: – which is it?

MR. ARGIROV: Yes, project manager.

MR. LEARMONTH: Now, there's some comments on him – I'd like you to – you mentioned he was 78 years old, but – and that he's not available to testify – but at any time during his work on the project – which I understand carried on for approximately one year after financial close, is that right?

MR. ARGIROV: Little bit less, but he remain in a QA/QC position.

MR. LEARMONTH: Yes.

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: That's correct.

MR. LEARMONTH: Did you have any concerns about his capacity or experience or competence to perform the work that he was doing on the – for the independent engineer's (inaudible) –?

MR. ARGIROV: No, no.

MR. LEARMONTH: No.

MR. ARGIROV: No, never.

MR. LEARMONTH: How you would rate his ability?

MR. ARGIROV: Oh, very experienced person.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Highly experienced.

MR. LEARMONTH: Yeah. 'Cause there were some problems I notice, and I'm going to turn to page P – excuse me, Exhibit P-02181 at tab 39 of volume 3. And there's a comment from James Meaney, September 23, 2013, in this email. And, you know, the reference is in referring to Rey Hokenson; it's clearly that he says: "Oh I know...like I said, a few cards shy..." which is obviously not a complementary term. Did you ever – when's the first time you saw this email?

MR. ARGIROV: I haven't seen it at that time at all, this email. So I cannot speculate what Mr. Meaney means, so I don't know what to tell you about it.

MR. LEARMONTH: And you wouldn't agree that –

MR. ARGIROV: Mr. Hokenson was a highly qualified individual. Perhaps there was a bit organizational struggle in communications that he was trying to – particularly through this communication (inaudible). He was trying to obtain information from Nalcor and maybe there was a – some level of miscommunication. He had little bit of – also some slight – well, certain health issues and maybe he sometimes might

have been misunderstood during conference call because his voice was little bit low.

MR. LEARMONTH: Yes.

MR. ARGIROV: But I'll say, in terms of competence –

MR. LEARMONTH: Yes.

MR. ARGIROV: – not a problem at all.

MR. LEARMONTH: Okay.

So if there was a problem it was in terms of communications rather than the substance of the type of work he was doing?

MR. ARGIROV: Yes. Yeah, communication and little bit of the organization of –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – the process.

MR. LEARMONTH: Yeah.

But you had solid confidence in him, did you?

MR. ARGIROV: Absolutely.

MR. LEARMONTH: Okay.

Okay, tab – and we will get into this here, but I think there was some concern that perhaps Mr. Hokenson was going a little too far in his assessment of Astaldi. Is that correct?

MR. ARGIROV: Yes, there was a certain discussion and arguments about this. So, internally, we had to review and our QA/QC people had something to say about it.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So, yes.

MR. LEARMONTH: So there was an issue there but it was resolved.

MR. ARGIROV: Yes.

MR. LEARMONTH: Is that correct?

MR. ARGIROV: Yeah, it was resolved internally. I guess might have been exhibit through some of the emails that he was sending, but then the things were internally (inaudible).

MR. LEARMONTH: I think legal – your legal counsel put an end to it –

MR. ARGIROV: Correct.

MR. LEARMONTH: – at some point –

MR. ARGIROV: Yes.

MR. LEARMONTH: – and said that's enough of that.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah.

Okay, now, tab 41 of this same book through Exhibit P-02183. This is September 24, 2013, so we're getting up to – I mean financial close is – well, November 29, that's when the documents were signed. I think the bonds were priced on December 10 and the funds were advanced on December 13, but it seems that we use the term financial close to refer to November 29.

MR. ARGIROV: Correct.

MR. LEARMONTH: Some people may refer to it differently. But, anyway, the – so September 24, we're getting up to – you know, we're getting fairly close to – and I understand that there was – at this point in September, perhaps earlier, but certainly by September – there was a growing problem with respect to the information on cost estimates that Nalcor was providing. Am I correct?

MR. ARGIROV: Yes, from my recollection.

MR. LEARMONTH: What was the problem in September say – on September 24, 2013, or thereabout? What was your understanding of the problem in terms of the disclosure of relevant information that would enable you to do an assessment of the cost estimates and contingencies?

MR. ARGIROV: As far as I remember, there was a question about details. There was more details in an estimate cost and budget.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And the same was related to schedule.

MR. LEARMONTH: Yeah, so you were having trouble – from your point of view, you weren't getting enough information from Nalcor –

MR. ARGIROV: At this point, yes.

MR. LEARMONTH: – on cost estimates –

MR. ARGIROV: Correct.

MR. LEARMONTH: – and schedule.

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah, and was this – did this cause any frustration or concern? Or was it just a minor item?

MR. ARGIROV: I assume that was part of the issues that was kind of identified about Mr. Hokenson. It was (inaudible) frustration on his part. I think it's quite natural.

MR. LEARMONTH: Yeah, but if you were – you were retained on August 27, 2012. Would it be reasonable to expect that, say, by the end of September that you would have received all the information on cost estimates that you required in order to do your work?

MR. ARGIROV: I would say yes and – because the time frame was really, really tight. I mean, if we don't have it September, November is just right there, and the pressure was really increasing on the team. Now, I'm not 100 per cent sure what was going on with Nalcor and submission of information and why, but that was the case. I guess at that time, also, they were going through final negotiations with some of the contracts that perhaps Astaldi was at the time already –

MR. LEARMONTH: Yes.

MR. ARGIROV: So I don't know.

MR. LEARMONTH: But is it your understanding that from the point of view of your project team, this –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – was a –

MR. ARGIROV: Correct.

MR. LEARMONTH: – point of frustration –

MR. ARGIROV: Yes, correct.

MR. LEARMONTH: – that you weren't getting –

MR. ARGIROV: Yes.

MR. LEARMONTH: – the right information.

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

And we'll refer to some – but is my understanding correct, that Ms. Manzer, your legal counsel, had to get involved to get this straightened up? Is that right?

MR. ARGIROV: Yes, that was even after additional draft report, which was still seeking certain gaps, information gaps, and this report was in mid-November that Mr. Hokenson has issued directly in trying to obtain this and to fill up these gaps. So it was a bit of this, I would say, lack of streamline of organization when Ms. Manzer involved and set up a matrix that were actually filled up by – filled in by individual members of the team of what information is required and that was sent to Nalcor.

MR. LEARMONTH: Okay.

And what effect did the development of that matrix by Ms. Manzer have on the production of documents by Nalcor to the independent engineer?

MR. ARGIROV: Well, the thing started to move smoother and I guess the team obtained quite a bit of information, but still there was –

almost to the last moment there was little bit of struggle.

MR. LEARMONTH: There was.

MR. ARGIROV: Yes, but finally they received the information that they needed.

MR. LEARMONTH: Right.

The – in tab 42 – excuse me, tab 41, this is September 24, 2013, document – I refer to P-02183. This is an email from Peter Madden to James Meaney – can you turn to page 7 and explain what this list – 7 to 14. Can you explain what that list is about, what does it cover and what is the purpose of it having been created?

MR. ARGIROV: Those are documents, project documents.

MR. LEARMONTH: But, like, who would've requested them?

MR. ARGIROV: Oh, I would expect that the MWH team have requested submission of some of those documents. Whatever was available, of course.

MR. LEARMONTH: Okay.

So that would've been provided by Nalcor?

MR. ARGIROV: Yes.

MR. LEARMONTH: That would've been provided to Nalcor.

MR. ARGIROV: Yes, and it has to (inaudible).

MR. LEARMONTH: Okay.

The – at tab 51, you can see that – well, this is an email from Scott O'Brien, October 31, 2013. It's from Scott O'Brien to Robert Woolgar at Hydro. And then at the bottom of page 1 of 02193 there's reference from Abudulai, Suhuyini. That is the legal counsel at Cassels Brock?

MR. ARGIROV: Yeah.

MR. LEARMONTH: Same for Ms. Manzer.

MR. ARGIROV: Correct.

MR. LEARMONTH: And then on page 4 –

UNIDENTIFIED MALE SPEAKER: What P is that?

THE COMMISSIONER: P-02193.

MR. LEARMONTH: Yeah, page 4 to page 54.

MR. ARGIROV: Yes.

MR. LEARMONTH: Can you identify this document?

MR. ARGIROV: Yes, this is the document that we mentioned earlier in this (inaudible).

MR. LEARMONTH: Ms. Manzer –

MR. ARGIROV: Correct.

MR. LEARMONTH: And that was pivotal in getting the process moving forward?

MR. ARGIROV: Yeah, streamlining the process and getting the additional outstanding information.

MR. LEARMONTH: Tab 54 – 52, Exhibit P-02194 is an email from James Meaney to Mr. Harrington and Lance Clarke, Nalcor. Third paragraph says – second paragraph: "I also just got off the phone with Alison from CBB. She gave me a 'private' heads up that Rey and, interestingly, David Pyper from BF have some real 'hot buttons' that we need to address ASAP, otherwise there's potential issues with IE report. I can provide more detail in person this afternoon, but at a high level they are"

The first thing is: "Astaldi experience & competency (MWH have negative view on this)." Was that a correct assessment of MWH's view on Astaldi's experience and competency on November 1, 2013? That's just 29 days before financial close.

MR. ARGIROV: Yeah, correct. I think this was what you referred earlier to somewhat biased opinion by Mr. Hokenson.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And this was further internally clarified.

MR. LEARMONTH: Right.

MR. ARGIROV: Internally, I mean internally for the company.

MR. LEARMONTH: Right.

The – well, in the final analysis – I guess we can end this part of the discussion by saying that in the final analysis am I correct that MWH found Astaldi both in terms of their qualifications and their ability to get the job done was acceptable.

MR. ARGIROV: Correct.

MR. LEARMONTH: It was acceptable.

MR. ARGIROV: Yeah.

MR. LEARMONTH: There was a lot of back and forth, there was a lot of checking and so on –

MR. ARGIROV: Yes.

MR. LEARMONTH: – but the final decision was Astaldi is an acceptable contractor.

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

Now, on – in tab 56, it's Exhibit P-02198, there's a reference to – this is an email from – well, at the top, from Alison Manzer and then to James Meaney, and then it's responding from an email from James Meaney to Alison Manzer, Friday, November 1, 2007 [sp. 2013]. And there's a reference here to a meeting in St. John's – I think it took place on November 6 – where everyone was going to get together and see what was going on because there were problems. Is that correct?

MR. ARGIROV: Yes, I believe that was the case.

MR. LEARMONTH: We're getting close to financial close and there's still –

MR. ARGIROV: Oh, yes. Yes.

MR. LEARMONTH: – a lot of issues that have not been resolved.

MR. ARGIROV: Yes, and everybody was really intense and stressed at the time.

MR. LEARMONTH: Yeah. Was it stressful at that point?

MR. ARGIROV: It was.

MR. LEARMONTH: It was.

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah. Okay.

Now, you didn't attend that meeting did you?

MR. ARGIROV: I don't believe I attended this one.

MR. LEARMONTH: Yeah.

MR. ARGIROV: No, I did not.

MR. LEARMONTH: One might expect that, you know, you're the independent engineer, that you would go to that meeting since it was fairly important. Is that just not something you had time for or what?

MR. ARGIROV: No, project manager was one that was leading the process and it was absolute duplication for me to go there (inaudible).

MR. LEARMONTH: Okay, so your presence wasn't necessary.

MR. ARGIROV: No.

MR. LEARMONTH: All right.

The – we're now into volume 4, Mr. Argirov, and I want you to turn to tab 58, Exhibit P-02200. This is an email from – well, on page 2, it starts off an email from Rey Hokenson.

THE COMMISSIONER: Okay, I'm going to need some help here, Mr. Learmonth. I'm behind you now. So where are we?

MR. LEARMONTH: 02200, and it's at tab 58, volume 4.

THE COMMISSIONER: Thank you.

MR. LEARMONTH: All right?

THE COMMISSIONER: And page?

MR. LEARMONTH: Two.

Now, this is an email, November 4, from Mr. Hokenson saying: “As a result of our telephone conference call with Nalcor representatives today, we would like to share our current opinion of the project schedule with CBB” – that’s Cassels, Brock & Blackwell; that’s Ms. Manzer’s firm, right?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah or the firm that she’s a partner of.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Okay.

“MWH is currently disadvantaged to provide an accurate assessment of the LCP Integrated Project Schedule (IPS) in regards to the likelihood of achieving key milestone dates or the accuracy of the indicated critical path as it leads to a conclusion regarding the likelihood of achieving the targeted in-service date for the Project. We were able to express our general methodology and project specific concerns verbally to the Nalcor Project Controls team today in a lengthy and productive phone session. While we appreciated Nalcor’s professional explanations to our questions and offers to submit additional information, our fundamental concerns surrounding the robustness and adequacy of the underlying scheduling methodology prevents us from opining further on the current IPS.” Et cetera.

Now, that’s a fairly cautionary type of –

MR. ARGIROV: Correct.

MR. LEARMONTH: – comment for you to receive from the project manager –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – you know, a little more than three weeks before financial close.

MR. ARGIROV: Correct.

MR. LEARMONTH: And what was the concern with the schedule at that point to your recollection? That’s November 4, 2013. That would’ve been just before that November 6 meeting.

MR. ARGIROV: Yeah. As far as I remember Nalcor’s schedule was more just very overall without critical paths and they were expecting to fill, then, more details by receiving the detailed schedules from the contractors. And that was the method they decided to use, I guess, because definitely a contractor schedule will be a lot more detailed than an engineering schedule.

MR. LEARMONTH: Yes.

MR. ARGIROV: And –

MR. LEARMONTH: Is that called a Gantt schedule?

MR. ARGIROV: A Gantt chart is –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – schedule. Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: It’s another term –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – for because you – the chart is called Gantt chart. Yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So I guess that was basic – this controversy –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – that we had with evaluating the schedule that was presented to us.

MR. LEARMONTH: And I think even in your final reports – the ones in November 27, 29 and

December 30 – that continued to be a concern of the independent engineer –

MR. ARGIROV: Yes.

MR. LEARMONTH: – that the schedule was not fully developed as you would like to see it.

MR. ARGIROV: Correct. Yeah. I mean, it was more generic format and I think the team was really expecting and would've appreciated to have the more detailed parts, but they were not available yet because they were still waiting for awarding of the contract to Astaldi and so on. So –

MR. LEARMONTH: Yeah. Okay. But by this term, I mean, Astaldi had received on November – September 24, 2014, a limited notice to proceed. So wouldn't the – wouldn't – you know, based on that level of contractual discussions, wouldn't there be enough information for Nalcor to incorporate at least Astaldi's schedule into their schedule?

MR. ARGIROV: No, because – I don't remember the terms in the contract, but there's certain period when the contractor has to submit information, and detailed information. After award of the contract, there's a certain period when the contractor has to come up with this. And perhaps that was not yet in the hands of Nalcor at the time.

MR. LEARMONTH: But schedule – even at the end of December 2013, schedule was still an item of concern for you?

MR. ARGIROV: That was understood and addressed in our report.

MR. LEARMONTH: Yes, okay.

There's a document I want you to have a look at: tab 64. There's – this is dated – it's an email, November 6, 2013. It's Exhibit P-02206.

MR. ARGIROV: Okay.

MR. LEARMONTH: And on page 5 – actually, at the bottom of page 4, there's an email from Jason Kean to Ed Martin. This is dated November 6, 2013. And he says:

“Ed,

“My rationale for this including this slide is to address the pending question of ‘what are you doing to prevent this from growing to \$7B?’. I am fully expecting for MWH to point out that our costs have grown by \$600+ million since we have used our contingency (much earlier than we had initially viewed).

“Paul and I would prefer to maintain the slide and leverage it to respond to the anticipated question.”

Now, this is getting very close to financial close. Were you aware of any, you know, concerns that, you know, this could go up to \$7 billion? That the costs had grown by \$600-plus million at that time?

MR. ARGIROV: No.

MR. LEARMONTH: According to this email. I mean –

MR. ARGIROV: No, no.

MR. LEARMONTH: – it's not definitive, but ...

MR. ARGIROV: There was not.

MR. LEARMONTH: Was there any discussion on those matters communicated to you?

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

And in that same exhibit, that's P-02206.

MR. ARGIROV: Okay.

MR. LEARMONTH: This is a draft project update and I guess this was – well I don't know. I can't assume but it may have been done for that meeting in St. John's. Would that be a fair assumption?

MR. ARGIROV: Which page, Mr. Learmonth?

MR. LEARMONTH: It's on page – of that same exhibit, page – starts off page 8.

MR. ARGIROV: Oh, page 8. Okay.

Oh yes. That –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – must have been the presentation –

MR. LEARMONTH: From that meeting, yeah.

MR. ARGIROV: – prepared by Nalcor for –

MR. LEARMONTH: Okay.

MR. ARGIROV: – for this, I think, yes.

MR. LEARMONTH: Now we go to page 29 and there's a reference to – there's a – it says: Key Changes from DG3. The facilities capital cost, plus 5 per cent and it's \$300 million. Now I don't know if this was presented at that meeting or not but at that point were you aware that there had been a – you know, some form of an estimate that there be an additional 300 million?

MR. ARGIROV: No. We were not. And I guess you referred to this figure of \$6.5 billion.

MR. LEARMONTH: Yeah.

MR. ARGIROV: No.

MR. LEARMONTH: Well, there's two figures that have been floating around, there's 6.5 in some places and \$6.531 billion. They're – I don't know if – they're probably a reference to the same general increase –

MR. ARGIROV: I guess, but I –

MR. LEARMONTH: – but –

MR. ARGIROV: – no for us the figure was 6.2.

MR. LEARMONTH: So from the – at the time of financial close, we'll say, November 29 right up to December 13. Was it the understanding of the independent engineer that the capital cost estimate of 6.202 or whatever – 6.202, the DG3 number was the number that was on the table?

MR. ARGIROV: Yes that was placed in our report.

MR. LEARMONTH: Yeah.

So this – anything about \$6.5 billion or \$6.531 billion was –

MR. ARGIROV: It wasn't in –

MR. LEARMONTH: – news to you?

MR. ARGIROV: – our information, actually. It wasn't.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Is this a good spot? Maybe we'll take our morning break, Mr. Learmonth, or did you want to continue on with this document first?

MR. LEARMONTH: I'd like to go for a little bit more if that's possible but I – certainly there's no problem if you want to break now.

THE COMMISSIONER: I'm just thinking it's 11:05 now.

MR. LEARMONTH: Okay. All right.

THE COMMISSIONER: That's – okay, so it's okay with you?

MR. LEARMONTH: It sure is.

THE COMMISSIONER: Yeah, okay.

Well, let's take our break then now for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Mr. Learmonth, when you're ready.

MR. LEARMONTH: Okay, thank you.

Yeah, when we stopped, we were on Exhibit P-02206 and I was asking you about that \$300 million, which you said you didn't know

anything about – that you believed it was 6.202 at the time of financial close.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, and just before we leave that 6.202, I want to make sure I got this clear. Is your evidence that at no time up until financial close did the independent engineer do a deep dive or a detailed examination of the DG2 capital cost estimates? Is that correct?

MR. ARGIROV: Yes, that's correct.

MR. LEARMONTH: That's correct.

MR. ARGIROV: Yes.

MR. LEARMONTH: No time.

MR. ARGIROV: No time, yeah.

MR. LEARMONTH: Okay.

Now, in this same exhibit, P-02206 – oh, and just before I leave that, and so you'll – I can say that what you did was high level, not a deep dive?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, okay.

The – page 29 of this exhibit, the same page we were referring to before. It says here: "2017 power achievable." Now, this is in November 2006. Did you, as independent engineer, actually believe that that was a reasonable statement?

MR. ARGIROV: Our team (inaudible) was expressing the report and I believe the conclusion was that typically we see anywhere between five to seven years –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – say, arrange for development of big projects. So, in this case, this was very close to the lower level of the range –

MR. LEARMONTH: I think it was 5.25 or something like that?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: So, well did you believe it was a long shot, 2017 power?

MR. ARGIROV: It's not what was really concluded and didn't we state such things.

MR. LEARMONTH: No.

MR. ARGIROV: So, it was –

MR. LEARMONTH: But did you believe it was a long shot?

MR. ARGIROV: Personally I don't remember anything like that –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – but everything, whatever Mr. Hokenson had put in the report is still there.

MR. LEARMONTH: Yeah.

And as – just to repeat – you didn't know about this P1 –

MR. ARGIROV: No.

MR. LEARMONTH: – assessment.

MR. ARGIROV: No, we were not given this information.

MR. LEARMONTH: All right.

Tab 70 of the same book, which is Exhibit P-02212. Now there's a reference here to – it says November 19 – so it's, you know, 10 days before financial close. Alison – from James Meaney to Paul Harrington, Lance Clarke – as I said, November 19, 2013. It says: "Alison has already indicated she is open to an MWH line-up change following delivery of the IE report....they would be the first 2 to go."

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: And I take it that's a reference to Mr. Loucks and Mr. Hokenson. Is that right?

MR. ARGIROV: I don't know.

MR. LEARMONTH: Okay.

MR. ARGIROV: Is it?

MR. LEARMONTH: Well, okay. Were you aware that there was a discussion about what we'll call line-up change, which means a change in personnel, I take it.

MR. ARGIROV: Not at this time. I was not aware of that.

MR. LEARMONTH: You weren't?

MR. ARGIROV: No.

MR. LEARMONTH: Well, there's some suggestion that Ms. Manzer – well, it's just a suggestion based on Mr. Meaney's email – that there had been discussions between her and Mr. Meaney on that. Were you aware of any such discussions?

MR. ARGIROV: No.

MR. LEARMONTH: No.

Were you in regular communication with Mr. Meaney around, you know, November – say in November 2013?

MR. ARGIROV: I don't say regular communication. I might have been cc'd on some emails, but nothing regular.

MR. LEARMONTH: No.

And would most of your communications with him be by email or telephone or (inaudible)?

MR. ARGIROV: By email, yes.

MR. LEARMONTH: Okay.

Because then Mr. Meaney, based on the Exhibit 02213 at tab 71 – if we turn to page 2, it's obvious that Mr. Meaney was aware of a projected \$300-million capital cost increase.

This is two weeks before financial close. Do you see the email on page 2?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: But – and then there's also a reference to the 6.531. I'll read it out: "As a follow up to last week's session with Canada and their advisors where we tabled the projected \$300m capital cost increase along with the financing cost savings, Auburn and his team are meeting with Canada and Blair Franklin tomorrow at 11am ... in Toronto to review financial models that have updated ... the \$6,531m cost flow series provided by LCP Project Controls mid week."

So, obviously, Mr. Meaney knows about that. I just find it unusual that you didn't know about it.

MR. ARGIROV: No.

MR. LEARMONTH: You have no –

MR. ARGIROV: Information like this was not presented to us, to the independent engineer.

MR. LEARMONTH: Okay.

THE COMMISSIONER: So, this talks about – this seems to be talking about a session that was held with Canada and their advisors.

MR. LEARMONTH: Yes.

THE COMMISSIONER: So, this – you would not have been at a meeting with Canada.

MR. ARGIROV: No, no, that was (inaudible).

MR. LEARMONTH: That could've been the November 6 meeting.

MR. ARGIROV: Go ahead? Sorry?

MR. LEARMONTH: Would that have been the November 6 project meeting, or –?

MR. ARGIROV: I don't believe so, no.

MR. LEARMONTH: No.

MR. ARGIROV: That was a –

MR. LEARMONTH: Another meeting.

MR. ARGIROV: Blair Franklin was – they were financial advisors to Canada.

MR. LEARMONTH: Right.

Now, there's a – I'll get you to turn to tab 74.

MR. ARGIROV: Okay.

MR. LEARMONTH: Exhibit P-02215.

MR. ARGIROV: Okay.

MR. LEARMONTH: And it's an email from Gilbert Bennett to Ed Martin, copied to James Meaney and Paul Harrington. He says:

“Ed,

“We're under some pressure to demonstrate the changes to material contracts as identified by the IE. The attached sheets are intended to show how the growth from 6.202 to 6.531 is occurring.

“Before sending them through to the IE, I'd like you to take a look. From my perspective, the numbers summarise the key changes, and I don't see anything here that the IE would not have access to were they in our office.”

Then if we look to page 5 of that exhibit, P-02215, you have a LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation. There, you can see how it's changed to – from 6.202 to 6.531.

MR. ARGIROV: Correct.

MR. LEARMONTH: And that's dated November 13 –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – 2013.

MR. ARGIROV: Yes.

MR. LEARMONTH: But this reference in the email I just referred to – “Before sending them through to the IE, I'd like you to take a look ...” – from your earlier evidence, can I conclude that this was never sent to you?

MR. ARGIROV: No, I don't remember anything like this.

MR. LEARMONTH: You have no recollection at all?

MR. ARGIROV: No.

MR. LEARMONTH: Tab – let's see now. On – in tab 75, Exhibit P-02216, email from James Meaney to Paul Harrington, Lance Clarke, Gilbert Bennett and Peter Madden:

“Had a call with Canada/CBB today on status of FLG conditions precedent. Finalizing IE report ASAP was a hot button...capital cost / major contract update and MWH views on schedule were 2 key points raised.”

Okay, so this is dated November 19, 2009 [sp. 2013]. So is your – does that conform with your recollection, that at that late date, November 19, there were still issues –

MR. ARGIROV: Correct, yes. Yeah.

MR. LEARMONTH: – with scheduling and capital cost estimates?

MR. ARGIROV: Yes.

MR. LEARMONTH: Is that not an unusual situation when you're looking at a critical date for November 29 and you have got proper cost estimates and information on schedule, you know, taking into account that you've been retained since August 27, 2012? Isn't that unusual?

MR. ARGIROV: Yes.

MR. LEARMONTH: Tab 79, Exhibit P-02220.

This is a reference – this is Mr. Harrington writing to James Meaney, November 20, where he's providing comments on a draft report, I take it.

MR. COFFEY: Commissioner?

MR. LEARMONTH: 02220.

MR. COFFEY: Mr. Commissioner, if I could –

THE COMMISSIONER: Yes.

MR. COFFEY: – I just ask that – I appreciate Mr. Learmonth is concentrating, but, yes, could he reposition the mic? Because it's very difficult to hear, at times, what he's saying. Thank you.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay. Is that better?

MR. COFFEY: Oh, yes. Thank you.

MR. LEARMONTH: Okay.

So Exhibit P-02220.

MR. ARGIROV: Yes.

MR. LEARMONTH: So they're talking about Astaldi, and we touched on this before, in paragraph 3: "MWH are in a conflict with this S American projects they claim to have been the Owners Engineer is incorrect – the Chacayes"

What's this business about a conflict for MHI with respect to ...?

MR. ARGIROV: MWH was the owner's engineer for one project in Peru and Astaldi was the contractor. So – and also there was another project that they were also involved. I don't remember the capacity of MWH, but Astaldi was contractor. And this project in Peru was called – I think it was called Huanza hydro. And I personally visited this project when was in very close to completion. The dam was already built and operational, and penstocks were installed, and tunnels were finished and powerhouse was – internal works were on the go.

So one thing is interesting. This project was at 4,300 metres elevation altitude, so it's very – it was kind of difficult, actually, to walk because you start panting and you don't get enough oxygen. So it was project that was very well

completed by the contractors. And MWH had some, obviously, arguments with Astaldi around claims, but that's quite normal, actually, for contractor to have claims and change orders, to request change orders and so on.

So when I was there, I just saw almost finished product. So that information after, during this process here, I've heard that they had this disagreement, which is normal. And I – that's why our further legal review, internal, the company remove our objection from – and the project manager objection from the report.

MR. LEARMONTH: Okay, so you don't believe there ever was any conflict between MWH and –?

MR. ARGIROV: No, no, it wasn't conflict in terms of –

MR. LEARMONTH: No, but I think the suggestion here is conflict of interest.

MR. ARGIROV: No, no.

MR. LEARMONTH: No, that's the suggestion.

MR. ARGIROV: No, MWH was –

MR. LEARMONTH: I'm not sure, but I just –

MR. ARGIROV: – owner's engineer.

MR. LEARMONTH: Yeah, okay.

MR. ARGIROV: And Astaldi was the –

MR. LEARMONTH: Okay.

MR. ARGIROV: – contractor.

MR. LEARMONTH: Well, I'm not sure what it means. We'll have to ask Mr. Harrington about that.

MR. ARGIROV: Oh, yeah.

MR. LEARMONTH: And he says at the end: "... MWH are outside of their mandate and contract scope here and are on a philosophical mission."

What do you make of that?

MR. ARGIROV: You should ask Mr. Harrington, please. I don't know.

MR. LEARMONTH: You don't know. No.
Okay.

Were there any suggestions at any time before financial close that MWH was out – working outside the scope of its work?

MR. ARGIROV: No. I wouldn't expect that. I mean, Canada would be one to judge this and adjudicate this.

MR. LEARMONTH: Yeah.

MR. ARGIROV: It's not Nalcor; it's not anybody else.

MR. LEARMONTH: Right. That's what I would've thought, but anyway.

MR. ARGIROV: Yeah.

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

MR. ARGIROV: Absolutely.

MR. LEARMONTH: Yeah.

Tab 84. Now, this is from James Meaney to you. This is what appears to be a commentary on what is – the November 15, 2013, report.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: The email is dated November 21, re IE draft.

MR. ARGIROV: Yeah.

MR. LEARMONTH: So is –?

THE COMMISSIONER: P-02225?

MR. LEARMONTH: Yes.

Did you recall receiving this – these comments?

MR. ARGIROV: Not really, but obviously I have received them, and the most important

thing for me was to pass them further to Mr. Hokenson.

MR. LEARMONTH: Okay, he'd be the one that would have to deal with them, is that (inaudible)?

MR. ARGIROV: Correct.

MR. LEARMONTH: But did the – do the comments appear to be, you know, satisfactory in their tone and content?

MR. ARGIROV: I think they were in the same fashion as what you were asking me before.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So definitely that's kind of acceptable communication level.

MR. LEARMONTH: Okay.

Now, we're in book 5, Mr. Argirov. I'm going to refer to Exhibit P-02228.

Now, this is an email from Auburn Warren to Craig Hippern, James Meaney, Meghan Felt with McInnes Cooper. The email says, page 1, dated November 21, so just a little more than a week away from financial close: "As previously noted, these can go to Financing Data Room where the other older models are... Access will need to be given to Canada, Cassels Brock and Blair Franklin. Do not provide access to MWH, NL, BLG and Faskens at this time."

Now, if we turn to – actually, if we turn to – maybe I referred to the wrong email.

Okay, well, I'll pick up on that a little later, but –

THE COMMISSIONER: Yeah, I think the one you're looking for is 02217, tab 76.

MR. LEARMONTH: Seventy-six, yes.

The – do you know why there would be any information that would be denied to you in terms of this project?

MR. ARGIROV: No.

MR. LEARMONTH: Your review?

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

Okay, well, thank you for referring me back. I'm going to go back now to Exhibit P-02217.

Do you have that Mr. Argirov?

MR. ARGIROV: Which book?

MR. LEARMONTH: That's tab 76, book 4.

MR. ARGIROV: Seventy-six, four.

Okay.

MR. LEARMONTH: This is the – okay, this is from James Meaney to Meghan Felt, copied to Auburn Warren and Jennifer Gray: "... Capital Cost & Material Contracts Update." So he says:

"Hi Meg

"Please post the attached files to the data room this evening. I am going to suggest the 'Materials Contracts' folder in the 'Overview' subfolder.

"Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH. Do not provide access to NL, BLG and Faskens at this time."

So do you know why any information on financial cost estimates – and they're shown on page 2; maybe you can just have a look at page 2 of that. Can you offer any explanation as to why the Government of Newfoundland and Labrador, which was on the hook for the cost of this project, would be denied access or would not be given access, at that date, anyway, on the current financial forecast cost?

MR. ARGIROV: I don't know.

MR. LEARMONTH: Do you have any –?

MR. ARGIROV: No.

MR. LEARMONTH: Can you give us any insight?

MR. ARGIROV: No. Unfortunately, I have no idea.

MR. LEARMONTH: Does this strike you as unusual?

MR. ARGIROV: I cannot speculate, Mr. Learmonth.

MR. LEARMONTH: Okay.

And, by the way, that document on page 2, that's the same amount as the one I showed you on November 13.

MR. ARGIROV: Okay.

MR. LEARMONTH: It's the same amount, but there's some change. You know, some money is added to contingency and taken away from (inaudible) –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – but the same figure emerges.

MR. ARGIROV: Okay.

MR. LEARMONTH: Okay.

Is that wrong? Oh, I thought you said no.

MR. SIMMONS: No, I did, but I was talking to ...

MR. LEARMONTH: Oh, okay, sorry.

MR. SIMMONS: (Inaudible.)

MR. LEARMONTH: All right.

Well, and – anyway, just getting back to that, the earlier exhibit, in tab 87, and this is Exhibit P-02228.

Well, in this situation, and there's nothing attached to it, but it says: "As previously noted, these can go to Financing Data Room where the other older models are... Access will need to be given to Canada, Cassels Brock and Blair Do not provide access to MWH, NL, BLG and Faskens"

MS. O'BRIEN: Madam Clerk doesn't have this – 02228.

MR. LEARMONTH: 02228. There it is.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Now, do you know why – can you offer any explanation for this? It seems that the information is going to Canada and Cassels Brock and Blair Franklin, which is Canada's financial advisor, but not to you, not to MWH, the independent engineer. Can you give me any insight or any explanation as to why this would be the case?

MR. ARGIROV: No, I cannot.

Now, you have to understand one thing: our level of clearance was not at the same level as the other two consultants. We were a step below.

MR. LEARMONTH: Okay, so there was a higher level of clearance given?

MR. ARGIROV: Absolutely, yeah.

MR. LEARMONTH: Yeah.

And that would be, I guess, consistent with what you said earlier, which I said in my introductory comments, that you were not in any way part of the decision-making process for the Government of Canada on the – in –

MR. ARGIROV: Correct.

MR. LEARMONTH: Is that correct?

MR. ARGIROV: Absolutely correct.

MR. LEARMONTH: You were out – intentionally out of the loop on that.

MR. ARGIROV: Well, I think, like in process, according to the process, we were not to be in the loop for this final decision-making.

MR. LEARMONTH: Yes.

MR. ARGIROV: Okay.

MR. LEARMONTH: Tab 88 is Exhibit P-00229 – 02229, sorry.

MR. ARGIROV: Yes.

MR. LEARMONTH: Email from Paul Harrington to James Meaney, copied to Lance Clarke, Gilbert Bennett and Ed Bush.

Under – if you go down, there's a comment on schedule and then there's a comment on cost.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: This is from Mr. Harrington. This is November 21, 2013:

“Cost - We know we have approx. 2/3rds of the total Project estimate firmed up as completed contracts, delivered PO's or firm priced executed contracts or LNTP's.” That's limited notice to proceed. “The net effect of this is a cost increase of” – around or about – “~5% which results in the \$6.531B - so there is \$2.2B left to firm up with contracts and PO's - the cost to complete as far as we know today is \$6.531B and we believe that the greatest budget hits are already behind us and even if in the worst case the 5% increase in cap cost we have seen continues to be experienced for the next \$2.2B (which we do not accept at this time) the \$6.531 would not exceed \$6.641. So we are now out of the realm of estimating theory and into the world of fixed and firm contract and PO costs. So MWH can be assessing actual fixed and firm costs that we have and then focus on the costs we have yet to firm up and again using their experience look at the cost situation and pass an opinion on the reasonableness of our revised budget of \$6.531B.

“If we take this simplified but practical approach to what we are looking for from MWH's test of reasonableness we should be able to satisfy the stated requirement and allow MWH to comment on the reasonableness of the LCP Cost and Schedule.”

Now, this information was not passed on to you, was it?

MR. ARGIROV: No.

MR. LEARMONTH: And you're sure of that, are you, to the best of your recollection?

MR. ARGIROV: To the best of my recollection I am, yes.

MR. LEARMONTH: Yeah. Okay.

At tab 91 of the book, and it's Exhibit P-02232, this is a draft IE report, and this email is from James Meaney to you. It's dated November 24 at 6:02 p.m.

Do you remember receiving this?

MR. ARGIROV: Not really.

MR. LEARMONTH: No?

MR. ARGIROV: Yeah.

MR. LEARMONTH: Well, what would you have done with it? Would you have sent this on to Mr. Hokenson since you –?

MR. ARGIROV: Oh, yes.

MR. LEARMONTH: Okay.

MR. ARGIROV: Yeah, absolutely.

MR. LEARMONTH: Just want to – and the comments from – the comments are on the – in the right margin of each page. There seem to be many from Mr. Harrington.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: So this is – these are comments on the November 15, 2013, draft report.

MR. ARGIROV: Okay.

MR. LEARMONTH: Page 171 of Exhibit P-02232, the second-to-last paragraph from the bottom says: "The IE was not furnished with the actual cost estimate details as part of oversight effort. However, based on a review of the Basis-of-Estimate document that accompanies the cost estimate, generally Nalcor's cost estimate methodology is considered consistent with industry best practices for organizing, calculating, and reporting the project's current capital budget relative to a defined scope"

Now, so as of November 15, Mr. Hokenson is still pointing out that the independent engineer was not furnished with the actual cost estimate details.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Was that your understanding? Is that correct?

MR. ARGIROV: I think that's why he was sending this report because he was feeling that there was gaps in the information that they were expecting.

MR. LEARMONTH: Okay.

And on this November 15 report, we look at page 172, and that's Exhibit P-02232, the second – well, the first full paragraph beginning with "Nalcor": "Nalcor qualifies the DG3 estimate as an AACEI Class 3 effort. The IE agrees with this classification and confirms the implied accuracy range (-20% to +40%). However, as noted in the *Decision Gate 3 Capital Cost and Schedule Estimates Summary Report*, a Class 2 AACEI-compatible cost estimate is required at the time of Financial Close."

Did you ever receive a Class 2 report at the time of financial close? That would've been only two weeks after this November 15 report was written.

MR. ARGIROV: No, I don't think that was provided, no.

MR. LEARMONTH: It wasn't.

MR. ARGIROV: No.

MR. LEARMONTH: And then, next sentence says: "The IE is not aware of any ongoing efforts by Nalcor to upgrade the capital cost estimate to support Financial Close with a higher degree of accuracy. As well, Nalcor has committed to completing a Class 1 cost estimate upgrade of the cost estimate at the mid-checkpoint of the project. The IE urges stakeholders to request these cost estimate updates from the project developer to ensure the most accurate project budget is available for inspection and proactive budget control."

Now, was there a Class 2 estimate prepared that you were given at any time?

MR. ARGIROV: I really don't remember anything like this, so ...

MR. LEARMONTH: Okay, but it seems like – we're talking about November 15 –

MR. ARGIROV: Correct, and the –

MR. LEARMONTH: – and there was a suggestion that –

MR. ARGIROV: – this matrix was issued after.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Because they were missing quite a bit of information. And this matrix was prepared –

MR. LEARMONTH: Are you sure the matrix was issued after this? This is November 21.

MR. ARGIROV: Oh, that's (inaudible).

MR. LEARMONTH: Or November 15. The report is November 15, sorry.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah. But, anyway, we'll go back to that.

The next paragraph says: "While Nalcor adopted a theoretical P50 contingency based on analytical modeling (i.e., range uncertainty) of the project's sub-element summary budgets, the IE expresses the opinion that the calculated overall 6.7% scope contingency is aggressive relative to our legacy experience with similar remote heavy-civil construction endeavours that typically have a contingency reserve for known, but not specifically quantified risks approaching double to quadruple what is currently provided for LCP."

That's double to quadruple.

MR. ARGIROV: Mm-hmm. Mm-hmm.

MR. LEARMONTH: And they're talking about tactical risk, right? That's not strategic risk.

MR. ARGIROV: Correct, yeah. Yeah.

MR. LEARMONTH: So that could be – quadruple would be –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – you know, 20 – way over 25 per cent (inaudible).

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: And then he says: "The IE is not aware of a separate management reserve allowance to fund or accommodate unknown risks or changed field conditions as is typical practice for these types of projects. As per AACEI practice, the scope contingency is assumed to be spent during project execution while the management reserve is considered not to be spent in entirety during project execution."

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Now, this term, this reference to a quantified risk approaching double to quadruple being reflective of the legacy experience, this language was removed from the – certainly from the November 29 report.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Do you know why?

MR. ARGIROV: I assume that they received further information that was provided from Nalcor to give them some different detailed understanding of what was achieved at that moment.

MR. LEARMONTH: Okay, but you assume that. Is there anything concrete you can point to that –?

MR. ARGIROV: No, no, I don't remember at this stage what was being exchanged.

MR. LEARMONTH: Okay.

And then the next paragraph says, in this exhibit, P-02232: “As the project moves into full scale field execution with the award of CH0007” – that’s the Astaldi contract – “... the IE would advocate for re-thinking and reauthorization of the project contingency fund. Due to significant overruns recently recognized with the award of CH0007, the project contingency fund is considered to be spent at this time” –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – “and unavailable for future unknowns and risks associated with the field construction phase” Well, that’s consistent with what the Grant Thornton said.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

“The IE believes the drivers on contingency will be varied and not entirely predictable as the project unfolds over the next several years. Issues associated with budget estimate accuracy, baseline schedule accuracy, uncompetitive market conditions, directed scope changes, changed field conditions, claims, weather impacts, resource shortages, directed scheduled acceleration, potential contractor defaults, incremental owner project support costs, and other unknown risks are some of the typical factors that our experience indicates will consume contingency on a remote large-scale heavy ... endeavour.”

Now –

MR. ARGIROV: Correct.

MR. LEARMONTH: – if you look at all these comments –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – we’re talking all those use of the words that legacy experience was triple or double or quadruple, you know, what I referred to, and then you’ve got this other comment in the bottom paragraph, doesn’t this point to a very worrying situation in terms of the contingency levels?

MR. ARGIROV: We maintain our opinion through all this reports and, most importantly, the final report. We maintain our opinion that the contingency was very aggressive and was – we were advocating that Nalcor should have additional evaluation and to consider further management reserve or additional contingency funds and so on. We were very clear with our evaluation of – and our comment, which was mainly directed to Canada.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Nobody else.

MR. LEARMONTH: Right.

MR. ARGIROV: So.

MR. LEARMONTH: Well, I mean, the Government of Newfoundland wouldn’t know about this report because they didn’t ask for it, right?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

But isn’t this – you know, if – you’re an experienced person. Aren’t these comments that I just referred to on page 172, don’t they sort of send off a flashing light?

MR. ARGIROV: They are exactly what they are.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: And they’re cautionary, aren’t they?

MR. ARGIROV: Of course.

MR. LEARMONTH: Yeah. Okay.

Now, in the final report – well, the one that was used at financial close, which was the interim final report –

MR. ARGIROV: Yes, yeah, okay.

MR. LEARMONTH: – or interim report, and that was sent to Nalcor, I think, in February. They didn't get it at time of financial close, but anyway.

Was there any – did you have any input at all into changing the language? Because the language in the November 29 report on contingency is different. Did you have any input at all into that?

MR. ARGIROV: No, no. The team was working, as I explained, in Seattle and everything was between them, the project manager and the experts and the QC. If we were to get something and Nalcor was just the – some editorial change, if their advice is to change something because we were printing the report but, no, we didn't do anything.

MR. LEARMONTH: Okay.

On page 297 of Exhibit P-02232 – and, once again, this is the November 15 draft report – it says in the first full paragraph under section 10: “We have reviewed the Integrated Project Schedule prepared by Nalcor and find that it is generally complete as far as listing contracts, but it is a simplistic Gantt chart without activity linking, critical path(s), float time ... and is not suitable to the level of detail we require and had expected to view to allow us to form opinions. Until we view more large contracts under construction and obtain the P6 classic CPM view of the project schedule, we cannot express an opinion as to the likelihood of the contracts being completed as scheduled.”

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Now, this recommendation, once again – and we referred to this earlier, but this is a fairly –

MR. ARGIROV: Yes.

MR. LEARMONTH: – important comment, is it not?

MR. ARGIROV: Oh, absolutely, yes.

MR. LEARMONTH: Yeah. I mean, he's saying we can't really express an opinion on the schedule.

MR. ARGIROV: Yeah, because they were asking for a CPM and, I mean, P6 is a very detailed schedule tool – scheduling tool, Primavera. And this one is critical at milestones –

MR. LEARMONTH: Right.

MR. ARGIROV: – schedule.

MR. LEARMONTH: But that's not – it would be expected that you would have a P6 –

MR. ARGIROV: Well –

MR. LEARMONTH: – CPM at this point of –

MR. ARGIROV: CPM, that's right. Correct.

MR. LEARMONTH: Isn't that correct?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah. So how is it that Nalcor – they knew that they didn't have it. Can you explain why they didn't have one?

MR. ARGIROV: Well, I believe they had whatever they had and I'm sure SNC-Lavalin has developed a schedule for them as well, but I believe Nalcor was really expecting to get a lot more precise schedule by incorporating Astaldi's schedule and some other contractors' schedule into their total integrated schedule.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So that's why they – I guess they – for them it was not critical the level of schedule they have or the detailed schedule that they have provided to us.

MR. LEARMONTH: Well, from their point of view – but what is their – how does their point of view prevail? I mean, I thought it would be the experts, the independent engineer, who would dictate to Nalcor what was expected of them in terms of the schedule at the time of financial close.

MR. ARGIROV: Correct, but that's what we got.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So ...

MR. LEARMONTH: And that was acceptable, obviously, because financial –

MR. ARGIROV: Well, that's right, yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Well, and let me clarify again, we cannot really get into very detailed schedule evaluation because this was not our mandate. In a way, we have to see, okay, if this contract proceeds from here to here, does it make sense? Methodology is correct or it's not correct and that's the level of details.

MR. LEARMONTH: That's it.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Okay.

Then recommendation 2 on page 297: "Within 120 days of Financial Close, Nalcor should furnish to the IE a complete P6" – that's Primavera 6 critical path milestone – "... schedule that includes the extensive task list (over 6000 tasks) to allow the IE to review the critical path schedule and float. The purpose of this review would be to independently verify schedule accuracy and determine if the currently targeted completion date is achievable."

MR. ARGIROV: Mmm.

MR. LEARMONTH: Did you ever get within 120 days of financial close such a P6 report?

MR. ARGIROV: No, and keep in mind this was the November 15 report –

MR. LEARMONTH: Right.

MR. ARGIROV: – which I guess Rey was really pushing Nalcor for whatever they could provide for us to get to the final – this date of November 29.

MR. LEARMONTH: Right.

MR. ARGIROV: And so it might've been a little bit excessive request.

MR. LEARMONTH: Do you know if it was intended to be excessive, or are you just speculating?

MR. ARGIROV: I speculate right now.

MR. LEARMONTH: Okay.

MR. ARGIROV: So I don't want to really further speculate because I was –

MR. LEARMONTH: Okay. Yeah.

And then paragraph –

MR. ARGIROV: They sent this report directly. They didn't even copy me, so I don't know.

MR. LEARMONTH: Yeah. You didn't see this report before it was issued?

MR. ARGIROV: No.

MR. LEARMONTH: Paragraph 3, under "RECOMMENDATIONS," page 297 of Exhibit P-02232: "Within 60 days of Financial Close, Nalcor should furnish to the IE for review the complete analysis of the North Spur including the laboratory test reports that determine the strength of the soils under the loadings that it will sustain during the life of the project and that address the questions contained in Section 2 of the IE's report that have not ... been addressed. Additionally, the IE would expect to be furnished the technical reports of Dr. Seed and Dr. Idriss as noted in Section 2 when these reports become available."

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Now, what can you tell us about the review that the – you, the independent engineer, and your team did on the North Spur situation?

MR. ARGIROV: The design and the – all the approach and engineering of the North Spur was well developed by SNC-Lavalin and was available for the team to evaluate. One thing that was still in a process and it was not finalized, I believe, was seismic activities that might be induced by a reservoir filled up and what could this seismic activities will – how they could affect the North Spur. And I think that was some

additional information that we were expecting to see, to receive. And this was in the process of completion, so that's why we said in this period provided.

MR. LEARMONTH: But you –

MR. ARGIROV: But this is not seismically active area to start with, so that's why we didn't have major concern about this.

MR. LEARMONTH: Okay, just explain that, please.

MR. ARGIROV: The area is not seismically active. It's not like, for example, BC or the West Coast where there's active plates and movement and so on, and quite high level of seismicity. This is very mild.

MR. LEARMONTH: You're talking about the North Spur.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, okay.

MR. ARGIROV: And the area in Labrador –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – over there, so ...

But the report was reviewed after and was received, I think it was Ms. Atkinson, and she is expert of seismic evaluation (inaudible).

MR. LEARMONTH: Yeah, but in terms of the North Spur, as you know, I mean, it's still an issue. There are people in Labrador that are concerned and there's reports from Dr. Stig Bernander and others, and it – I take it that during the course of your work as independent engineer, you would've reviewed the work done by Nalcor on the North Spur and that you would've expressed an opinion as to whether reasonable steps were taken to address the problem presented by the quick clay. Is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay, and what did you do? What did you do to ...?

MR. ARGIROV: We reviewed –

MR. LEARMONTH: Whose reports did you review?

MR. ARGIROV: Well, first, the report by Nalcor, which is SNC-Lavalin design, we reviewed and we had meetings with them that we evaluated their approach and everything was up to good practice and industry standards.

MR. LEARMONTH: Okay.

MR. ARGIROV: Then there further reports that were done by Hatch, for example, to confirm the methodology and the approach. We had additional meetings with the geotechnical designers in Montreal to further confirm that everything is following the original established methodology and there is no any concerns – further concerns.

And then, at the end, there was a geotechnical panel – peer review, which concluded. It was mainly addressed towards the reports by Dr. Bernander. And I think this report is in a public domain and I'm sure everybody that is interested would've seen it.

And we concluded – even before that, we have our final report to Canada that we find all of the measures up to this moment – which is actually all of the measures because North Spur is finished, has been constructed – that everything is satisfactory.

MR. LEARMONTH: Okay.

So you signed off on the work –

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: – that Nalcor had done.

And did you take into account the reports of Dr. Stig Bernander and others that – who were on the other side of the argument?

MR. ARGIROV: Correct. They were reviewed by our experts and our opinion is in this publicly available report that we – it was presented to Canada, but it is publicly available, so.

MR. LEARMONTH: Right.

And, by the way, on this November 15 report that you said you didn't see it before was issued –

MR. ARGIROV: No.

MR. LEARMONTH: – but you did receive the – on November 24 –

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: – the responses, yeah, but you didn't see it before it was issued. Is that your point?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

And I guess that that would be something with in the specialty of Rey Hokenson anyway, when he's talking about cost estimates and schedules.

MR. ARGIROV: Correct.

MR. LEARMONTH: So you would defer to him and Mr. Loucks on those issues?

MR. ARGIROV: I would defer everything to them because they were the people working on this – in this phase. They were moving whatever activities were necessary. They were providing or requesting information, and they were the group that delivered the final one or two reports.

MR. LEARMONTH: All right.

Tab 92, Exhibit P-02233; it's an email from James Meaney to – I don't – yeah, Mr. Hokenson, Mr. Loucks and others, Ms. Manzer. I don't see your name on it, but there's – and Mr. Krupski, Joseph Krupski, who was a representative of the Department of Natural Resources. Is that correct?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

Now, this is dated November 25, 2013. What – do you know why this document was prepared November 25, 2013?

MR. ARGIROV: Not really, to my recollection. Must've been due to the request by the team for additional information.

MR. LEARMONTH: Yeah. And the – if you look at page 5, it says the purpose of this report is to "provide MWH with assurance that the critical path for the LCP is both understood and reasonable."

So would this be dealing with the –

MR. ARGIROV: Yes.

MR. LEARMONTH: – concerns in the November 15 report expressed by Mr. Hokenson about the schedule issue?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

And on page 6, it says: "The overall LCP schedule is ..." – right at the bottom. "The overall LCP schedule is very achievable and realistic."

Now, that's a fairly strong, confident statement. Do you agree?

MR. ARGIROV: Absolutely.

MR. LEARMONTH: Do you agree that at that time that that was a reasonable statement for Nalcor to represent or make?

MR. ARGIROV: I cannot speculate on that, whether this was a reasonable statement. It's our opinion that matters.

MR. LEARMONTH: And if you'd seen the report that said it was a P1 and then a P3, perhaps you would've taken that –

MR. ARGIROV: Sure, yeah.

MR. LEARMONTH: – report into account –

MR. ARGIROV: Yes.

MR. LEARMONTH: – in accessing the validity of this statement. Is that a fair comment?

MR. ARGIROV: Yeah. Yeah.

MR. LEARMONTH: Okay.

And, once again, the – on page 27 of that exhibit, P-02233, bottom line – two lines on that page, 27, under the heading “MF Critical Path – Powerhouse”: “Commissioning & start up of Unit 1 is complete 10-Dec-2017, followed by Unit 2, 3, & 4 by April 2018.”

So that’s what they’re saying at that point, and you didn’t have any reason to question that, those dates?

MR. ARGIROV: No, I’m not sure if Rey has further questioned things because this was only 25th.

MR. LEARMONTH: Yeah, but do you know whether these – like, this deck slide or whatever you want to call it is – do you – is it your understanding that that addressed Rey Hokenson’s concerns that he expressed in the November 15 report about this Gantt report and it not being acceptable and so on?

MR. ARGIROV: I truly don’t remember this discussion at this period. However, I’m sure that Mr. Hokenson will not accept something lightly.

MR. LEARMONTH: Okay, but that’s just a general observation.

MR. ARGIROV: Correct.

MR. LEARMONTH: You don’t have any personal knowledge as to –?

MR. ARGIROV: Yeah.

MR. LEARMONTH: Okay.

The next document I want to turn to is at tab 94. This is November 27, email from James Meaney to you –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – with another bunch of people copied on it. So this is November 27 at 5:40: Thanks –

THE COMMISSIONER: Oh –

MR. LEARMONTH: 02235.

THE COMMISSIONER: Just one second, Mr. Learmonth – 02235?

MR. LEARMONTH: Yeah.

THE COMMISSIONER: P-02235.

MR. LEARMONTH: Okay.

“Hi Nik

“Thanks for ... your time on the call today. Just wanted to do a quick recap, particularly for the benefit of those who weren’t able to join:

“You indicated the updated sections on the North Spur, Capital Costs and Schedule will be delivered to Canada and Nalcor later tonight/early tomorrow morning our time (due to time change to Pacific).

“You indicated the balance of the IE report will be delivered to Nalcor and Canada by Friday,” et cetera.

Now, like, at this point, November 27 –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – Wednesday, financial close is two days away on Friday, did you receive sufficient information on the North Spur, capital costs and schedules that – to satisfy the concerns expressed in the November 15 report?

MR. ARGIROV: I remember that there was another report that was issued on 27th, still draft form, I believe. And then there was some kind of additional information that was provided to Rey and they came up to the final 29 report.

MR. LEARMONTH: Say that again; I missed that.

MR. ARGIROV: So, there was additional information that was received and I don’t know if that was everything or there was something that was signed on 28th.

MR. LEARMONTH: Okay.

Once again, that would be a question if he were available to put to Mr. Hokenson, is that right?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah, not you, yeah.

Now, there's another report that was done on November 27.

MR. ARGIROV: Yes. Yeah, that was (inaudible) –

MR. LEARMONTH: So we have the November 15 and we got the November –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – 22nd and then we have at tab 96 – it's an email from James Meaney to Alison Manzer. You're not copied on this –

MS. O'BRIEN: (Inaudible.)

MR. LEARMONTH: – excuse me, 02237. You're not copied on this, although –

MR. ARGIROV: Which?

MR. LEARMONTH: P-02237, that's tab 96.

MR. ARGIROV: Okay.

MR. LEARMONTH: So, it says to Alison and Charles – do you know why this wouldn't have come to you, to your team?

MR. ARGIROV: No, I cannot comment. I don't know.

MR. LEARMONTH: 'Cause at November 24 – this is November 27; it's a commentary on the –

MR. ARGIROV: This is actually November 28.

MR. LEARMONTH: This is November 28 – excuse me, it's November 28.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: And it's a commentary on November 27. Now on the November 24, you received the comments from Nalcor.

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: But then on this one you didn't receive the comments of Nalcor, is that correct?

MR. ARGIROV: No, I didn't receive anything here.

MR. LEARMONTH: Do you know why?

MR. ARGIROV: No.

Perhaps this was sent to Canada, was it?

MR. LEARMONTH: Yes.

MR. ARGIROV: That's right, yeah.

MR. LEARMONTH: Yeah, and this is Mr. – these are the comments that are made. So, you didn't see this at, all did you?

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

So, is the first time you saw this when you received it from the Commission?

MR. ARGIROV: Correct.

MR. LEARMONTH: But shouldn't you have seen all the draft reports? Wouldn't that be normal?

MR. ARGIROV: Not exactly, because they're still drafts (inaudible). They're working documents and the team is getting information mainly, as I explained before, attempt to collect as more factual information as possible.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And I get – I was eventually getting involved in a level when there was a contractual issue or a timing issue. So, or something is getting delayed; they will go to the next level.

MR. LEARMONTH: Okay.

But without you even being copied?

MR. ARGIROV: For the reports, no.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yes, it wasn't necessary for me to participate in how – this exchange.

MR. LEARMONTH: Okay.

So we know financial close is November 29 and I take it that if we turn to tab twenty – 97, which is Exhibit P-02238; it's an email from James Meaney to Alison Manzer at the top, and at the bottom it's an email from Alison Manzer to James Meaney.

It says November 30, 12:28 p.m.; that's Saturday, financial close being a day earlier:

"Jim,

"Prior to Canada accepting the IE report draft that is expected shortly, we need to have some comfort around a few concerns going forward. Please confirm these on behalf of Muskrat Falls," et cetera, "... We have a protocol ... consider that to be ..."

Number one: "We have a protocol for the determination of Cost Overruns that requires an IE confirmation; it is our expectation that the IE confirmed number, determined by the IE acting reasonably and in consultation with your team, will set up the Cost Overrun amount in accordance with the provisions of the MF/LTA and LIL project finance agreements and you will work out what you need to before it is confirmed. We consider that to be a usual approach and allows us to accept the considerable contingency concerns expressed."

Can you provide us some clarification on what – on your interpretation of this?

MR. ARGIROV: Well, I guess Ms. Manzer was advising Mr. Meaney that there was an additional process for a Cost Overrun Escrow Account.

MR. LEARMONTH: Yeah.

And that's commonly referred to as the COREA, is it?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

Can you give us some explanation as to your understanding of how this COREA account operates, or operated and operates today if there's been any changes?

MR. ARGIROV: Mm-hmm. So –

MR. LEARMONTH: Can you explain it?

MR. ARGIROV: Yeah, it is based on annual review and also it is based on any reasonably forecasted overrun. It doesn't need to be realized; it doesn't need to be fixed, but if it is a reasonably forecasted overrun, the equity portion has to cover it. So, that has to come from the Government of Newfoundland, and this normally takes – prior to this review – takes about end of the year, around November, December time frame, and if there was a – such a forecasted overrun, the equity position has to be filled in, in this account, and that's what it is.

MR. LEARMONTH: Okay.

MR. ARGIROV: This is the escrow account that stays on the side and it's ready to draw upon funds if this overrun really realizes.

MR. LEARMONTH: Yeah.

So that there's an – there's, we'll say, estimates made of probable overruns?

MR. ARGIROV: Correct. Reasonable.

MR. LEARMONTH: Reasonable.

MR. ARGIROV: Reasonable –

MR. LEARMONTH: So it doesn't have to be – it could be just a preliminary estimate; it could be a late-level estimate, but some kind of an estimate –

MR. ARGIROV: Sure.

MR. LEARMONTH: – as to what the cost –

MR. ARGIROV: That's –

MR. LEARMONTH: – overrun –

MR. ARGIROV: – right, yeah.

MR. LEARMONTH: – will be.

MR. ARGIROV: Yeah, should be, based on certain, reasonable estimate – not anything that’s imaginary, of course, but doesn’t need to be already realized –

MR. LEARMONTH: Right.

MR. ARGIROV: – cost.

MR. LEARMONTH: It doesn’t have to be settled, in –

MR. ARGIROV: Settled.

MR. LEARMONTH: – other words, no.

MR. ARGIROV: Yes.

MR. LEARMONTH: So, would this be the case that – let’s take one claim, that a claim comes in for an extra hundred million dollars. Nalcor does an assessment and says, well, there’s something there but we feel that a reasonable assessment of that would be \$50 million.

MR. ARGIROV: Correct.

MR. LEARMONTH: Then, the \$50 million would be the figure that would be used to fund the COREA.

MR. ARGIROV: To fund the COREA –

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yes.

MR. LEARMONTH: – at the time.

MR. ARGIROV: Correct.

MR. LEARMONTH: And then, as time went by, and eventually the claim would be settled, then there could be more contributions the next year; they could be reduced the next year, I suppose –

MR. ARGIROV: Correct.

MR. LEARMONTH: – if (inaudible).

MR. ARGIROV: If there was a still –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – funds in the –

MR. LEARMONTH: Yeah, so is there any –

MR. ARGIROV: – the account.

MR. LEARMONTH: – magic term? Like, I called it a reasonable estimate.

Is that a fair way to put it –

MR. ARGIROV: Absolutely.

MR. LEARMONTH: – of the claim?

MR. ARGIROV: I think it’s a very fair way to put it, yeah.

MR. LEARMONTH: All right.

Now, so this is the – the last document I referred to was the email exchange between Mr. Meaney and Alison Manzer on November 30, so I guess at that point things progressed. The bonds were priced on December 10, and then –

MR. ARGIROV: Correct.

MR. LEARMONTH: – the funds were drawn on –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – December 13 and the full amount of the \$5 billion was – or the full amount of the loan was advanced, correct?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah, okay.

MR. ARGIROV: I also have to probably clarify a little bit that the IE report that was provided was only one of numerous conditions that Canada were required to come to final conclusion.

MR. LEARMONTH: Yes. Yeah.

MR. ARGIROV: It was not the governing and it's not the only one.

MR. LEARMONTH: Yeah, so there are a number of steps –

MR. ARGIROV: A number of condition –

MR. LEARMONTH: – the government –

MR. ARGIROV: – precedents that were supposed to be satisfied in a process –

MR. LEARMONTH: Yes.

MR. ARGIROV: – by Canada. And Canada, as far as I know – and I'm not – never been privy to this process – but they have went into a lot more evaluation.

MR. LEARMONTH: Okay.

So your work was just a piece of the puzzle we'll say. Would that be a reasonable way to put it?

MR. ARGIROV: Sure, yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Good to put it this way, yeah.

MR. LEARMONTH: Yeah.

At tab 102, Exhibit P-02243. Now we're up to February 19, 2014.

MR. ARGIROV: Correct.

MR. LEARMONTH: And this is an email from Paul Harrington to James Meaney. And I'd just like to know – get your take on this. That – Mr. Harrington writes: "The IE scope of work during the construction phase includes the following" – and then he refers to – "Prepare IE Periodic Report" et cetera. "... report shall cover" underneath it.

Then he says: "Rey has overstepped his scope of work here by not ... reporting on the status of the REA but also passing opinions on the handling of REA - which is clearly a commercial matter for Nalcor to manage. The IE's scope of work does not include the detail

analysis that the IE is suggesting that they would 'like to know'. This is a commercial matter and if this goes to litigation then the Contractor could demand all correspondence on this matter which would include the IE's observations on Nalcor's handling and has even incorrectly labelled Nalcor's process for handling the REA as a 'delay', this in itself is an unwarranted intrusion in an ongoing commercially sensitive manner which is following due process."

Now, is Mr. Harrington, based on your information, entitled to, you know, make claims that Rey has overstepped the bounds of his work? I mean, are there any bounds to what Mr. – what Rey can ask for as the representative of the independent engineer?

MR. ARGIROV: Well, if it is commercially sensitive information, one should be careful.

MR. LEARMONTH: Okay.

So you believe –

MR. ARGIROV: So that's my comment.

MR. LEARMONTH: – there's – is there validity to Mr. Harrington's statement that Rey has overstepped –?

MR. ARGIROV: I really don't know the story here, but if it is – as I said – if it is commercially sensitive information –

MR. LEARMONTH: Okay.

MR. ARGIROV: – everybody should be very careful.

MR. LEARMONTH: So you don't really know whether it's –

MR. ARGIROV: No.

MR. LEARMONTH: – legitimate or not, okay.

MR. ARGIROV: But it sounds like it is commercially sensitive information.

MR. LEARMONTH: Okay, fine

Okay, now we're on to – it's tab 106. I'll get the – this is binder 7. This is Exhibit P-02246. February 26 –

MR. ARGIROV: Which tab was this, sorry?

MR. LEARMONTH: Excuse me. This is tab 106. And now we're in binder 7.

MR. ARGIROV: Okay.

MR. LEARMONTH: Now, we're into – so this is an email from Paul Harrington to James Meaney, February 26, 2014. So this is just after financial close.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: I take it Astaldi is – well, they're – they've showed up at the job site. Do you agree, you know, generally, that Astaldi accomplished very little during 2014?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah. That's a fair statement?

MR. ARGIROV: Yes.

MR. LEARMONTH: Do you know why? Do you have any knowledge as to the reasons why they accomplished – Astaldi accomplished very little in the calendar year 2014?

MR. ARGIROV: Well, most of it will be speculation, and I don't want to speculate on this. However, the start of their involvement was too late in the year. And it wasn't the right time for them to have full construction year because by the time they mobilized, the winter was all over at the site. And of course the – we know very well that first their idea was not to work in the winter in the powerhouse; although, the spillway was where they were still going to proceed with construction.

However, winter – we know very well that the cost of material, the cost of labour is increasing substantially. So this could have been one of the reasons for slow start for them.

After that though, they still didn't move as was expected. Given the very tight schedule, that was

obvious to everybody and to Astaldi. And whether they missed the – didn't have a good understanding of labour or whether they missed to hire the really good superintendents – and I believe it came up to the moment that – because their organization was (inaudible), that's everything I could remember. And because of that, I only could further speculate that probably some of the – and superintendents will provide – good superintendents will provide the really good organization and they will bring good people.

MR. LEARMONTH: Yeah. Now –

MR. ARGIROV: So I think everything is question of quickly to set up the office or their position on the ground and to have a running start with very good organization.

MR. LEARMONTH: Yeah, now –

MR. ARGIROV: Which was missed.

MR. LEARMONTH: You mentioned supervisors. Can you explain why it's important on a job site to have well-trained, competent supervisors? And these are the supervisors over the labour, is that correct?

MR. ARGIROV: Correct. Correct, (inaudible) –

MR. LEARMONTH: Explain the – why –

MR. ARGIROV: Construction management –

MR. LEARMONTH: – that's an important point – yes, why is that important, to have well-trained, competent supervisors or superintendents –?

MR. ARGIROV: It's a question of expertise and how they – if they have the experience, they know how to schedule the approach; they know how to schedule their work. And I mean not just schedule of time, but organization – to organize. Also, these people, most of them are local people. They are well known to the craft labour and they attract good group of people that they have a certain relationship or respect to them. And that's been always the case when we see good performance.

MR. LEARMONTH: Yeah. So is it correct that if you have a good labour force – you know, good, competent, hard-working labour force – and inadequate or even poor supervision that there's going to be a problem.

MR. ARGIROV: You have a problem.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: And can a good superintendent get more out of the labourers than a mediocre one?

MR. ARGIROV: Definitely.

MR. LEARMONTH: You have –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – personal knowledge of that do you?

MR. ARGIROV: Yeah, I've seen countless – even on this project, how everything changed in the following year when the construction manager was changed. Very experienced person that was brought and then some of the superintendents – also very experienced people – were brought into the team. So nothing strange here.

MR. LEARMONTH: No.

MR. ARGIROV: Actually Astaldi started to perform the way it was expected that they will, and they performed very well up until the last fall.

MR. LEARMONTH: Yeah.

So you agree that Astaldi accomplished very little in the first year?

MR. ARGIROV: Yes.

MR. LEARMONTH: And – but that they picked up in subsequent years?

MR. ARGIROV: Oh, they picked up. They picked up very well and actually they didn't miss the milestone with the spillway, which is very important –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – because otherwise it would affect the diversion –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – of the river and so on. But they managed to do it and it was hard work and winter construction. They had tarped everything and heated constantly.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So –

MR. LEARMONTH: Can you give us your observations on the ICS, the Integrated Cover system, in terms of whether it was a feasible plan to begin with and whether you've ever seen anything like that before in terms of the size of it?

MR. ARGIROV: I believe it was very good idea and could have worked and should have worked if – once again, if the organization was there. And there was probably something else which I – again, I cannot speculate because it was never revealed to me – but I think there was some, probably, mis-agreement between Astaldi and the subcontractor –

MR. LEARMONTH: Proco was it?

MR. ARGIROV: – Proco.

MR. LEARMONTH: Proco, yeah.

MR. ARGIROV: Proco.

Because finally, I mean, half of the structure was almost built. I mean, the over – the north bay and unit one – everything was accomplished. So they could have finished very well the other. It is – it looks big, but in a way it is very light steel structure which is like warehouse with light cranes.

MR. LEARMONTH: Yes.

MR. ARGIROV: And Astaldi had already prepared the foundations so it wasn't a problem for erection of a structure like this. It is nothing really difficult to –

MR. LEARMONTH: Mm-hmm.

MR. ARGIROV: – accomplish. It's – everything is organization, how to do it. And also these cranes, they were not planning to use them for concreting, but for moving material and –

MR. LEARMONTH: Yes.

MR. ARGIROV: – (inaudible).

MR. LEARMONTH: We've had that clarification –

MR. ARGIROV: Yes.

MR. LEARMONTH: – before.

MR. ARGIROV: So – could have worked very well. Now, perhaps if they started June – I mean they – Astaldi – and mobilized earlier, they could have prepared the foundations earlier and that would have given little bit more time. By the end of the first year they would have had already the design of this finished and perhaps the production of the super – the steel structure ready. Or some material could have been shipped, you know, to the site.

MR. LEARMONTH: Yeah.

MR. ARGIROV: To start erection. And they could have erected this in the winter because that's not so difficult to do this.

MR. LEARMONTH: Yeah. Well I guess the –

MR. ARGIROV: Really they didn't need to do it during the first winter. They could have started – say March or this time and – to erect completely the structure. Even if it was not completed to the very final north pour – small bay – still, they could have tarped over, and Astaldi is working down from the unit 1, unit 2 and so on.

MR. LEARMONTH: Right. But I guess the – and you've covered this to a certain extent – but

the ICS is – you know, Integrated Cover system – it's a big garage or a big warehouse. Isn't that what it is?

MR. ARGIROV: Correct.

MR. LEARMONTH: So someone not knowing much about construction would say, why can't an international construction company put that up? What's the problem?

MR. ARGIROV: I told you. It was the subcontractor who was responsible to put it up. Obviously there was some – I don't know.

MR. LEARMONTH: Okay.

MR. ARGIROV: Something that didn't work between them.

MR. LEARMONTH: But do you agree –

MR. ARGIROV: Somehow.

MR. LEARMONTH: – with the point in my question?

MR. ARGIROV: Absolutely.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And, you know, normally everything comes to funds.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So...

MR. LEARMONTH: Okay. And then – once – having built one half of it covering unit 1 and 2 – so half of it's built –

MR. ARGIROV: Almost unit 2.

MR. LEARMONTH: – and then it's torn down. Why not – when you've got half of it built, why not complete it rather than tear it down?

MR. ARGIROV: Well because then it started to interfere. Because the time that was lost – elapsed. Like, it started to interfere – to placement of concrete. And they have already decided that – they see that the progress and the

productivity of Proco was not there. This was obvious.

MR. LEARMONTH: Yes.

MR. ARGIROV: And would have delayed further the – and it was mainly to go over the first winter. Not the very first, but the second winter.

MR. LEARMONTH: Yes.

MR. ARGIROV: And it didn't.

MR. LEARMONTH: Yeah.

MR. ARGIROV: They were not there. So after that, the whole summer this would have been in the way of placement of concrete. And it was the right decision to –

MR. LEARMONTH: Okay, so –

MR. ARGIROV: – (inaudible).

MR. LEARMONTH: – it was in the way. At that point, it became a nuisance?

MR. ARGIROV: Yeah. That's right, yeah.

MR. LEARMONTH: Yeah, it would inhibit work rather than –

MR. ARGIROV: Correct.

MR. LEARMONTH: – promote it.

MR. ARGIROV: Absolutely. But it should have been done –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – and could have – they could have achieved a lot more.

MR. LEARMONTH: Yeah, but –

MR. ARGIROV: It is unfortunate.

MR. LEARMONTH: – we've had – I just want to make sure I get your assessment on this point that, you know, we've had people criticize the ICS as being, you know, a bad idea. It was way too big, this is something we've never seen

before, it should never have been – 'cause you know, comments like that.

I take it that your view is somewhat different. Is that correct?

MR. ARGIROV: That's right, yeah.

Well if you go to Port aux Basques, there is a long industrial building (inaudible) shop that was owned originally by M and M – it's quite big. Probably you see the same in some of the other sites where Hibernia was built. It's very big structures – steel structures. It wasn't anything special on this; it's columns, frames on the top, and covered to enclose it and create environment conducive to better work – to provide good working conditions.

THE COMMISSIONER: I think, Mr. Learmonth, this might be a good spot to break for lunch now.

MR. LEARMONTH: Okay.

THE COMMISSIONER: All right, so we'll take our break here until 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Mr. Learmonth, when you're ready.

MR. LEARMONTH: Thank you.

There's another exhibit that I'd like to have entered. It's P-02343.

THE COMMISSIONER: All right.

MR. ARGIROV: Which tab?

THE COMMISSIONER: That will be entered as marked then.

MR. LEARMONTH: Thank you.

We were speaking about the ICS and I wanted to know whether – and I think you generally approved the plan anyway. There was problems with the execution but the plan you didn't have a problem with, is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah. Now, are you aware of any structures – similar structures, particularly of that size – that have been built anywhere in Canada or, say, North America or anywhere?

MR. ARGIROV: I know and I don't know exactly where, but I'm aware of something that was used for a dam, actually, not powerhouse. But I think it was a probably smaller structure.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So the other – even the Granite Canal was constructed in a way during the winter so McNamara could tarp over the whole powerhouse.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So cover it in a way –

MR. LEARMONTH: No, I think the –

MR. ARGIROV: – completely.

MR. LEARMONTH: – concept of covering in –

MR. ARGIROV: Yes, that's right, yeah.

MR. LEARMONTH: – during the winter itself as a general concept.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: I think that's well known –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – it's a well-used practice, but I'm just thinking that something of this size, because we know how enormous it was –

MR. ARGIROV: No, I don't know about anything that has been used for a hydro project –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – of this size.

MR. LEARMONTH: Yeah.

MR. ARGIROV: But I know that, but I cannot recall exactly the name and the place that was used for a dam.

MR. LEARMONTH: Yeah.

MR. ARGIROV: This construction of a dam.

MR. LEARMONTH: But you don't have a recollection –

MR. ARGIROV: No.

MR. LEARMONTH: – of where or when?

MR. ARGIROV: No.

MR. LEARMONTH: Or even what country it was in?

MR. ARGIROV: No, I think it was in North America.

MR. LEARMONTH: Okay.

MR. ARGIROV: Yeah.

MR. LEARMONTH: But you don't know.

Now, we also had –

MR. ARGIROV: No.

MR. LEARMONTH: – on the ICS we also had evidence from someone on a panel last Friday. And what they said is that when – you know, if, the way it was built, the ICS, there was a five-metre drop from the floor to the ground so that you couldn't get anything in there, and that was an error in, I guess, design or construction. Where you aware of any such problem?

MR. ARGIROV: No.

MR. LEARMONTH: You never heard of that?

MR. ARGIROV: No.

MR. LEARMONTH: Did you see the evidence presented on this last Friday?

MR. ARGIROV: No, I didn't.

MR. LEARMONTH: But you see what he was saying is that, you know, you've got this big structure and then you've got a five-foot drop down, so how could you get a truck in or something like that. Were you aware of –?

MR. ARGIROV: Well, it depends what – no, no, it depends how everything was organized as the original design. And the layout might be exactly this and the access to be from somewhere else.

MR. LEARMONTH: All right.

MR. ARGIROV: So ...

MR. LEARMONTH: Okay, okay. Well, you don't really know –

MR. ARGIROV: No.

MR. LEARMONTH: – anything about that. And the – okay, that's the – you said, in relation to the ICS, that the gantry cranes were not to be used for moving concrete, they were used – to be used for moving materials. Is that correct?

MR. ARGIROV: That was my understanding, yes.

MR. LEARMONTH: Are you certain of that, or – because that issue has come up before?

MR. ARGIROV: No, I'm not hundred per cent sure, but that's what I've heard.

MR. LEARMONTH: It wasn't for moving concrete?

MR. ARGIROV: That's right, yeah.

MR. LEARMONTH: Yeah. Okay, thank you

MR. ARGIROV: That's –

MR. LEARMONTH: Now, getting back to Mr. Rey Hokenson again, because there seems to be

a number of complaints or comments about his – certain aspects of his performance. I'm looking at tab 108, which is Exhibit P-0248 and this is an email from Ms. Manzer to James Meaney dated March 28, 2014. That's P-02248 and that's tab 108.

MR. ARGIROV: Correct.

MR. LEARMONTH: It says: "Nik Canada is also asking. The recent issues with Rey have really driven us to the brink and we need to get this turn over done soon."

Do you know what were the circumstances on May – March 28 that may have led to that comment? Can you comment on that at all?

MR. ARGIROV: No, I think that was a – generally a little bit the lack of organization –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – that was witnessed during the final reports and little bit in the winter and, also, his health issues.

MR. LEARMONTH: Oh, there were health issues, were there?

MR. ARGIROV: Yes.

MR. LEARMONTH: And there's another document – Exhibit 02181, which is tab 39 – we can just bring it up – of book 3 where the comment from Ms. Manzer: "Thanks trying to take the Rey pain away as best we can!!"

Is that the same – reference to the same issues that you referred to earlier?

MR. ARGIROV: Yeah, I believe so. Yes.

MR. LEARMONTH: Okay.

MR. ARGIROV: Because we – at that time, we were moving it into – we were already into the second phase and the second phase is monitoring the construction, which required the ability to travel.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And all the, actually, flights and travels are quite lengthy.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And that was a bit –

MR. LEARMONTH: Yeah. But this here –

MR. ARGIROV: – too much for him.

MR. LEARMONTH: – about the pain, that was dated September – in Exhibit 02181, that was in September 2013 so that wouldn't have been in –

MR. ARGIROV: No, that was related to what I mentioned earlier.

MR. LEARMONTH: Okay, (inaudible) very well.

Now tab 109 in the same book, Exhibit P-02249. Now, this is an email from Mr. Meaney to Ms. Manzer, March 28, 2014 – oh, excuse me, it's an email from you to Alison Manzer, May 28, 2014, concerning that.

You say: "Those are the new members that will be added

You say: "Those are the new members that will be added to the existing team for Phase 2." Phase 2 is post –

MR. ARGIROV: Construction –

MR. LEARMONTH: It's –

MR. ARGIROV: – monitoring.

MR. LEARMONTH: Yeah. So what caused this change to come about? What was the reason for it? Mr. Hokenson's health and so on?

MR. ARGIROV: Well, that's one side. The other was the Americans that were involved in the first phase were not really needed to continue on this phase because – also it wasn't the best arrangement during the period, the effects went really not in a favourable direction for the company. So –

MR. LEARMONTH: So they were paid in US dollars –

MR. ARGIROV: Correct.

MR. LEARMONTH: – and the FX was –

MR. ARGIROV: FX was prohibitive.

MR. LEARMONTH: So it's partially –

MR. ARGIROV: Well – that's right.

MR. LEARMONTH: – a cost issue?

MR. ARGIROV: Yeah.

MR. LEARMONTH: Okay.

Tab 112, it's an email from you to Gilbert Bennett and James Meaney, April 14, 2014.

You say: "Attached is an updated ZIP file (marked 'rev2'), which includes the changed pages 174-175. I've attached those pages separately for convenience of review."

Now, this is a partially redacted copy of the November 29 report.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: The last one that was prepared before financial close.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Can you tell us a little bit about this? Why on April 14, 2014, would you be sending a redacted copy?

MR. ARGIROV: I don't, you know, recall. That was sent with (inaudible) –

MR. LEARMONTH: You don't remember?

MR. ARGIROV: It might've been something that was sensitive commercially that was removed.

MR. LEARMONTH: Okay.

Was this going to be released to the public, do you know, or anything like that?

MR. ARGIROV: I suppose.

UNIDENTIFIED MALE SPEAKER: What was the P number again, Mr. Learmonth?

MR. LEARMONTH: That's Exhibit P-02252.

So you can't shed any light on that?

MR. ARGIROV: No. No, I mean, there are sections that were completely blacked out.

MR. LEARMONTH: Okay.

Now did you –

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: – black them out or were they blacked out by someone else?

MR. ARGIROV: Sorry?

MR. LEARMONTH: Did you black them out?

MR. ARGIROV: No, it was still – Rey was still functioning at that time.

MR. LEARMONTH: Okay.

MR. ARGIROV: Yeah.

MR. LEARMONTH: The same Exhibit 02252, if we turn to page 16. And we're talking under: 4.12 Schedule Achievability.

The fourth sentence: "Nalcor's estimated 5.25-year build-out and commissioning period is observed to be within that range. While there is probability that the projects' schedule objectives, as defined by Nalcor can be achieved, there is also reportable probability that the target in-service dates will remain under pressure for protraction as field execution challenges are encountered."

And I should've put in the other sentence: "Similar projects have taken approximately five to seven (5-7) years"

So what is –?

THE COMMISSIONER: Okay, where is that, Mr. Learmonth? I'm just trying –

MR. LEARMONTH: Paragraph 4.12 on page 16.

THE COMMISSIONER: Okay, thank you.

MR. LEARMONTH: Do you see that, Mr. Argirov?

MR. ARGIROV: Sure, yeah, I see it here.

MR. LEARMONTH: What is – and you've mentioned that earlier in your evidence, that it was within the range but at the low end of the range.

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: The schedule, yeah.

But what is the term "reportable probability" mean, as opposed to just probability? Do you have any idea?

MR. ARGIROV: I think it's just probability. I don't know what – such a qualifier, it's not typical. I don't know, somebody slipped this –

MR. LEARMONTH: You're not familiar with that term, are you?

MR. ARGIROV: No.

MR. LEARMONTH: Okay.

Tab 116, Exhibit 02256 is an email from James Meaney, May 22, 2015 – '14, sorry.

Mr. Meaney writes to Derrick Sturge: "I met with Craig Martin and Paul Morris this morning for about an hour...it was basically an introduction to Craig at their request. Showed them the IE MOU, attached, that's effectively final with Canada/IE now and ready for execution. They seemed very pleased with that and seemed to acknowledge the benefit of piggy backing off that process vs. having separate 'independent expert' working for NL. I also asked if there was any update on when they'd be expecting the Deloitte special report ..." – and so on.

Do you know – can you tell us anything about this email?

MR. ARGIROV: Well –

MR. LEARMONTH: I can tell you Craig Martin was involved with the Oversight Committee.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: I think Nalcor was starting to present some additional information to the Oversight Committee that was coming from the Independent Engineer.

MR. LEARMONTH: Okay.

And tab 119, Exhibit P-02259. This is –

MR. ARGIROV: Yes.

MR. LEARMONTH: – an email from Gilbert Bennett to Paul Harrington and James Meaney.

“Attached is the signed letter for MWH - pls take it from here...”

Now, this is the reliance letter, we’ll call it, that – which gave the Government of Newfoundland and Labrador access to some of your work? Is that correct?

MR. ARGIROV: Yes.

MR. LEARMONTH: Or it allowed Nalcor to provide it to the Province of Newfoundland and Labrador.

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: Yeah.

And was that in relation to the work of the Muskrat Falls Oversight Committee?

MR. ARGIROV: I believe so, yeah. That was additional information that Nalcor could’ve provided to –

MR. LEARMONTH: So they were brought in – the reference in the (inaudible) of the piggybacking, that would probably –

MR. ARGIROV: Yes.

MR. LEARMONTH: – be a reference to –

MR. ARGIROV: I think that’s what it is, yeah.

MR. LEARMONTH: Yeah.

And I notice on page 4 of this agreement, paragraph 5 says: “the Province acknowledges that any reliance placed on the reports and information provided as a result of the access to the Contractor granted by this letter is at their sole risk and without liability to the Contractor”

Now there was no –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – obligation. I guess –

MR. ARGIROV: Correct.

MR. LEARMONTH: – legal obligation created.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah.

Now tab 117, which is Exhibit P-02257. This is Muskrat Falls Project Value and Cost Update for Government of Canada/MWH, June 24, 2014.

MS. O’BRIEN: It says June 20.

MR. LEARMONTH: June 20, 2014. Page 21, there’s a reference to \$6.99 billion. Was that the first time you became aware that there’s been a revised estimate to \$6.99 billion?

MR. ARGIROV: Yes. Yeah.

MR. LEARMONTH: Yeah. Did you have advance warning of that or were you advised in advance?

MR. ARGIROV: Not at the time.

MR. LEARMONTH: Nothing.

MR. ARGIROV: No.

MR. LEARMONTH: So what was your action when you got this?

MR. ARGIROV: Well, that was a surprise. The only discussion I had earlier, probably during his site visit, was that there is some difficulties with the transmission contractor, but no figures were provided or anything like that.

MR. LEARMONTH: Well, based on the information we referred to in the Grant Thornton report that was available, don't you think you should've had more advance warning than you just indicated?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah. So were you disappointed or upset or what was your reaction when you got this information?

MR. ARGIROV: Well, of course, I was disappointed because my role is to – the IE role was to monitor such changes in a most readily fashion.

MR. LEARMONTH: Yeah. Because the government – well, not necessarily the lenders because they had an AAA Canada bond. They weren't too concerned. But is it correct that Canada wanted to be on top of any cost updates?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: So this could give the appearance that you weren't doing your job. Is that right?

MR. ARGIROV: Perhaps, yes.

MR. LEARMONTH: Yeah. You know, if you're not reporting up-to-date information.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Well, did you have any exchange of words or letters with Nalcor about this to the effect that, you know, why are you dropping this on me now? Why didn't you give me cost updates earlier? What's going on? What

about your obligation in the construction reports? Did you have conversations with them about that?

MR. ARGIROV: We had the conversation after the next level –

MR. LEARMONTH: Yeah. I know, that's the one in 2015.

MR. ARGIROV: Yeah.

MR. LEARMONTH: I'm talking about this (inaudible) –

MR. ARGIROV: I don't remember at this point anything, any action –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – taken.

MR. LEARMONTH: Any action taken, but you did – did you discuss it with Nalcor? Their obligation?

MR. ARGIROV: Oh yeah, we discussed during this presentation, yes.

MR. LEARMONTH: Okay.

Now, tab 120 is a document – P-02260 – dated July 24, 2014. And it has to do with – it says: "Lower Churchill Project, NORTH SPUR STABILIZATION WORKS, Site description, 10 and 11-Mar-2014."

That's Exhibit P-02260.

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay. Are you familiar with this document?

March – 10th and 11th of March 2014. Does that ring a bell?

MR. ARGIROV: Sorry, no, but would ensure we have seen this if it was sent to us.

MR. LEARMONTH: Did you make a site visit on March 10 and 11, 2014, to the North Spur?

MR. ARGIROV: No, I don't think so.

MR. LEARMONTH: No.

MR. ARGIROV: No, we –

MR. LEARMONTH: Okay, well –

MR. ARGIROV: I would – our site visit was towards the summer or in late June or something like that.

MR. LEARMONTH: Yeah. But you indicated that you had done a review of the remediation work –

MR. ARGIROV: Correct.

MR. LEARMONTH: – of the North Spur –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – before financial close.

MR. ARGIROV: That's right, yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Everything that was available at that time, we had confidence that things – everything was up to expected standards.

MR. LEARMONTH: And was it assessed just by you or by other experts?

MR. ARGIROV: Oh no, no, this was the experts in the team. And one of them was John Young who is a very experienced geotechnical engineer. And –

MR. LEARMONTH: And do you know –

MR. ARGIROV: – (inaudible) team.

MR. LEARMONTH: – what he tested for? Because there's still concern that it's going to collapse as soon as there's pressure put on it by the water, you know.

MR. ARGIROV: No, the – everything was well accepted.

MR. LEARMONTH: And John Young himself did that work?

MR. ARGIROV: Did the review, yes. The –

MR. LEARMONTH: For MWH?

MR. ARGIROV: Correct. Before FLG, yes.

MR. LEARMONTH: Okay.

So in addition to those comments, do you have anything more to say about the work that MWH did on the North Spur?

MR. ARGIROV: No, I don't.

MR. LEARMONTH: You have nothing more?

MR. ARGIROV: Yeah.

MR. LEARMONTH: Okay, well we'll have to ask someone else I guess.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: But in March 2014 did you accept and review this Exhibit P-02260?

MR. ARGIROV: I am telling you I don't remember so ...

MR. LEARMONTH: You don't remember, okay.

Tab 122, Exhibit P-02262 is a Lower Churchill Project site – it's P-02262 on page 2. It's indicated to be a "Lower Churchill Project Site Visit Report July 14 to 23, 2014." It's prepared by you –

MR. ARGIROV: Yes.

MR. LEARMONTH: – for Natural Resources Canada and Nalcor Energy.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: So at what point did you develop this practice of making quarterly or whatever – quarterly visits to the site?

MR. ARGIROV: Well, that was established at the start of phase 2.

MR. LEARMONTH: Yeah.

MR. ARGIROV: But not quarterly visits, site visits with – two site visits, maybe one per year.

And that's how it was started in 2014, so then we produce a report that we include our observations.

MR. LEARMONTH: Okay. Now –

MR. ARGIROV: We present draft report in a fashion that I already discussed and then final report.

MR. LEARMONTH: Now, on page 18 of this Exhibit P-02262, the second-to-last paragraph says: "Schedule achievements are very good. Construction work will continue throughout the winter. The major works will be covered by large weatherproof shelters to enable civil works construction during winter conditions."

Now, this is September 19, 2014, so, you know, we're well into the first year of Astaldi's contract.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: So how could it be that schedule achievements were noted to be – you know, schedule achievements to be very good at that point when you knew that – well, you know, at that point that almost nine months of schedule had been consumed with little or no results by Astaldi. How is it possible that schedule still – could be still very good?

MR. ARGIROV: Because the visit was – this was reflecting the site visit –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – and the site visit was in July.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So at that time they were building this structure.

MR. LEARMONTH: The ICS.

MR. ARGIROV: The integrating structure.

MR. LEARMONTH: Okay.

MR. ARGIROV: And they were really moving, advancing well.

MR. LEARMONTH: Okay.

MR. ARGIROV: So, as I explained earlier, they managed to get to unit one covered and were moving towards unit two. And probably you will see even here, photos from this construction side of ...

MR. LEARMONTH: Okay, so in the time you wrote this report, you were satisfied that the work they were doing – Astaldi was doing on the ICS was on schedule?

MR. ARGIROV: Yes, I guess that was the report –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – covering Astaldi, yes.

MR. LEARMONTH: And just going back to page 17 of that report at the bottom, P-02262.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: It says: "Astaldi was still mobilizing to the Muskrat Falls site at the time of the site visit and was carrying out work on various civil structures."

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: "It is understood that there has been some schedule slippage by Astaldi, but the IE was assured by Nalcor that can be easily recovered once Astaldi's full mobilization is complete." Is that a reasonable assurance you received?

MR. ARGIROV: Yeah, a correction, Sir. This report was actually done before they had started to put the structure above, but we observed the successful progress of the SOBI –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – the SNC –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – mock-up and part of the training (inaudible). The excavation was really finished or almost finished – no, no, no, the

excavation was finished and Astaldi was starting to build the foundations for this structure.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So that's why everything was looking like they're moving.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Okay.

MR. LEARMONTH: But the generating station is the main thing. I mean, you can have all the other parts of the project built –

MR. ARGIROV: Correct, but Astaldi was already –

MR. LEARMONTH: – but if the generating station isn't completed, nothing moves, right?

MR. ARGIROV: Yes, as long as you can see not only the generation side, but there's a transmission side as well which we were observing too. But what I'm referring here is that Astaldi was – I think the excavation was still – no, the excavation was probably almost finished.

MR. LEARMONTH: Right.

MR. ARGIROV: And Astaldi was not yet taking completely ownership of the site.

MR. LEARMONTH: Yeah.

Was that late in September, like, for them to be mobilizing? They should have mobilized – fully mobilized by then, shouldn't they? Astaldi?

MR. ARGIROV: Oh they – probably they were mobilized, though, I think, or just in the process.

MR. LEARMONTH: They're in the process of it.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: I just got to –

MR. LEARMONTH: Okay, now –

MR. ARGIROV: – familiar myself with this because it's been a long time ago.

MR. LEARMONTH: Do you have anything more to say about that exhibit?

MR. ARGIROV: No.

MR. LEARMONTH: Okay. Now –

THE COMMISSIONER: So can I just step in for a second, because I'm not sure I got what you said, Mr. Argirov.

MR. ARGIROV: (Inaudible.)

THE COMMISSIONER: So you were asked about your comment that the schedule achievements are very good. And first you referred to the fact that the ICS was started, but looking at the pictures, you can see that didn't happen. So what were you –?

MR. ARGIROV: The RCC was started.

THE COMMISSIONER: No. Well, you had initially said it was, but if you look at the pictures, it wasn't started.

MR. ARGIROV: Oh, yeah, well, then that's what I meant here.

THE COMMISSIONER: Right.

MR. ARGIROV: There's a RCC wall that was built.

THE COMMISSIONER: We'll have a look.

MR. ARGIROV: I refer your attention to ...

Six – photo 6.3, page 10.

THE COMMISSIONER: Mm-hmm.

MR. ARGIROV: See, the "RCC cofferdam above the spillway left" That's the –

THE COMMISSIONER: I've seen that.

MR. ARGIROV: Yeah, that's what I meant.

THE COMMISSIONER: Okay, so you weren't referring to the ICS?

MR. ARGIROV: No, no. Not – I said RCC.

THE COMMISSIONER: The RCC.

MR. ARGIROV: Yeah.

THE COMMISSIONER: Okay, I got that. But then you were referring – initially you had said that – I thought you had said that the ICS was – construction was started.

MR. ARGIROV: Sure, but I think I was confused with the timing, and that was in a next period –

THE COMMISSIONER: Okay.

MR. ARGIROV: – in the next site visit when we observed the ICS already started. At that time, excavation was just completed, and Astaldi was still mobilizing the site, but this is actually written here in report, and it's clearly stated.

MR. LEARMONTH: Does that answer your question, Commissioner?

THE COMMISSIONER: Well – so are you saying then that that level of progress caused you to say that the schedule achievements were very good?

MR. ARGIROV: Yes.

THE COMMISSIONER: Okay.

MS. O'BRIEN: (Inaudible.)

MR. LEARMONTH: Okay.

Now, Exhibit P-02267, it's tab 127, Mr. Argirov.

MR. ARGIROV: Tab 127, yes.

MR. LEARMONTH: Okay, now here you're making some negative comments about Jim Gordon. You're saying – this is an email from you to a number of people at Nalcor, also at NRCan and your legal counsel. You say: "Just FYI.

"This is what I have to deal with. Looks like the opponents have a long reach. They even try to

influence the independent engineer internally. Ingenious!

"Good old Jim... they are using him well. My question to you is who funds the Cabot Martin 'enterprise'? Makes me wonder if Hydro Quebec have something to say about it...."

Now to start off with, what – you're referring to Jim Gordon, right?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

And what was your relationship, if any, with Jim Gordon?

MR. ARGIROV: Oh, I knew Jim for quite a long time and I respect Jim very much.

MR. LEARMONTH: Yeah.

MR. ARGIROV: He's one of the biggest contributors to hydro engineering development in Canada and the knowledge of hydro-technical engineering and so on.

MR. LEARMONTH: Right.

MR. ARGIROV: I know Jim personally. He knows me, too.

MR. LEARMONTH: Right.

MR. ARGIROV: It wasn't anything negative that I was commenting about Jim here or anybody else. It was the process that happened and somehow he tried to go around and to talk to somebody from MWH who was – I think probably he met him during Hydro-Québec technical sessions with one of the technical committees.

MR. LEARMONTH: So are you suggesting that he, sort of, went around your back and talked to someone at your employer without your knowledge.

MR. ARGIROV: Well, it wasn't exactly behind my back, but we were independent engineer –

MR. LEARMONTH: Yes.

MR. ARGIROV: – so we cannot be influenced by anybody in such a way. So that was my reaction.

MR. LEARMONTH: Okay.

And then you say: “Also” – this is to Mr. – you say: “Also, you should perhaps give Dr. Bernander a retainer. Hire him on some kind of advisory capacity so instead of criticism he might provide a constructive idea. He might be just fishing for that.”

Can you comment on that statement?

MR. ARGIROV: Well, I guess I was trying to make a bad joke.

MR. LEARMONTH: Yeah.

MR. ARGIROV: It wasn’t – it was attempt to be humorous which was I guess not very – a very –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – positive thing to do, and I apologized for that.

MR. LEARMONTH: You apologized for saying that?

MR. ARGIROV: Yes. That’s right.

MR. LEARMONTH: Yeah.

You weren’t serious, were you?

MR. ARGIROV: No, I wasn’t.

MR. LEARMONTH: No.

Now, I know that you’ve said that you can’t really say anything more about the North Spur given your background as a structural engineer, but there is a report here – a lecture by Stig Bernander at P-02267. There’s a Lecture by Dr. Stig Bernander on “Quick Clay” and The North Spur. Memorial University, St. John’s, October 31, 2014.

Now, I know you’re not a geotechnical engineer and you’re –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Do you agree that your knowledge of matters relating to the North Spur is rather limited? Your personal knowledge.

MR. ARGIROV: Correct.

MR. LEARMONTH: Yes, okay. But what, if any – I mean, Dr. Stig Bernander’s a world-renowned expert – or has been considered that – on quick clay. What, if any, weight did you give to the findings of Dr. Stig Bernander, which were at odds with the preponderance of the findings by Hatch and SNC-Lavalin and the peer-review committee? What weight, if any, did you give to his presentations on this issue?

MR. ARGIROV: Okay. Once again, I have to clarify. Our mandate is not to make analysis of all the reports; our mandate is to follow the process and to see how the designers and the engineers are addressing different issues.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And our opinion was based on what SNC and Nalcor has provided and also how they will address the issues with Dr. Bernander – or the issues that he raised. And I think they addressed those issues very successfully.

MR. LEARMONTH: Okay, and that’s all you can say on that, is it?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay. So that’s the same – are we getting back to the same point that you made a couple of times earlier this morning that your work was a high-level –

MR. ARGIROV: Correct.

MR. LEARMONTH: – review –

MR. ARGIROV: Review.

MR. LEARMONTH: – in all aspects.

MR. ARGIROV: Absolutely.

MR. LEARMONTH: Okay.

Exhibit 02268, which is at tab 128. This is a February 2 email from Mr. Harrington to James Meaney and others – Mr. Pellerin. It says: “here are my comments to your draft- the decision has been made not to proceed with the ICS on units 3 and 4 recently so I would suggest rewording as indicated” Now, do you know when the decision was made to abandon the work and tear – eventually tear down the ICS? I think it was torn down in May, but do you know when the decision –

MR. ARGIROV: No.

MR. LEARMONTH: – was made?

MR. ARGIROV: No. I guess you have to refer to Nalcor or Astaldi.

MR. LEARMONTH: Yeah, 'cause I don't think it was reported until May or some day in May, but anyway –

MR. ARGIROV: Correct.

MR. LEARMONTH: – you don't know –

MR. ARGIROV: Yeah.

MR. LEARMONTH: You don't have any information on that, do you?

MR. ARGIROV: That's right, yeah.

MR. LEARMONTH: Okay. And just for – you've described the ICS structure – and perhaps we can just show for people that are interested. If we turn to page 65 of Exhibit P-02268 – 65, 66 and 67 – if we can just go through those slowly, then you can see the size of the – and the type of structure that the ICS was.

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: Are those good representations of what you were referring to earlier?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

MR. ARGIROV: Yeah, that was exactly my point here.

MR. LEARMONTH: Tab 131. That's exhibit P-02271. It's an email from you to Anthony Embury. Now that's a new name. Who is Anthony Embury?

MR. ARGIROV: Oh, he was one of the project control people –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – for Nalcor's team.

MR. LEARMONTH: Yes.

And – yes. He's –

MR. ARGIROV: Project controls manager.

MR. LEARMONTH: Yeah.

And on the – on page 2 of that exhibit, 02271, and this is an email that Mr. Embury sent to you. It says: “As to your comment of timely up to date contractor reports, this has been an ongoing issue due to completeness and accuracy of the contractors information which we have not accepted to date, however, this has been corrected, we are awaiting the contractors submission of all outstanding reports. The Project team is continuously addressing outstanding reports for either tardiness or resubmission due to incorrect or missing information.”

And this was in response to an earlier email that you sent, which is – the emails are on pages 3, 4, 5, 6 and 7, where you're expressing concern about the quality and frequency of the reports?

MR. ARGIROV: Correct.

MR. LEARMONTH: Can you give me some of – some insight into that problem, as you understood it to be?

MR. ARGIROV: Yeah.

As far as (inaudible) –

MR. LEARMONTH: And this is February 24 –

MR. ARGIROV: Yes. Yes.

MR. LEARMONTH: – 2015.

MR. ARGIROV: Some of the reports that contractors were presenting, submitting every month, they were not following exactly the format that Nalcor has established. And there were different interpretations or sometimes missing information. And Nalcor constantly were turning back these reports. So, it was – sometimes they passed them on to me, as well, because I'm expecting to see something. And then there were gaps in the reports or some wrong figures.

So, Nalcor had put the requirements for monthly reporting in the procurement documents of each contractor and they were – and they started after certain periods, started to report consistently.

MR. LEARMONTH: Okay.

MR. ARGIROV: Some of them still struggled, but ...

MR. LEARMONTH: Was there a – were there variations in the quality of the reports that were received by you?

MR. ARGIROV: Oh, correct. Yes, yes. Yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: That was – that's – particularly in this time, and there was quite a bit of variation and that's why Nalcor's project control team was struggling with their own review of these reports.

MR. LEARMONTH: And where – was Astaldi the main culprit?

MR. ARGIROV: No, not all of them.

MR. LEARMONTH: No.

MR. ARGIROV: No.

MR. LEARMONTH: Who was?

Or, I shouldn't put it that way. Should put it – which companies were not meeting the expectations and the requirements for reporting?

MR. ARGIROV: Sometimes company like, for example, one was for provider of – vendor for the transformers. They were providing little bit their own pattern of – or format of reporting, which in a way is okay, but it's out of the format that was established and was creating confusion.

MR. LEARMONTH: Would –

MR. ARGIROV: (Inaudible) –

MR. LEARMONTH: – that be ANDRITZ?

MR. ARGIROV: No, ANDRITZ actually was doing quite well.

MR. LEARMONTH: Okay.

MR. ARGIROV: And the other was Nexans.

MR. LEARMONTH: Okay, Nexans, okay.

MR. ARGIROV: Nexans –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – was doing really, very well as well.

MR. LEARMONTH: Okay.

MR. ARGIROV: There are always some questions that could arise during my review of those reports and they are related to cost figures or some potential requests for change orders or change orders. So, I clarified those things and also progress figures.

So, some of the reports were struggling with the correct representation of the progress figures.

MR. LEARMONTH: Okay.

And what about GE, what was the quality of their reporting?

MR. ARGIROV: GE was mixed quality.

MR. LEARMONTH: Mixed.

MR. ARGIROV: Yes, sometimes, and they had three contracts. So, one of them – well, at that time, even at the beginning it was still Alstom and that was –

MR. LEARMONTH: It was Alstom, yeah.

MR. ARGIROV: Yes, and that was the period of transition from Alstom to GE. So there was quite a bit of adjustment there as well.

MR. LEARMONTH: Well, Alstom was bought out by GE.

MR. ARGIROV: By GE, yeah.

MR. LEARMONTH: Yeah, okay.

Okay, then, at tab 132 is the next exhibit, P-02272.

MR. ARGIROV: Okay.

MR. LEARMONTH: And this has to do with the stay ring problem.

MR. ARGIROV: Okay.

MR. LEARMONTH: It's a lengthy, detailed comprehensive report by ANDRITZ.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: I'd just like you to give us a brief overview of what – the nature of this problem, the stay ring problem.

MR. ARGIROV: It's not a problem. It's –

MR. LEARMONTH: Okay.

MR. ARGIROV: – just a part of the design and engineering process that a vendor like ANDRITZ will – or anybody that is fabricating turbines will go through. And we requested just to see the evidence that this has been done.

MR. LEARMONTH: Yeah.

MR. ARGIROV: The stay ring is one of the heavily – the most heavily stressed with load parts of the turbine, because it – on top of the stay ring there is a big part of the roof of the spiral case concrete, and then it is the generator (inaudible) and generator support bracket for the rotor, so the whole weight of all of this massive equipment and concrete goes through the stay ring, and goes down into the foundation around the draft tube.

R. LEARMONTH: All right. Okay.

MR. ARGIROV: So it's very important that this is analyzed properly.

MR. LEARMONTH: Okay, so this was a standard type of –

MR. ARGIROV: Absolutely, yeah.

MR. LEARMONTH: – analysis?

MR. ARGIROV: Yeah. That's –

MR. LEARMONTH: Didn't –

MR. ARGIROV: – right, yeah.

MR. LEARMONTH: – result from any problem that –

MR. ARGIROV: Oh –

MR. LEARMONTH: – (inaudible).

MR. ARGIROV: – no, no, no, no, it's –

MR. LEARMONTH: Okay.

MR. ARGIROV: – it was just a request to see if they're following the quality process –

MR. LEARMONTH: Okay.

MR. ARGIROV: – and –

MR. LEARMONTH: And they were, were they?

MR. ARGIROV: Oh, absolutely.

MR. LEARMONTH: Yeah.

Tab 133, Exhibit P-02273. Now, this is a reference to the fact that you, on – on or about April 14, 2015, you were leaving MWH. It says – this is an email from James Meaney to Gilbert Bennett and Paul Harrington: "Just got a call from Alison Manzer...Nik is going to be announcing this week he's leaving MWH. Tired of the internal politics, particularly dealing with folks in US headquarters."

Okay, so you had decided at that point you were gonna leave –

MR. ARGIROV: Yes, yeah.

MR. LEARMONTH: – the company, and obviously the question would be: Would you be able to continue on to be independent engineer if you were asked to be, and what relationship – what type of contractual arrangement could you enter into with MWH if you were gonna continue on in the role?

Is that it, generally?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

And there were problems, were there? It was a lengthy negotiation with MWH, is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

And then we look at tab 138, Exhibit P-02278, and there's a – this is an email from Patrick Corser to James Meaney and others.

Who's Patrick Corser?

MR. ARGIROV: Well, Patrick Corser became the manager of the office.

MR. LEARMONTH: Yeah.

MR. ARGIROV: He came from Denver.

MR. LEARMONTH: Yes.

MR. ARGIROV: He was a mining engineer and also vice-president.

MR. LEARMONTH: Okay.

And, just to flip through a few more emails on this – I don't wanna go on too long on it.

In – at tab 139, Exhibit P-02279, James Meaney writes on May 20, 2015 to Gilbert Bennett, Paul Harrington, Steve Pellerin and others that: "FYI....email to follow from Nik which I

received during this exchange ... He advised they are still at an impasse ..."

I take it that negotiations weren't going well at that point, is that correct?

MR. ARGIROV: Yes, but the main issue is their request for – which was a very reasonable, but not reasonable in terms of time – but the process of quality control and they wanted to impose on my work was not possible because of the time frame that I had for issue the draw confirmation certificates. And I didn't have much time.

You could imagine that there are a lot of monthly contractors' reports that need to be reviewed and a lot of times I was issuing the two certificates in the last moment, 5 o'clock or even sometimes past. And they needed a day or two to do their own review. So that was the process that we did not agree. But this was settled –

MR. LEARMONTH: Yes.

MR. ARGIROV: – after.

MR. LEARMONTH: I'm just going to refer to –

THE COMMISSIONER: So who – I'm just trying to follow this; to be honest with you, I'm a bit lost. So who was the dispute between?

MR. ARGIROV: Oh, me and MWH.

THE COMMISSIONER: Right. So – 'cause MWH had come back and suggested somebody else, but that you would work as an independent contractor, and then they were trying to work out arrangements between you and them.

MR. ARGIROV: Between me and Canada.

THE COMMISSIONER: Right.

MR. ARGIROV: Not between me and Canada, between me and MWH.

THE COMMISSIONER: Right, right.

MR. ARGIROV: Correct.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Yeah. Okay –

THE COMMISSIONER: All right.

MR. LEARMONTH: Sorry – is that all –

THE COMMISSIONER: Yeah, I'm just trying to follow along here, 'cause I'm – I was losing –

MR. LEARMONTH: Okay, so –

THE COMMISSIONER: – what just happened here.

MR. LEARMONTH: All right. So, just to summarize, Nalcor – Canada wanted to continue on with your services.

MR. ARGIROV: Correct, Canada (inaudible) continued.

MR. LEARMONTH: Nalcor wanted – was happy to continue on with you serving as independent engineer.

MR. ARGIROV: I think Nalcor –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – and Emera was okay with me.

MR. LEARMONTH: And Emera was.

MR. ARGIROV: Emera, absolutely.

MR. LEARMONTH: So the only thing that had to be resolved was the contract for the independent engineer was with – between MWH-Canada.

MR. ARGIROV: Correct.

MR. LEARMONTH: And so there had to be some legal document arrived at whereby you would be able to continue on with the work to the satisfaction of both MWH and Canada and all the other parties, is that right?

MR. ARGIROV: Not exactly, because the independent engineer contract was not changed.

MR. LEARMONTH: Right.

MR. ARGIROV: It was MWH that is providing –

MR. LEARMONTH: Yes.

MR. ARGIROV: – this.

MR. LEARMONTH: Yes.

MR. ARGIROV: It was internal contract between me and MWH only that was required just for my services to be agreed upon.

MR. LEARMONTH: Yes, and there was –

MR. ARGIROV: And I was working as a subcontractor to MWH.

MR. LEARMONTH: Right.

And tab 141 is the consulting services subcontract, which reflected the resolution of this issue, is that correct? It's Exhibit –

MR. ARGIROV: Correct, yes. Yeah.

MR. LEARMONTH: – P-02281.

MR. ARGIROV: Yes, correct.

MR. LEARMONTH: Okay, so does this – now that you – this was put in place on – it doesn't say the date I don't think.

MR. ARGIROV: I think it was the end of May.

MR. LEARMONTH: Yeah.

And it –

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: – this contract is still in full force, is it?

MR. ARGIROV: Oh, no.

MR. LEARMONTH: Okay, what –

MR. ARGIROV: There was additional reassignment 2016 –

MR. LEARMONTH: Okay.

MR. ARGIROV: – end 2016 because what happened is, in this one year, MWH was bought out by Stantec, and then Stantec was already involved in a project and issues are raised that they cannot be actually legally independent because they're already in a project. So that's how the additional transfer was – proceed with?

MR. LEARMONTH: Yes.

MR. ARGIROV: And everything was transferred from MWH to Argirov Engineering.

MR. LEARMONTH: So everything is satisfactory now is it?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

And there hasn't been any disruption in the services that you provide as independent engineer, is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

Volume 9, Mr. Argirov.

Now there are a number of reports here, you know, where – your site reports to the project. They speak for themselves; I'm not going to go through them in detail, but just to get to your – they were – every six months you went to the site?

MR. ARGIROV: Approximately.

MR. LEARMONTH: Yeah.

Twice a year?

MR. ARGIROV: Twice a year, and sometimes three times if there's some interesting moments like, for example, completion of the North Spur, construction work or something else that becomes a milestone.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Or particularly, was – at that time actually, most interesting was the SOBI completion –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – and I had to – we had to be right on site to observe final tests. And even the final moments of completion and jointing the cables.

MR. LEARMONTH: But on the North Spur you said you're just going to have to look and observe it because you would be able to –

MR. ARGIROV: Correct.

MR. LEARMONTH: – to analyze it from a geotechnical perspective, could you?

MR. ARGIROV: Oh no, I was always together with my geotechnical expert.

MR. LEARMONTH: Okay.

And that was, again, Mr. –?

MR. ARGIROV: Until the transfer for MWH to Argirov Engineering was Mr. John Young.

MR. LEARMONTH: John Young, yeah.

MR. ARGIROV: Yeah.

After I had another individual, also expert – geotechnical expert. Him – his name is Tim Little.

MR. LEARMONTH: Okay.

And they're geotechnical engineers?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

MR. ARGIROV: Tim Little is actually the chief engineer of BC Hydro.

MR. LEARMONTH: He is now?

MR. ARGIROV: Not now, he retired but he was –

MR. LEARMONTH: Oh and you –

MR. ARGIROV: – 5 years ago.

MR. LEARMONTH: – and you took him on as a consultant to do this work –

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: – did you? Okay.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: At the moment, actually, he is also independent engineer for Site C.

MR. LEARMONTH: He is?

MR. ARGIROV: Yes.

But that's slightly different mandate and different type of independent engineer.

MR. LEARMONTH: Okay.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Tab 146 is Exhibit P-02286.

Now on page 1 there's an email Friday, September 11, 2015, from you to James Meaney. You say: "further to the yesterday conference call re: Astaldi Advance Letter please advise if Nalcor is receiving Monthly Progress Reports from Astaldi.

"If Nalcor does receive these reports, why are they not provided to the IE?

"Conversely, if Nalcor is not getting such reports, please advise why not. The Monthly Progress Reporting is a contractual obligation and it is very unusual that Astaldi is the only Contractor not providing reports.

"In addition, please provide current progress metrics for the Astaldi contract (CPI, SPI) as well as budget estimates to completion."

What caused you to write this email on – to Mr. Meaney on September 11, 2015?

MR. ARGIROV: The lack of Astaldi's reports.

MR. LEARMONTH: Yeah.

MR. ARGIROV: So –

MR. LEARMONTH: But was it Nalcor's duty to – or obligation to get these reports to you from Astaldi?

MR. ARGIROV: Correct.

MR. LEARMONTH: You know, Astaldi –

MR. ARGIROV: Nalcor is providing this information.

MR. LEARMONTH: Yeah.

MR. ARGIROV: I think they put them in data room.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And I receive them from the Nalcor's team of project controls.

MR. LEARMONTH: Yeah.

But the fact is you weren't receiving them? That was the –

MR. ARGIROV: Oh that's right, yeah. They were not produced anyway.

MR. LEARMONTH: Yeah.

Okay tab – and that – so that was starting to be a building concern for you? Or a growing concern?

MR. ARGIROV: Yeah it was starting to be a concern because I was not getting the right information that my mandate requires.

MR. LEARMONTH: Right.

Now – and that, once again can – has the potential to put you in a bad position as far as your client is concerned? That you're not providing them with updated information –

MR. ARGIROV: Well –

MR. LEARMONTH: – because you're not receiving it?

MR. ARGIROV: Of course, but I mean I was communicating this to Canada and they were very much aware that that is the case and, of course, we raised the issue.

MR. LEARMONTH: Okay.

MR. ARGIROV: And I had to raise the issue.

MR. LEARMONTH: Tab 147 is Exhibit P-02287, "Muskrat Falls Project Update, Government of Canada/Independent Engineer, September 28, 2015."

Now, if we turn to page 25 of this report, P-02287, you can see that there's an increase in the cost estimate to \$7.653 billion. And that –

MR. ARGIROV: Correct.

MR. LEARMONTH: – had been an increase from the last figure you were using was 6.99. Is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

Now, did this just come out of the blue or was there some buildup to your receipt of this information, some forewarning?

MR. ARGIROV: Yeah, that's exactly what I was referring clearly, that back in spring I feared that there's an expectation that there is a cost that is starting to build up, but I didn't get any figures. I reported this to Canada, so we expected to see something, but we were quite surprised by the significant increase.

MR. LEARMONTH: Yeah. But there will be evidence I think, from Mr. Meaney, anyway, and perhaps others, that –

MR. ARGIROV: So –

MR. LEARMONTH: – in March 2015 the figure that they were using at that point was \$7.5 billion. Or, you know, it's a little bit off.

MR. ARGIROV: It wasn't reported to us.

MR. LEARMONTH: No, no. And so six months later you get this –

MR. ARGIROV: Exactly and it created quite a bit upset –

MR. LEARMONTH: Who was upset?

MR. ARGIROV: – between us.

MR. LEARMONTH: Who was upset?

MR. ARGIROV: I was and Canada was. Very much.

MR. LEARMONTH: And –

MR. ARGIROV: And we had to really very quickly address this issue and it was addressed.

MR. LEARMONTH: It was addressed.

MR. ARGIROV: That's right.

MR. LEARMONTH: But I want to refer to Alison Manzer's letter –

MR. ARGIROV: Right.

MR. LEARMONTH: – October 16, 2015, which is tab 150 and it's Exhibit P-02290. Now, if you go to page 2, 3 and 4 – it's a three-page letter.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Are you familiar with this letter?

MR. ARGIROV: Yes, I'm very much familiar.

MR. LEARMONTH: And this letter had to do with the information you just provided, that you got this sudden increase to 7.65?

MR. ARGIROV: Correct and with the gap in reporting as well. So it addressed many lingering issues that were every month they could be considered not significant, but when they start to collect after six months, and particularly when you get surprise. So it's such big jump and, of course, everything became significant.

MR. LEARMONTH: And they spent –

MR. ARGIROV: And we were concerned that we don't get the information.

MR. LEARMONTH: Yeah. And you knew at this point that Nalcor had the information much earlier –

MR. ARGIROV: Correct.

MR. LEARMONTH: – but didn't give it to you.

MR. ARGIROV: Correct.

MR. LEARMONTH: Correct?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

Okay, just page – on page 2 which is the first page of this letter to James Meaney from Ms. Manzer: “I am writing further to our recent telephone conference, being the Muskrat Falls Project update call with Canada and the Independent Engineer on Monday, September 28 ... The review during the course of that call was surprising to both Canada and to the Independent Engineer, as to a number of matters but most particularly as to the cost overruns identified, for the first time, during the course of that call. Both Canada and the Independent Engineer feel that the buildup of these cost overruns, and a proper estimate of further anticipated cost overruns, should have been identified on a month to month basis in the course of the regular reporting, and the recently held site visits. Canada is not prepared to proceed with the current reporting regime, without amendment, as it cannot accept significant cost overruns building, and being identified, late in the review process, and before they are able to provide input to properly recognize Canada's concerns in the setting of cost estimates, and contingencies. Accordingly Canada requires that we hold an all hands meeting, and work to a revised reporting process which will avoid these types of unreported, and unresponsive, identification of delay and cost”

Was that a fair reflection of the concern that you had

MR. ARGIROV: Very fair.

MR. LEARMONTH: Okay.

And then there's a list and it goes on – I'm not going to go through the entire letter but I will ask you to turn to page 4 – after the 7 at the top: “The Independent Engineer is responsible to ensure that Canada is kept appropriately, and timely, advised as to status, progress, costing, and in the context of that responsibility is required to ensure that the monthly approvals of the funding and progress draws are accurately and appropriately reflected. The Independent Engineer is also responsible to ensure that the cost overruns are suitably costed. At this time there is a significant concern that appropriate contingencies and estimates have not been included with regard to the power house and” – the – “HVDC transmission line, and the potential for further delay, or costs to avoid such delay. As a consequence we also require item #8 to the agenda to be a discussion of the contingency and estimate process, and a discussion as to a mutually acceptable” manner “to use for the cost overrun estimates which will be used for the cost overrun process and protocol for this year. We suggest that this discussion must go forward sooner than later.”

So there's a certain tone of urgency to this. Like, this has to be dealt –

MR. ARGIROV: Absolutely. Yes.

MR. LEARMONTH: – with right away.

MR. ARGIROV: Yes.

MR. LEARMONTH: And I'd also point out the last paragraph which I suggest underlines the seriousness that Ms. Manzer feels about this issue: “If this cannot be suitably done in this manner, then the Independent Engineer will need to take this into account in their approval of the monthly draws, their reporting of site and related visits” – to ensure suitable – “among other matters, which we would prefer to avoid.

However Canada has its responsibilities to ensure suitable and appropriate management of the costing of the project, and the Independent Engineer has its responsibilities to Canada in this regard, all of which must be suitably recognized in the review and reporting process.”

So this was – the effect of this is that if this isn’t straightened up –

MR. ARGIROV: Correct.

MR. LEARMONTH: – you’re not getting any more money.

MR. ARGIROV: Correct.

MR. LEARMONTH: Is that a fair –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – way to put it?

MR. ARGIROV: That was – we were very serious.

MR. LEARMONTH: Yeah. Okay.

And then eventually you had negotiations and eventually with Mr. Meaney – I guess there was an all-hands meeting as Ms. Manzer referred to.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: And there was a protocol agreed to on reporting.

MR. ARGIROV: Correct.

MR. LEARMONTH: And I think you can see that at –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – tab 152, which is a P-02292 exhibit. Is that the protocol that – I don’t have the signed copy but, to your knowledge, was that draft eventually signed?

MR. ARGIROV: Oh yes, yeah.

MR. LEARMONTH: It was.

MR. ARGIROV: Absolutely, yeah.

MR. LEARMONTH: So, since –

MR. ARGIROV: You can see how formal –

MR. LEARMONTH: Yeah.

So since that –

MR. ARGIROV: – and serious.

MR. LEARMONTH: – I wouldn’t call it a confrontation but since that, you know, discussion, what comment would you make on the reporting that you’ve received since then?

MR. ARGIROV: Everything became very smooth and transparent.

MR. LEARMONTH: Okay.

MR. ARGIROV: And we never had any further concern –

MR. LEARMONTH: Okay.

MR. ARGIROV: – with such a matter.

MR. LEARMONTH: Tab 153, Exhibit P-02293, this is – and on page 3 you can see this is a Meeting in St. John’s and Visit to Muskrat Falls, September 21, 2013. Just a couple of questions I have. And this has to do with the discussion that I – we had this morning about, you know, changes to reports and when is it appropriate for someone in a position in Nalcor to suggest changes to your reports.

And if we just go to page 11, if you look – and this is Mr. Pellerin. At page 11, under – right at the top of 6, Powerhouse/Tailrace, it says: “Astaldi’s progress on ~~for~~ the powerhouse ... is ~~considerably~~ behind schedule” you wrote.

And then Mr. Pellerin says: “Can we drop the qualifier? It is better qualified elsewhere ... and not really an observation made or discovered during ... the visit.” So he wants you to take out considerably.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: And I realize this isn't the end of the world or anything like that –

MR. ARGIROV: Mmm.

MR. LEARMONTH: – but is that the type of comment that you feel is appropriate for someone in Nalcor's position to make?

MR. ARGIROV: I don't have issue with a comment like this.

MR. LEARMONTH: Yeah.

MR. ARGIROV: First, this is a report from Canada and they have seen the draft.

MR. LEARMONTH: Okay.

If they have?

MR. ARGIROV: (Inaudible). Of course.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Second, when I reported the schedule as behind, considerable or not considerable really doesn't make any difference. It is always considerable.

MR. LEARMONTH: Right, or you wouldn't –

MR. ARGIROV: Otherwise, how are we gonna report it?

MR. LEARMONTH: Okay.

So you – there was no problem with that from your point of view?

MR. ARGIROV: No, no.

MR. LEARMONTH: And Canada knows that – what your draft said and they know the change –

MR. ARGIROV: Oh, absolutely.

MR. LEARMONTH: – so it's – there's no –

MR. ARGIROV: Absolutely.

MR. LEARMONTH: – concealment of the –

MR. ARGIROV: Canada (inaudible) –

MR. LEARMONTH: – (inaudible)?

MR. ARGIROV: Absolutely.

MR. LEARMONTH: Right, and likewise, the word at the bottom paragraph of page 11. So you put in your – of Exhibit P-02293: "Work is progressing at the powerhouse but there has been ~~serious~~ schedule slippage for this structure." Now he says –

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: – Mr. Pellerin: "Can we drop the qualifier? It is better qualified outside a trip report as it is not really an observation made or discovered during the site visit." Once again, same –

MR. ARGIROV: Once again, it's same – one small qualifier doesn't change the fact that the schedule slipped.

MR. LEARMONTH: Okay.

All right, the –

MR. ARGIROV: Sometimes laughable comments, so ...

MR. LEARMONTH: Yeah.

Well anyway, I did – we just want to get – because that's been an issue that's come up. The change in reports is appropriate, and I understand your evidence on it.

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: You have no problem with them proposing them to you. You make the call eventually, and they can –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – suggest whatever they want. Is that the way it is?

MR. ARGIROV: Absolutely, yeah.

MR. LEARMONTH: Okay.

THE COMMISSIONER: So just on that point – so, you’re providing your report to Canada.

MR. ARGIROV: Correct.

THE COMMISSIONER: I’m assuming you’re the expert that they’re relying on and –

MR. ARGIROV: Correct.

THE COMMISSIONER: – they don’t – likely some of the people in Canada wouldn’t have real knowledge about construction to the degree, certainly, that you would have, correct?

MR. ARGIROV: Mmm.

THE COMMISSIONER: Some of the people you reported to?

MR. ARGIROV: Correct, because they’re not engineers.

THE COMMISSIONER: So, if I was putting myself in their shoes, and I was getting a report, if I were to look at a statement like: Astaldi’s progress on the powerhouse construction is considerably behind schedule –

MR. ARGIROV: Mm-hmm.

THE COMMISSIONER: – and then I were looking at another one that said: Astaldi’s progress on the powerhouse construction is behind schedule, I would tend to think that I would be more concerned about the first statement than I would about the latter one.

MR. ARGIROV: However, if I could (inaudible).

THE COMMISSIONER: Right.

MR. ARGIROV: However, Canada is kept very much on line with exactly how far Astaldi is and they were not in the dark. They’re not unaware of what is going on, and they have also the draft report.

THE COMMISSIONER: Right, but this is your –

MR. ARGIROV: So they see the comments.

THE COMMISSIONER: – but what’s the point of – I’m still just trying to sit here and figure out, well, what’s the point in making the change? Like, why –

MR. ARGIROV: Because –

THE COMMISSIONER: – if they already have the draft report that says this –

MR. ARGIROV: Mm-hmm.

THE COMMISSIONER: – it seems to me that if you change it, if I were looking at the report, I’d be saying to myself, well, maybe it’s not considerably behind schedule.

MR. ARGIROV: No, because I wouldn’t – we wouldn’t report that there was a schedule slippage if it is not considerable, or if it’s not serious. Otherwise, if the schedule slipped with one month or two months, this is not a big deal. They could achieve very quickly to compensate this lack. However, if there is a schedule slippage, that’s purely something that becomes a problem.

THE COMMISSIONER: I just don’t – yeah, anyway, okay –

MR. ARGIROV: Hmm?

THE COMMISSIONER: – that’s fine. Go ahead, Mr. Learmonth.

MR. LEARMONTH: Okay.

Tab 156, Mr. Argirov, is P-02296. This has to do with – is this the draft-tube issue – draft-tube problem on unit 2 – failure? P-02296.

MR. ARGIROV: Oh yes, that’s right, yeah. Yeah.

MR. LEARMONTH: Yeah.

Did you have any involvement in assessing that situation? Did you go to the site or was it just based on what –

MR. ARGIROV: Well –

MR. LEARMONTH: – reports you received?

MR. ARGIROV: – we went to the site to observe. And that was the site visit and we saw what happened. But then there was a forensic evaluation and report by third party. And yes, that was proceeding, as good as it could be.

MR. LEARMONTH: So you did your report and it was handled promptly by Nalcor, was it –

MR. ARGIROV: Yes.

MR. LEARMONTH: – the aftermath?

MR. ARGIROV: Yes. Yeah.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Yeah. Okay.

MR. ARGIROV: Yeah.

MR. LEARMONTH: The – and there was no injury or loss of life or anything like that?

MR. ARGIROV: No, no, no.

MR. LEARMONTH: Is that a serious –

MR. ARGIROV: Very lucky situation.

MR. LEARMONTH: – problem?

MR. ARGIROV: Could have been.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Could have resulted in a very serious issue.

MR. LEARMONTH: Did it cause any schedule delay to speak of?

MR. ARGIROV: It wasn't anything so significant, no, because they had the front for number 2, number 3 –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – units, so ...

MR. LEARMONTH: Okay.

Tab 157, Exhibit P-02297. And in this – on page 3, you're dealing with the change of management. So I guess the – this – you're writing this in – it's May 24, 2016. You're writing to Kapoor Anoop at NRC Canada, Joseph Krupski. You're reporting to Canada and your – and Canada's counsel. You know, the email speaks for itself. But I take it that you didn't think it was a good idea for there to be a change of management? That had to do with –

MR. ARGIROV: I wouldn't say – I can't –

MR. LEARMONTH: – Mr. Martin being replaced by Mr. Marshall.

MR. ARGIROV: Yes. I wouldn't qualify it in this way; whether it's a good idea or not, it was a risk.

MR. LEARMONTH: Okay.

MR. ARGIROV: And I had to – that's my duty, to identify risk.

MR. LEARMONTH: Okay.

So you were just pointing out this as a risk; you weren't saying –

MR. ARGIROV: Absolutely.

MR. LEARMONTH: – that it was gonna be realized. It was just a risk out there that had to be (inaudible).

MR. ARGIROV: (Inaudible) it's – it was business decision by Mr. Marshall. It is a risk that I had to identify.

MR. LEARMONTH: Okay. And we have at tab 159, Paul Harrington to Nik Argirov, an email June 6, 2016. It says:

“Nik

“I am fighting hard to keep the team together So I could not call you. I have decided to draft a letter to Stan Marshall”

He goes on: “This way I can keep the team reporting to me ... and able to finish the project.

“The alternative in my opinion is chaos and people quitting.”

So did you have a close relationship with Paul Harrington? It seems that, you know, he was –

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: P-02299.

MR. ARGIROV: No. I didn’t have close relationship, but Paul Harrington was the highest person at the ladder at that time.

MR. LEARMONTH: Yeah.

MR. ARGIROV: And he knew that I reported already my concern. And I think he referred back to me with his observations.

MR. LEARMONTH: Okay.

Tab 161, Exhibit P-02301. This has to do with that proud stranding issue. Are you familiar –

MR. ARGIROV: Correct.

MR. LEARMONTH: –with that?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

Can you explain the nature of that problem?

MR. ARGIROV: Well, what happen is one of the strings – the strands, actually, were under pressure from the other because the circumference –

MR. LEARMONTH: This is on the cable, right? The –

MR. ARGIROV: The cable.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Because the circumference of – okay, I should probably start with – I might bore somebody to death, but it is – those conductors are not standard. When it comes to DC lines, those conductors were newly designed. And in this case, somehow, whoever

did the design or maybe the manufacturer, when they were twisting in helical shape the strands –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – the circumference, the outside circumference of the conductor was perhaps shorter of portions of millimetre. However, when all this is under this tension and they placed the conductor on a tower so the tension will increase, this stress between the strands increase and was, actually, physically displacing one of them. So it was a strange issue but not unobserved. This have happened in some other projects as well.

MR. LEARMONTH: Okay.

Was there any determination as to fault? Or I think there’s legal action on the go with that? Is that correct?

MR. ARGIROV: I –

MR. LEARMONTH: Okay, we’ll leave that alone.

MR. ARGIROV: – don’t know the legal side, but there was insurance coverage.

MR. LEARMONTH: Yeah, okay. Well, then we’ll leave that alone, okay?

MR. ARGIROV: Yeah.

MR. LEARMONTH: Because I don’t think the issue’s been resolved.

Now tab 162, Exhibit P-02302. As we know, Mr. Marshall did replace Mr. Martin as a CEO. And in this email dated July 7, 2016, from Mr. Harrington to you, it speaks for itself – P-02302 – but he seems to be suggesting that there was going to be irreversible damage to the schedule because of this change in management. Is that your –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – take on it?

MR. ARGIROV: Sure, yeah. That was his observation of risk.

MR. LEARMONTH: But it didn't materialize, did it?

MR. ARGIROV: No.

MR. LEARMONTH: In fact, wasn't the schedule accelerated after Mr. Marshall came?

MR. ARGIROV: No, I think it was kept to the same level. It did not deteriorate it either.

MR. LEARMONTH: Okay. So there was no – so the risk that you pointed out didn't materialize?

MR. ARGIROV: No.

MR. LEARMONTH: That doesn't mean it wasn't the risk, I understand that –

MR. ARGIROV: Correct.

MR. LEARMONTH: – but it didn't –

MR. ARGIROV: Yes.

MR. LEARMONTH: – materialize.

MR. ARGIROV: Yes.

MR. LEARMONTH: Correct?

MR. ARGIROV: Correct. Yeah.

MR. LEARMONTH: All right.

And we talked about that the subcontract and then the – eventually, the assignment. I think if you look at tab 167, Exhibit P-02307, this is the confirmation about the assignment of the contract to your company. Is that right? You say: On November 4, 2017 –

MR. ARGIROV: Oh, yes. That's right, yeah. Yeah.

MR. LEARMONTH: "I spoke with John Wood who is the internal counsel at MWH."

MR. ARGIROV: Yeah, correct.

MR. LEARMONTH: "They understand the issue" So this is the final document that

followed the subcontract document I referred to just a little while ago?

MR. ARGIROV: This was the final one that –

MR. LEARMONTH: Yes.

MR. ARGIROV: – when everything was transferred from Stantec or MWH to Argirov Engineering.

MR. LEARMONTH: Right.

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay. Now, there were – I want to turn to the contracts, well, actually there's a few documents I wanna just –

THE COMMISSIONER: Is it a – might this be a good time to break for the – for your – for the afternoon break, Mr. Learmonth. Or did you wanna continue?

MR. LEARMONTH: I've only been an hour. I'd prefer to go a little longer, but I'm obviously in your hands. If you want to wait or break now, it's fine. I'll just get this organized, that's fine.

THE COMMISSIONER: Okay.

Let's take our 10 minutes now then. We might have to – looks like we're a little bit behind on this witness, so we may have to sit a little bit later this afternoon and certainly into tomorrow morning.

MR. LEARMONTH: Well, I'm towards – near the end.

THE COMMISSIONER: Okay, no problem.

MR. LEARMONTH: Yeah.

CLERK: All rise.

Recess

CLERK: All rise.

THE COMMISSIONER: Mr. Learmonth.

MR. LEARMONTH: Thank you. There's a few exhibits I just want you to identify. I don't want to go into any detail on them.

If we go to tab – or book 9, tab 172. This is the – P-02338. This is the Reliance Agreement we referred to earlier between Muskrat Falls Corporation and all the other Nalcor subsidiaries.

MR. ARGIROV: Correct.

MR. LEARMONTH: And that was dated November 29. And it was dated that day because that's the date that those agreements with those entities were signed. Is that right?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay, fine. The next is the – at tab 173, Exhibit P-02339 – Assignment, Assumption and Consent Agreement. Are you familiar with this? This was – this document?

MR. ARGIROV: Correct.

MR. LEARMONTH: And that was the document that you signed, is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Yeah.

And the third is a – at tab 174, Canada Acknowledgement and Consent dated July 21, 2014. Can you confirm this is the acknowledgement that Canada gave on page 4 of that exhibit, P-02340, to Nalcor's agreement to provide information to the Province of Newfoundland?

MR. ARGIROV: Correct.

MR. LEARMONTH: Correct. And tab 175, Exhibit P-02341. This is the Consent and Agreement between the independent engineer and – and refers to the Reliance Agreement and so on. Can you identify this document as being the Consent Agreement that's in full force and effect?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay. And the signature pages are on page 4 and 5. Correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay.

Now, the – I want to discuss – I've already (inaudible) some of the reports that you've prepared, and according to my calculations there were six draft reports prepared and there was then the one – the final report dated December 30, 2013.

Is that correct, to your knowledge?

MR. ARGIROV: Perhaps, yeah.

MR. LEARMONTH: Okay, March – okay, if you go to volume 2. It'll be tab 27. It's Exhibit P-02169.

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay, so this is the first report. Is that correct?

MR. ARGIROV: Correct.

MR. LEARMONTH: Okay. And do you agree that there was no information on costs or anything in this report?

MR. ARGIROV: Yes.

MR. LEARMONTH: Capital budgets?

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: If you go to –

MR. ARGIROV: It appears to be.

MR. LEARMONTH: If you go to page 86 of Exhibit P-02169, section 5, Capital Budget. And then if you go to – that's page 85, and then if you go to page 86, you'll see under – excuse me, page 87, Total Project Cost Estimate Total Cost Estimate Methodology and then 5.1.2 Evaluate Cost Estimate and Fixed Price Estimates and so on. So this is just – there's no information on that. Would I be correct in saying that this is, well, a little bit more than a template but it has – it's just that you're –

MR. ARGIROV: Correct.

MR. LEARMONTH: – setting up the format –

MR. ARGIROV: Yes.

MR. LEARMONTH: – of your reporting in the future.

MR. ARGIROV: Yeah.

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

MR. ARGIROV: That's right.

MR. LEARMONTH: Okay.

The next document is the July 2, 2013, report, and that's in volume 3, tab 33, Exhibit P-02175. Do you see that? July 12 – sorry, I said July 2 – July 12, 2013.

MR. ARGIROV: Okay.

MR. LEARMONTH: Okay.

And, once again, on page 95, once again under 5.1.2, Evaluate Cost Estimate and Fixed Price Estimates: "Currently under review. No comments are yet available."

So this is the same thing, there hadn't been sufficient work to develop –

MR. ARGIROV: Correct.

MR. LEARMONTH: – anything on that.

I will point out that there is – I don't know if you're aware of this – but there is evidence that this report, this July report, was made available – or Government of Newfoundland and Labrador was given access to this report by Nalcor, but whether they actually received it or took advantage of their right to access, we don't know. But that's the only one. I just mention that for the record.

So this report, there's not too much in this report, do you agree?

MR. ARGIROV: Yes.

MR. LEARMONTH: Apart from a little bit more development of the template (inaudible) –

MR. ARGIROV: Correct.

MR. LEARMONTH: – further reports.

Okay, then we have the report – October 21, 2013. That is in volume 4, tab 61, Exhibit P-02203

MR. ARGIROV: Okay.

MR. LEARMONTH: And you can see, on page 3, this is a draft of October 21, 2013.

MR. ARGIROV: Correct.

MR. LEARMONTH: Now, I'm not going to take the time to go through the whole report or we'll be here for the rest of the week. But I'm going to refer you to a few pages – a few excerpts from this report.

If you go to page 58 – well, it's actually starting on the bottom of page 57, okay: "Nalcor qualifies the cost ... as an AACEI Class 3 effort. MWH is in agreement with this classification and confirms the implied accuracy (-20% to +30%). While Nalcor adopted a P50 contingency based on" et cetera, "MWH expresses the opinion that the calculated overall 6.7 ... scope ... is aggressive relative to our legacy experience with similar remote construction endeavors that typically have a contingency reserve for known, but not specifically quantified risks approaching double that which is currently" seen.

"A separate allowance for unknown project risks" – would that be strategic risks as opposed to tactical, Mr. Argirov?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

"A separate allowance for unknown project risks, known as the management ... is provided by Nalcor as additional" And then: "MWH can confirm the establishment of the management reserve for LCP at a theoretical \$500M level, but the actual funding" – for – "this allowance is not described. As per AACEI

... the scope contingency is assumed to be spent during project execution while the management reserve is considered not to be spent” – entirely – “during project execution.”

Now, this refers to the fact that there’s – in similar remote construction endeavours there would normally be a contingency reserve that would be double what –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – Nalcor was having here?

We know in later versions of the draft reports it’s doubled to quadruple.

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: Yeah, so ...

So anyways so this is identified clearly as a problem, would you agree?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Absolutely.

MR. LEARMONTH: Yeah.

And in terms of this management reserve of \$500 million, when you have a management reserve to deal with strategic risk, is it not customary or industry practice to have it funded, you know, as part of your budget? You may not spend it, but to fund it?

Can you comment on that?

MR. ARGIROV: I mean, it definitely has to be funded, but it doesn’t always need to be part of the budget, showing in a project budget, but it should be indicated that management has such a reserve.

MR. LEARMONTH: Yeah, but it should be, so if it isn’t – it should be noted in the budget, in the capital cost estimates.

MR. ARGIROV: Well, at least should be mentioned that there –

MR. LEARMONTH: Yes.

MR. ARGIROV: – was be a management reserve.

MR. LEARMONTH: Okay.

Now, I just refer you to the Conclusions and Independent Engineer’s Opinions on – that’s section 10 of the report, pages 169 to 171. There’s more discussion of these same issues that – and also reference to the concern about the simplistic Gantt chart. That is in the last paragraph, 10.1.10. So this is a – an ongoing concern, the Gantt chart, as a – for the project milestones, is that right?

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: Okay. Now this report – this October report, you had said that – I think you said that the – was it the November 15 report – although you saw it after it had been issued on November 24 when it was sent back to you by Nalcor.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: But that you hadn’t seen the November 15 report before it was sent?

MR. ARGIROV: Correct.

MR. LEARMONTH: What about this report, the November – the October 21, 2013 –

MR. ARGIROV: No I don’t have a –

MR. LEARMONTH: – report?

MR. ARGIROV: – recollection exactly of this – where it was sent – when it was sent, actually. I don’t.

MR. LEARMONTH: Oh. I take it then Mr. Hokenson would have the authority to send draft reports without your review, is –

MR. ARGIROV: Correct.

MR. LEARMONTH: – that correct?

MR. ARGIROV: Yes.

MR. LEARMONTH: Okay.

Is that usual practice?

MR. ARGIROV: Quite usual, because the project manager is the – ultimately responsible for the delivery that he's working on.

MR. LEARMONTH: Okay. Now, the next report after the October 21, 2013 is a November 15, 2013, and that's the same volume 4. It's tab 72. And we've referred to this earlier. I'm just gonna go through some parts of it.

It's volume 4, tab 72, Exhibit P-01949. And I'd like you to turn to page 152 of that document.

Now, you can see on page 152 in the middle paragraph beginning with "While Nalcor adopted a theoretical P50 contingency," – some of this language is the same. Here's where you have that reference to – and I'll read the sentence, "the calculated overall 6.7% scope contingency is aggressive relative to our legacy experience with similar remote heavy-civil construction endeavors that typically have a contingency reserve for known, but not specifically quantified risks approaching double to quadruple."

So the – in the earlier report in October it was double. And now it's double to quadruple, which is, you know a significant difference.

Can you give us any information that would help us to understand why – in the course of roughly less than a month – why the project manager would – he would want to, you know, (inaudible) –

MR. ARGIROV: I agree this was expression of his frustration, of not getting the information that he expected to see. And to receive. And in this way, this is little bit even further challenging to what Nalcor was doing.

MR. LEARMONTH: Okay.

So just to get the picture, are you suggesting that Mr. Hokenson is saying, okay, I'm gonna get your attention, and I'm gonna put something in a report that will get your attention –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – and that will cause you to give me the information I've requested?

MR. ARGIROV: I assume that's the case because that's why he was putting these figures because he didn't have the correct information.

MR. LEARMONTH: Yeah. But that's just an assumption. That's just speculation on your part.

MR. ARGIROV: That's right.

MR. LEARMONTH: It also could've been that Mr. Hokenson had reflected on it and, you know, looked deeper into it and was – felt justified in using this language. Is that possible also?

MR. ARGIROV: I don't think there was much information that was provided between this and the previous report –

MR. LEARMONTH: Okay.

MR. ARGIROV: – for all that to happen.

MR. LEARMONTH: But you can't give us a definitive answer –

MR. ARGIROV: No.

MR. LEARMONTH: – can you? It's just –

MR. ARGIROV: But keep in mind, I mean, there was a quality control for all of this, as well.

MR. LEARMONTH: Yes.

So would quality control have to approve this report before it was issued?

MR. ARGIROV: Not approve it, but they would discuss this.

MR. LEARMONTH: Oh, they would discuss it.

MR. ARGIROV: Yeah. They were in the same office, I think, they would discuss –

MR. LEARMONTH: Okay.

MR. ARGIROV: – approach.

MR. LEARMONTH: The recommendations are on page 277. I won't go through them, except to point them out that – I think we've gone through this before but – "Within 120 days ... furnish to the IE a complete P6 CPM schedule" – and so on. Two, three and four on 277, we've referred to those earlier today, so I'm not gonna go over them again.

MR. ARGIROV: Okay.

MR. LEARMONTH: Okay, so that's the November 15 report.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: The next one is the November 27 report. And we've discussed that briefly here earlier today, I believe.

MR. ARGIROV: Yes.

MR. LEARMONTH: That's in volume 6, tab 95 and it's Exhibit P-02236.

Now, Mr. Argirov, it might strike some as a little unusual that, you know, two days before financial close, the deadline – a big deadline looming that there's a further draft report. Is that unusual?

MR. ARGIROV: I explained that earlier and I have no more explanation to this, Mr. Learmonth.

MR. LEARMONTH: Okay.

MR. ARGIROV: I believe that was the whole process of struggle to collect and to gather more information.

MR. LEARMONTH: Okay.

And once again, on page 120, 121, 124 and 125 of this report, we've – we have the double to quadruple language that's on page 120, the third – second full paragraph. And all the other information that I believe we've gone through today. So I'm not –

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: – gonna take it –

MR. ARGIROV: Yeah.

MR. LEARMONTH: – do you have anything further to say about this? You just – you really –

MR. ARGIROV: No.

MR. LEARMONTH: – can't comment can you?

MR. ARGIROV: Yeah.

MR. LEARMONTH: And the – just for the record – the recommendations are on pages 226, 227 and 228 of this report.

Now, the November 29 report – which I've referred to – it's in evidence, volume 6, tab 103, page 01958.

Now, we understand that Nalcor didn't actually receive this report until sometime – I think it was in February. Is there a reason why that report, the November 29 interim report, would not have been sent to Nalcor on November 29 before financial close? Do you have any – is there –

MR. ARGIROV: No, I think that was –

MR. LEARMONTH: – any reason for that?

MR. ARGIROV: – the process that for – established by Canada. And that's it. That – the report was not for Nalcor. It was for Canada.

MR. LEARMONTH: All right. So the report was prepared, it was given to Canada and –

MR. ARGIROV: Correct.

MR. LEARMONTH: – then Canada gave the guarantee?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah, okay. And then it was later sent to Nalcor.

Okay. Now, the December 30, 2013 report, which is P-01930.

Was this report sent to Nalcor? To your knowledge?

MR. ARGIROV: No, I don't know. Perhaps that was also sent to Canada.

MR. LEARMONTH: Yeah.

MR. ARGIROV: Only.

MR. LEARMONTH: And there were changes in that report from November – from the November 29 report to the December 30 report, correct?

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: Okay. And I just want to bring that up. I haven't got the reference. It's P-01930 I believe. 01930, okay.

P-01930. So that's tab – what book is that?

THE COMMISSIONER: (Inaudible.) Binder 10.

MR. LEARMONTH: Seventy-six. Volume 4, I think.

Oh yeah, we've got it brought up on the screen. So this report, to your knowledge, was not sent to Nalcor on December 30?

MR. ARGIROV: Yeah, not to my recollection.

MR. LEARMONTH: And there was qualification in the language. There was still – there were changes in the language dealing with contingency, is that correct?

MR. ARGIROV: Correct, yeah.

MR. LEARMONTH: Yeah.

So this would be further adjustments that were made by the – you know, like the numbers go back and forth.

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: They're lower and then they're higher and so on.

MR. ARGIROV: Correct, yes.

MR. LEARMONTH: Yeah, so –

MR. ARGIROV: I think this report went through the really final quality review.

MR. LEARMONTH: Pardon?

MR. ARGIROV: And at that time, also, I think information was coming from the award of the Astaldi contract.

MR. LEARMONTH: Yeah.

Now, I'm just – I haven't – I've lost my reference to it as to what tab it is, this report, the December 30 one. I just wanted to see if I could find it.

MS. O'BRIEN: There should be a large sheet.

MR. LEARMONTH: There is.

MS. O'BRIEN: Yeah, it's on (inaudible).

MR. LEARMONTH: Yeah, just give me a second here now. I've got it, yeah, 01930, but it's – 01930 is not here.

THE COMMISSIONER: Tab 176.

MS. O'BRIEN: Yes, it is.

MR. LEARMONTH: Okay.

Yeah, okay, binder 10, tab 176. Thank you.

Okay, so it's Exhibit P-01930. Now, if we go to capital budget, that's page – excuse me, capital cost estimate is – starts on page 108. And then we have on page 112, there's a defined DG3 cost escalation allowance.

Then, turning to page 113, paragraph 5.1.3, Defined DG3 Contingency Analysis: "The contingency allowance figures for the three sub-projects are identified in Table 5-1. As defined by the PMI and the AACEI, a scope or" – tactical – "tactile contingency is used to offset known project risks and/or market conditions. While Nalcor adopted a theoretical P50 contingency for 'tactile' type risks based on analytical statistical modeling (i.e., range uncertainty) of the project's sub-element summary budgets, the IE is of the opinion that the calculated overall 6 percent scope contingency" – represents – "an adder of \$368M

to the project ... is not conservative relative to our legacy experience with similar remote heavy-civil construction endeavors.”

So this is watered down quite a bit, isn't it, from the double and then from the double to quadruple?

MR. ARGIROV: Yeah.

But I think I explained already what was probably the purpose for the draft reports.

MR. LEARMONTH: It was to jolt them?

MR. ARGIROV: Yes.

MR. LEARMONTH: Yeah, okay.

But, once again, you're just speculating on that?

MR. ARGIROV: Well, it's not anything else that I could say at the moment.

MR. LEARMONTH: Okay.

So anyway, it says: "... an adder of ... is not conservative relative to our legacy experience with similar remote heavy-civil construction ... and is, therefore, judged to be somewhat optimistic.”

MR. ARGIROV: Mm-hmm.

MR. LEARMONTH: “The IE typically sees scope or tactile contingency allowances in the range of 8 ... to 12 percent comparable DG3 stage gates ... A mitigating circumstance for the current LCP budget is the fact that cost certainty has been achieved for the awarded-to-date work ... that provides a rationale....”

So, what's – well, anyway I've asked you this enough. You don't know the reason why these figures are changing in every report do you?

MR. ARGIROV: No.

MR. LEARMONTH: Yeah.

MR. ARGIROV: No.

MR. LEARMONTH: But this –

MR. ARGIROV: For me the most important thing is that we identified (inaudible) further step up the pressure here – well, not to step up the pressure but we identified this further to Canada and that –

MR. LEARMONTH: Yeah.

MR. ARGIROV: – we have a concern with the contingency.

MR. LEARMONTH: Yeah.

MR. ARGIROV: There was no – any moment that we did not identify this in our drafts or final, kind of, reports.

MR. LEARMONTH: Right.

But you do agree – do you agree with me that the wording changes and it seems to get a little more favourable to Nalcor's position as we progress through?

MR. ARGIROV: No.

MR. LEARMONTH: You don't?

MR. ARGIROV: No.

That's – that is a further opinion of the team and how they try to finalize some of these conclusions.

MR. LEARMONTH: Yeah.

But this figure here in the final report on page 113, the December 30th report, so we got \$368 million. That remained consistent throughout; that was the figure that was given to them – to Nalcor by Westney –

MR. ARGIROV: Correct.

MR. LEARMONTH: – back in 2012. That's remained the same.

MR. ARGIROV: Yeah.

MR. LEARMONTH: But then you've got a comment of 8 to 12 per cent, so –

MR. ARGIROV: Mmm.

MR. LEARMONTH: – if that 368 is 6 – I thought it was 6.7, but if it's 6, that's quite a shortfall, isn't it, in terms of contingencies for a project like this?

MR. ARGIROV: Yeah – well sure, yeah, but that's exactly what we were saying –

MR. LEARMONTH: Okay.

MR. ARGIROV: – that – in a previous report as well – that the contingency is optimistic and that they have to review the contingency fund –

MR. LEARMONTH: Mmm.

MR. ARGIROV: – and management funds. So ...

MR. LEARMONTH: Yeah.

So when you saw these budget increases in stage 2 of your work after financial close, based on what's in these reports, it couldn't have been a surprise to you.

MR. ARGIROV: No.

MR. LEARMONTH: No.

That's all my questions.

Oh, actually there's one more.

The exhibit that I referred to, see Exhibit – to earlier, and I put it in evidence – P-02343. That – you won't have it in your book but it will come up on the screen.

MR. ARGIROV: Yeah, I got it here.

MR. LEARMONTH: Yeah.

MR. ARGIROV: (Inaudible.)

MR. LEARMONTH: Paul Harrington to Nik – now, what is this about? He says on June 27, 2018 – that's just recently – well – “I am reminded of the novel by George Orwell 1984 where history was rewritten to suit the political agenda. Revisionism is alive and well with John MacIsaac where Darren DeBourke and Jason Kean become non persons and everything they did was forgotten and all the credit is taken by

folks who didn't do the heavy lifting. Shame on Nalcor.”

What – and this is in response to a – excuse me – the earlier email, June 27, 2018. He writes, “Nik. It is quite surprising and no doubt hurtful to those on the Project team who led the transmission and switchyard converter project for so many years getting to 80% complete...” and “they have not been invited to the event today.

“I am not thinking of myself but others such as Ron Power, Lance, Jason, Scott. Quite disappointing and indicative of poor form. This is truly that stage of a project where there is a reward of the uninvolved as Stan would say. Paul”

What is this all about?

MR. ARGIROV: Well, I believe that happened when the management changed. Happened on the bifurcation, as they call it.

MR. LEARMONTH: Yes.

MR. ARGIROV: And I expressed my analysis, as a potential risk to Canada. And he was following after – we discussed this earlier – and I think he's expressing his sentiment here because two of – those two people, two guys, Darren and Jason, they left the project.

MR. LEARMONTH: Yeah. But this is 2018 now, the date of this email.

MR. ARGIROV: Oh, this was obviously during the first power when there was a small opening celebration on a site. Site is Soldiers Pond. And some congratulations were expressed to the team, and he was referring that those people actually been doing the heavy lifting before, but they were not even mentioned.

MR. LEARMONTH: Mm-hmm.

MR. ARGIROV: That's his sentiment so.

MR. LEARMONTH: Yeah. So you didn't reply to that, did you?

MR. ARGIROV: No.

MR. LEARMONTH: This George Orwell, whatever that has to –

MR. ARGIROV: No.

MR. LEARMONTH: – do with anything? Yeah.

Anyway, okay. I just wanted to get your take on it. Yeah.

MR. ARGIROV: Yeah.

MR. LEARMONTH: Okay, those are all my questions.

MR. ARGIROV: Okay.

THE COMMISSIONER: Okay. All right. Cross-examination – Province of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy?

MR. LEARMONTH: I'll get those books out of your way.

MR. SIMMONS: That's okay. Just throw –

That's right. That goes there, good. Okay, yeah. Thank you.

Good afternoon, Mr. Argirov.

Dan Simmons for Nalcor Energy.

MR. ARGIROV: Good afternoon, Mr. Simmons.

MR. SIMMONS: I'll do my best to be a bit shorter than Mr. Learmonth was so far today.

Early in your testimony, at the – pretty close to the beginning, you mentioned that there were three phases to the work of the independent engineer here. And I think I have an understanding of what phases 1 and 2 are; phase 3 – I'm not so sure. But it might be useful if you could just describe for us what phase 1 was and what the work of the independent engineer was intended to be in phase 1, and then what phase 2

was. And so we can have an overall understanding of how that worked.

MR. ARGIROV: Okay. I believe I explained, but –

MR. SIMMONS: Yes.

MR. ARGIROV: – now I will repeat –

MR. SIMMONS: Yeah.

MR. ARGIROV: Phase 1 – we had to review the progress of the project to the moment, including engineering. And I'm talking about high level oversight to review the executed contracts if they were – and there were a few – to review cost, budget, which is the same, and schedule and – I mentioned the engineering already – to review the proforma, which is the business case.

MR. SIMMONS: Right.

So phase 1, if I understand it, brought us up to the commercial close or the financial close that we're talking about and, ultimately, to the report of November 29, 2013.

Is that the time period that you consider phase 1 – up 'til then?

MR. ARGIROV: Correct.

MR. SIMMONS: Okay.

And in the phase 1 work – did that include providing any services at all in relation to the decision to sanction the project that happened in December of 2012?

MR. ARGIROV: No.

MR. SIMMONS: Okay. So MWH was not retained or involved to provide any opinions and do any work in connection with the sanction of the project?

MR. ARGIROV: Correct. We were actually – our contract was after.

MR. SIMMONS: Okay. Now, for phase 1, MWH had a team of people that were involved in doing the work –

MR. ARGIROV: Correct.

MR. SIMMONS: – that – to meet the statement of work that was set out for that. What was your personal role in that? What was your position on the team?

MR. ARGIROV: Well we had positions like principal in charge. And I was the most senior person in MWH Canada, and MWH Canada has the contract of independent engineer.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: So I had this position –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – as principal in charge. And the same time I was principal in charge in another five projects –

MR. SIMMONS: Right.

MR. ARGIROV: – that were executed –

MR. SIMMONS: So –

MR. ARGIROV: – through my office.

MR. SIMMONS: Right. So as principal in charge, what were your responsibilities when it came to the discharge of the phase 1 work?

MR. ARGIROV: My responsibilities were related to only contractual issues. If there was some issues with timing or time frame. Or could be some contractual language that we might dispute or something like this.

MR. SIMMONS: Okay. So Mr. Hokenson was the project manager for the phase 1 work, is –

MR. ARGIROV: Correct.

MR. SIMMONS: – that correct? And was he assigned – was this the only project that he had responsibility for at that time? Or was he also conducting other work on other projects?

MR. ARGIROV: Correct, that was the only.

MR. SIMMONS: So the work of – that had to be done in phase 1 in obtaining information

from Nalcor or other sources, analysing it, preparing the reports – the drafts of the reports – consulting – how involved were you in the doing of that work compared to the other people on the team?

MR. ARGIROV: I was not involved.

MR. SIMMONS: Mr. Learmonth just took us through a series of draft reports leading up to a final, final report on December 30, 2013. Were you the author of any parts of any of those drafts?

MR. ARGIROV: No.

MR. SIMMONS: And how involved were you in reviewing the content of those drafts? We know the November 15 one you didn't review. But before those went out to Canada and to Nalcor as draft reports, did you play, yourself, any kind of quality control role in looking at the content of what was in those reports?

MR. ARGIROV: No, I had only cursory review of November 29.

MR. SIMMONS: Yes, okay.

MR. ARGIROV: And I was satisfied with the format –

MR. SIMMONS: Right.

MR. ARGIROV: – and other things presented.

MR. SIMMONS: Right. So tell me a little bit more about how involved you were then leading up to the November 29 report in the content of what was contained in it?

MR. ARGIROV: The report was presented very quickly actually, to me.

MR. SIMMONS: Yes.

MR. ARGIROV: Almost in same day.

MR. SIMMONS: Yes.

MR. ARGIROV: And I just flipped through it to –

MR. SIMMONS: Yeah.

MR. ARGIROV: – to see if all the pages are there and the content is there and the table was there and all of the sections were there.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: And –

MR. SIMMONS: Presented to you by whom?

MR. ARGIROV: The project team.

MR. SIMMONS: Okay. And we've seen that – and you've described – how it's a normal process to consult – in this case with Canada and with Nalcor on these drafts. When comments came back from Canada and/or Nalcor, did – the correspondence in some cases seems to be addressed to you, so it would come back to you.

MR. ARGIROV: Sure.

MR. SIMMONS: Would you – did you then take those and work through what the comments were and cross-reference the reports or merely pass it on to the team?

MR. ARGIROV: No, I was passing them to the team.

MR. SIMMONS: Right, yeah.

So the evidence that you've given us then, on the content of these draft reports – and ultimately the report on the 29th of November, that's based on what? Is that based on an after-the-fact review of the reports or a review of the documents you've been provided or – what's the source of your information for that?

MR. ARGIROV: Well, I knew the time frame.

MR. SIMMONS: Yes.

MR. ARGIROV: And that was mainly what I could comment on.

MR. SIMMONS: Right, okay.

Okay. So then phase 2.

MR. ARGIROV: Correct.

MR. SIMMONS: Phase 2 – did phase 2 start after commercial close? And then involved a changing role to now start to monitor the actual construction work or the –

MR. ARGIROV: Correct.

MR. SIMMONS: – performance on the site?

MR. ARGIROV: Correct. It started from the – I think 2014 let's –

MR. SIMMONS: Yes.

MR. ARGIROV: – make it more clear.

MR. SIMMONS: Yes. Okay.

And there's a point, I think, early in 2014 where you formally become the project manager for the phase 2 work. Is that correct?

MR. ARGIROV: Correct.

MR. SIMMONS: Right.

MR. ARGIROV: It wasn't until – I believe it was May, end of May –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – or something like that.

MR. SIMMONS: Mm-hmm. Okay.

So as project manager then for phase 2, tell me what your personal role and involvement was.

MR. ARGIROV: I'm the lead –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – the team lead. And I have five people, subs that work with me.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: I have the obligation to review every month –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – the monthly reports that were issued by the contractors.

MR. SIMMONS: Yes.

MR. ARGIROV: Through Nalcor – Nalcor puts them on the FTP site. Then I have to review Nalcor's reports, which are construction reports.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: And there are a few other informations that – for example, the status of all the contracts that we monitor in one table – that normally is provided every month –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – in terms of funds. Then, based on all of that, I have to form my opinion and to issue to (inaudible) confirmation certificates –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – which I issue to Canada and particularly to the lenders.

MR. SIMMONS: Right.

And as well –

MR. ARGIROV: Based on those certificates – sorry –

MR. SIMMONS: Sorry, I didn't mean to interrupt, yeah.

MR. ARGIROV: Yeah, based on those certificates, funds are released to Nalcor.

Now, I also review, or – sorry, I go to quarterly meetings –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – with Nalcor, which was practice established after October '15, particularly with the letter of Ms. Manzer.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: And then, I also do site visits –

MR. SIMMONS: Yes.

MR. ARGIROV: – together with the whole team.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: Also, I do factory visits with members of the team, whoever is specialist.

MR. SIMMONS: Factory visits would be visits to sites where fabrication is taking place?

MR. ARGIROV: Fabrication is taking – for example, transformer site or converter valves or turbine or gate.

MR. SIMMONS: Right.

So it sounds –

MR. ARGIROV: Because we have to monitor the quality –

MR. SIMMONS: Yes.

MR. ARGIROV: – of these fabricators or vendors –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – in the process. And also to understand what kind of quality practice and what kind of quality process has Nalcor established to monitor quality of these vendors.

MR. SIMMONS: Good, yeah.

MR. ARGIROV: Which is very important.

MR. SIMMONS: Yes. Anything else then?

MR. ARGIROV: Also, if we get request from Canada to comment on certain reports –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – we do that as well.

MR. SIMMONS: So in phase 2, then, it sounds like you've personally, actually been very closely involved –

MR. ARGIROV: Correct.

MR. SIMMONS: – with monitoring of the work and many aspects of the work: site visits, meetings with people at Nalcor, receiving information directly from Nalcor and receiving and reviewing contractor reports as well and reporting all that up to Canada –

MR. ARGIROV: Correct.

MR. SIMMONS: – which – who was your client throughout that whole process. Yeah, okay. Good. Okay.

And regarding the reports in 2013 that Mr. Learmonth took you through, if I understand correctly – I just want to confirm that this is your evidence – that while the drafts up 'til the November 27th draft were communicated to Nalcor, and there was an opportunity for feedback from Nalcor either directly or through Canada, the November 29, 2013 report was not provided directly to Nalcor by MWH, only to Canada.

MR. ARGIROV: Correct.

MR. SIMMONS: Correct.

And the December 30 report – was there any additional feedback or comments sought from Nalcor after November 29, before the December 30 report was finalized? Or was it only MWH's internal QA/QC process that resulted in any alterations to that report?

MR. ARGIROV: I believe it was the internal. Plus, I think we get the information of where Astaldi is –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – at this moment.

MR. SIMMONS: So –

MR. ARGIROV: Because Astaldi contract was already awarded.

MR. SIMMONS: Yes. So there was additional information, perhaps, that came from Nalcor, but no more comment on the November 29 report or no suggestions for any changes in the November 29 report from Nalcor?

MR. ARGIROV: Correct.

MR. SIMMONS: And the December 30 report was not provided directly to Nalcor, only to Canada?

MR. ARGIROV: I believe so.

MR. SIMMONS: Okay.

Now, I have some questions for you about the cost update at financial close in November of 2013. And, first of all, can we bring up, please, Exhibit P-02208?

You've been referred to this before, I think, Mr. Argirov. It's a presentation that was prepared, I understand, for the meeting on November 6. And if we just scroll –

THE COMMISSIONER: Tab –

MR. SIMMONS: – down.

THE COMMISSIONER: – it's tab 66 in volume –

MR. SIMMONS: Uh-huh.

THE COMMISSIONER: – 4.

MR. SIMMONS: Yes, we've got an index.

THE COMMISSIONER: Tab 66 in volume 4.

MR. SIMMONS: Okay.

And I'm not going to go through any great detail in this with you. But if we could stop there for a moment. This is just the cover sheet. It says "Project Update 6-Nov-2013."

Now, do I understand correctly that this was the date of a meeting in St. John's between various people, I presume, on the MWH project team and people from Nalcor in order to address outstanding issues that needed to be resolved before the report could be finalized?

MR. ARGIROV: Yes, I believe so.

MR. SIMMONS: And that you weren't there?

MR. ARGIROV: No, I was not there.

MR. SIMMONS: Okay, so –

MR. ARGIROV: And I – I’m not sure – I – perhaps Canada was there (inaudible), so ...

MR. SIMMONS: Okay.

And I think you’ve been brought before to page 24. So maybe we can go there please, Madam Clerk?

So this was a slide that indicates “Facilities Capital Cost (+5%)” – up about \$300 million. You were referred to this before.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: So, can you tell us anything at all about what happened at that meeting on the 6th of November – whether there was discussion of this \$300 million; whether there were questions about it; whether any other information was provided?

MR. ARGIROV: No, I cannot.

MR. SIMMONS: Okay.

Can we bring up, please, P-02217? This is another exhibit – let me see now. This is at binder 4, tab 76. So this was a November 19, 2013, email message where a – some information was sent to the – to be put in the data room.

So, first of all, a question for you about the data room: we’ve heard it mentioned; we haven’t really had it described. Correct me if I’m wrong, but my understanding is it’s an electronic site, a repository of documents where documents can be posted or put there and if someone is granted the appropriate permission, they can go to the site and look at it or go to the site and download it and take the document themselves.

MR. ARGIROV: Correct.

MR. SIMMONS: Right. And correct me if I’m wrong, as well, but when – if you were on the – if you had permission to view documents that are put in a location, a room on that site or a folder, when a new document is added you will get an email message telling you that there’s been a new document added.

MR. ARGIROV: Correct. That’s supposed to work.

MR. SIMMONS: Right.

MR. ARGIROV: At least right now it’s working this way.

MR. SIMMONS: Yes, okay. And are you subscribed to this? Do you receive documents now this way –

MR. ARGIROV: Absolutely.

MR. SIMMONS: – from that site? Do you (inaudible) –?

MR. ARGIROV: That’s how I receive the documents now.

MR. SIMMONS: Right. You get an email that tells you there’s a document there and –

MR. ARGIROV: That’s right.

MR. SIMMONS: – you can download it.

MR. ARGIROV: Yes.

MR. SIMMONS: Okay.

So if we look at this message, P-02217, here. It’s from Mr. Meaney and this is where he says to post some attached files to the data room. And the second paragraph says: “Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH.”

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: And if we go to page 2, please.

Page 2 is a document called LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation. And if we scroll down just a little we will see that there’s a column headed DG3-OCB, which at the bottom has a figure of \$6.2 billion which we –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – recognize, I think, as being the DG3 cost estimate. And then to the right of

that there is one that says, Current FFC and we generally understand FFC to mean final forecast cost, and the figure at the bottom of that column of 6.531. Now, you've told us already that you don't recall knowing about this \$6.531 billion figure at financial close.

MR. ARGIROV: Correct.

MR. SIMMONS: Correct.

MR. ARGIROV: Yeah.

MR. SIMMONS: And it appears, however, that this document was posted to the data room with instructions for it to be made available to MWH.

MR. ARGIROV: It appears. However, there was another exhibit, another – that indicated that it should not be provided to MWH.

MR. SIMMONS: That was something different. But this particular one indicates that this document was to be provided to MWH. Now –

MR. ARGIROV: Wasn't that the same, at the same time?

MR. SIMMONS: I think it was – it was a different – as I recall the other one was the LIL modelling, the financial modelling for the LIL.

MR. ARGIROV: Mmm.

MR. SIMMONS: We can probably look it up and find it if we need to.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: But for this one here do you know whether anyone else at MWH accessed this document in the data room on or after November 19 or would you know?

MR. ARGIROV: No, I wouldn't know because that's not possible for me to know who is accessing.

MR. SIMMONS: Right.

MR. ARGIROV: Or who has the access.

MR. SIMMONS: Okay.

So there appears to be other documentary evidence to establish, at least, that representatives of Canada had knowledge of this number prior to financial close. Did – what kind of communication did you personally have with representatives of Canada, either Mr. Newman or Ms. Manzer or others, through this period in November?

MR. ARGIROV: The communication was coming from them, if there was any need –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – for something to be communicated to me.

MR. SIMMONS: Right. Did anyone representing Canada, either directly with Natural Resources or with their legal counsel, communicate to you through that time period that they were aware that there was an increased budget or forecast figure of \$6.5 billion?

MR. ARGIROV: No, I was not aware of such a thing.

MR. SIMMONS: Hmm. Do you know if that was communicated to anyone else on the MWH team?

MR. ARGIROV: I cannot say that.

MR. SIMMONS: Okay.

MR. ARGIROV: I know only the final report, the figure was not changed, so ...

MR. SIMMONS: Okay.

Can we go to Exhibit P-01958, please? Which should be the November 29 report. I'll look up the number here now. Volume 6, tab 103. Okay, we can – okay, if we stop – scroll down a little. Okay.

So we can see that this is the November 29, 2013, report on the screen and can we go please to page 203. Scroll down and scroll down a little more until we can see this table. So here on page 200 – I'll give you time to find it.

MR. ARGIROV: Yes.

MR. SIMMONS: Now, I know you're not the author of this report but this is the one you would've reviewed just before it was finalized, the November 29 report, correct?

MR. ARGIROV: Is that 203 page?

MR. SIMMONS: Two-hundred and three on the PDF, so I don't know what page number – how the page is numbered on the document, if we go up or down and see.

THE COMMISSIONER: Just –

MR. SIMMONS: (Inaudible.)

THE COMMISSIONER: Okay, sorry.

MR. SIMMONS: It's on the red – on the top corner (inaudible) –

MR. ARGIROV: Oh, I'm on a different exhibit, sorry.

MR. SIMMONS: I might've given you the wrong tab number, Mr. Argirov. Binder 6, tab 103.

MR. ARGIROV: I'm getting there, just a second.

MR. SIMMONS: Yeah.

MR. ARGIROV: Yes.

MR. SIMMONS: Okay, and if we look at the table on the bottom.

So this one says, MF Sources and Uses of Capital Funds, so is this information you would have understood or is this a section of the report you would've been familiar with?

MR. ARGIROV: Not really.

MR. SIMMONS: Okay.

Well, I'll go through this anyway –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – if you can – if this rings any bells with you, fine. If not, we can deal with it with somebody else.

So on this table we have on the right-hand side a column that says Uses and the first one says: pre-FC, financial close, capex – capex generally means capital expenditure –

MR. ARGIROV: Capital expenditure.

MR. SIMMONS: – and Innu. And then there's, in the next line, post-financial close capex –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – and then there's figures there of \$565 million and \$2.724 billion.

Now, I'm not going to make you do any math on this, but if we – so we go then to the next page which is 204, down, and see there's another table. This one for the LTA Sources and Uses of Funds and it has pre-financial close capex and post-financial close capex. And go down a little more and there should be another table, and this one is for the LIL –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – the Labrador-Island Link, and there's pre-financial close capex and post-financial close capex.

Now, I'm gonna suggest to you that if we take the pre- and post-financial close capex numbers there for each of the three components of the project, it's going to add up to \$6.5-something billion.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: Now – so my question is: If that's the case, would you be able to tell us whether MWH had to have had information about the increased capital cost or final forecast cost in order to include this information in their report?

MR. ARGIROV: Obviously they had this information.

MR. SIMMONS: Hmm, okay. But it's not something you were personally involved in so –

MR. ARGIROV: No, I said I was not.

MR. SIMMONS: Okay. Okay.

Can we go please to the Grant Thornton report at Exhibit P-01677? I don't – yeah, it's at binder 10, tab 177.

THE COMMISSIONER: It's not in the report. It's gonna come up –

MR. SIMMONS: Oh, it's not in the binder. So we'll see it on the screen.

This is the same page as that – on the same page as Mr. Learmonth brought you to, which is page 19.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: Scroll down. Down a little more. Okay, we can stop here.

So there's – in the section 2.3.1 Communication with Nalcor Executives, there's some information summarized in a table here by Grant Thornton and it continues on the next couple of pages.

So the first question is: How much time or opportunity did you have to kind of study and digest this report from Grant Thornton?

MR. ARGIROV: Oh, I didn't have much time. So –

MR. SIMMONS: Did you read through this part of it before you got – you came to give your evidence here today?

MR. ARGIROV: I skipped over it quickly.

MR. SIMMONS: Okay, right. So it's not something you paid a lot of attention to.

MR. ARGIROV: No.

MR. SIMMONS: Have you done any –

MR. ARGIROV: I just didn't have time.

MR. SIMMONS: – investigation to look at – to see any of the presentations that are referred to here, such as this presentation from July of 2013 to see what the contents of it was?

MR. ARGIROV: No.

MR. SIMMONS: Or explored any of the other underlying documentation that would support the material contained in these tables?

MR. ARGIROV: No, I didn't have anything else. I mean, this was presented –

MR. SIMMONS: Mmm.

MR. ARGIROV: – only, and I didn't have anything else to compare.

MR. SIMMONS: Okay.

One of the things here is there's a mention of FFC, Final Forecast Cost, and AFE, which is Authorization for Expenditure –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – and I wonder if you can tell me, from your perspective as being the independent engineer here, who is approving payments to Nalcor from the lenders, is there any difference, technical difference, between a Final Forecast Cost and an Authorization for Expenditure.

MR. ARGIROV: Technically, there is a slightly more certainty –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – in approval of this funds to be spent.

MR. SIMMONS: More certainty in approval.

MR. ARGIROV: Well, there is an authorization –

MR. SIMMONS: Yes, mm-hmm.

MR. ARGIROV: – the forecast is just forecast.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: So, that's quite a bit of a difference –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – in my opinion.

MR. SIMMONS: So, would your expectation be that the approved for expenditure funds would often be a number that would be lower than a estimated forecast for the whole project, with that qualifier that it's approved funds?

MR. ARGIROV: That's something that I cannot speculate on it.

MR. SIMMONS: Mmm, okay.

MR. ARGIROV: It's a question of management, how the management wants to ...

MR. SIMMONS: Okay.

Can we put page 12, please, of this report?

This is the portion of the report you were brought to where there's discussion of the contingency amount that was in the budget at DG3, which –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – is \$368 million, and that as contracts were awarded, by the time it reached financial close, Grant Thornton have expressed a view that the contingency had been exhausted. And I believe you were asked if you knew about that at the time of financial close, and I – if I'm correct, you said you didn't.

MR. ARGIROV: Correct, that's correct.

MR. SIMMONS: So, I do want to bring you to the November 29 report – and again, at Exhibit 01958, please. It's your binder 6, tab 103, and page 112.

So I'll have to find the spot here now. You stop there, please.

So, in the paragraph that begins: "As the project moves into full-scale field execution with the award of CH0007 (Muskrat Falls Powerhouse), the IE would advocate for adjustment of the project contingency fund. Due to significant overruns recently recognized with the award of CH0007," –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – "the project contingency fund is considered to be spent –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – "at this time"

MR. ARGIROV: Yeah.

MR. SIMMONS: Which would suggest to me that the author of the report for MWH was aware that the contingency was exhausted at this time, 29th of November 2013.

MR. ARGIROV: Sure, but that was exactly what we were presenting to Canada, –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – that there was no contingency –

MR. SIMMONS: Right.

MR. ARGIROV: – fund.

MR. SIMMONS: Right.

Well, I'm having trouble reconciling that with your statement in direct that you were unaware of the information presented in the Grant Thornton report to the effect that the contingency had been exhausted prior to financial close, when this seems to be the exact statement that's been made in the November 29 report here, that MWH was, in fact, aware that contingency was exhausted.

MR. ARGIROV: Correct.

MR. SIMMONS: Mmm, okay.

MR. ARGIROV: Where was the discrepancy? I don't get it.

MR. SIMMONS: In your direct examination, when you were shown the Grant Thornton report passage I just took you to, I understood you to say when asked, were you aware prior to financial close that the contingency had been exhausted, I'd understood you said, no, you were not aware of that.

Now, it's not a big deal –

MR. ARGIROV: Sure, yeah.

MR. SIMMONS: – but I just wanted –

MR. ARGIROV: I mean, I –

MR. SIMMONS: – to point out in the report there's –

MR. ARGIROV: I'm –

MR. SIMMONS: – a statement –

MR. ARGIROV: – telling you, I –

MR. SIMMONS: – that you were –

MR. ARGIROV: – was not –

MR. SIMMONS: – aware.

MR. ARGIROV: – directly involved in this reports –

MR. SIMMONS: Mm-hmm, okay.

MR. ARGIROV: – so I had cursory review –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – and I really miss the point here with –

MR. SIMMONS: Okay.

Well, mister –

MR. ARGIROV: – this description.

MR. SIMMONS: – Mr. Hokenson was the primary author of that. If the conclusion of Mr. Hokenson and the QC team was that this statement was included here, that they were aware, at commercial close, that contingency –

MR. ARGIROV: Correct –

MR. SIMMONS: – was exhausted –

MR. ARGIROV: – yeah, yeah.

MR. SIMMONS: – I presume you will accept that.

MR. ARGIROV: Correct.

MR. SIMMONS: Yeah, okay.

Concerning contingency, the probability factor, the P50 probability factor is mentioned through all the draft reports as being the one that was used to calculate the contingency amount that Nalcor had included there. And I recognize that consistently through all the reports, MWH had expressed a view that the contingency value of 6.7 per cent was low, in their opinion.

I don't see there being any concern expressed with, though, that, from a process point of view, of using a P50 value when preparing contingency. And I just wonder if you have any comment on that as to what you've seen in industry regarding the use of probability factors for preparation of contingency.

MR. ARGIROV: As I said, I'm not really a specialist in this part –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – but MWH didn't make any major comment –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – when it comes to this P50.

MR. SIMMONS: Right.

MR. ARGIROV: And in industry, you can see all kinds of different variations.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: It could be P50, P75 or P25 or something like this.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: So the ranges depends on the level of definition of the project.

MR. SIMMONS: Right.

So you do see a construable variation in –

MR. ARGIROV: Of course. Of Course.

MR. SIMMONS: – industry and the selections –

MR. ARGIROV: Yes.

MR. SIMMONS: – that are used? Okay.

Now, we don't – I don't want to track back through the paper again, but in the November 29 report, the range of contingency that was regarded as being appropriate was identified, if I'm correct, as between 6 per cent and 10 per cent. And it was the December 30, report that changed it 8 per cent to 12 per cent.

Do you recall that?

MR. ARGIROV: Correct.

MR. SIMMONS: Right.

So as of November 29, which was commercial close and the report that was delivered by MWH to Canada –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – knowing Canada would rely on it to close the deal, correct?

MR. ARGIROV: Correct.

MR. SIMMONS: As of that time, the range of contingency from 6 to 10 per cent, Nalcor's 6.7 per cent contingency, although at the low end, was still inside that range, right?

MR. ARGIROV: Yes, you could say that –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – if we're talking about the ranges.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: But ranges is the most illusionary part of evaluation, and one could discuss this and could argue about 10 to 15, another could say 8 to 12. Where are we now?

MR. SIMMONS: Yeah.

MR. ARGIROV: Could any of those ranges fit where we are now?

MR. SIMMONS: Right.

MR. ARGIROV: So our comment was: Contingency is not enough.

MR. SIMMONS: Yes, and certainly –

MR. ARGIROV: And management fund.

MR. SIMMONS: – (inaudible), yeah.

MR. ARGIROV: They're not there.

MR. SIMMONS: And even –

MR. ARGIROV: Or they should be there.

MR. SIMMONS: Yeah.

And even within MWH, it appears that there was a process of debate. There must have been –

MR. ARGIROV: Correct.

MR. SIMMONS: – a process of debate about where this –

MR. ARGIROV: Correct.

MR. SIMMONS: – should belong –

MR. ARGIROV: Absolutely.

MR. SIMMONS: – among the people in your organization.

MR. ARGIROV: Absolutely.

MR. SIMMONS: Okay.

You were shown several messages where there was some communication back and forth between Mr. Meaney at Nalcor, and Ms. Manzer, Canada's legal counsel, where they were discussing the participation of Mr. Hokenson and some comments that either of them had made concerning that.

Did – and Ms. Manzer was one of the participants in those email discussions. Did she ever raise any of those sorts of concerns with

you? Did she ever come back to you and say we have any issue or problem with the way Mr. Hokenson is managing either the phase one or at the beginning of the phase two?

MR. ARGIROV: At the beginning of phase two, I was advised that I have to take charge –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – of phase two.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: This was not exactly beginning, but it was kind of April –

MR. SIMMONS: Right.

MR. ARGIROV: – period. So – and it was – and that was expressed to me as concern from Canada.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: And I accepted it.

MR. SIMMONS: Yes. So that was a request that came from Canada to make –

MR. ARGIROV: Correct.

MR. SIMMONS: – that change. Yeah.

Can we bring up Exhibit P-02218, please? That's binder 4, tab 77. And I don't think your attention was brought to this one in your direct examination.

This is now in the time frame of November 20, 2013. So this is in the midst of quite a bit of work that's going on to try and finalize the outstanding items so that the report could be completed, and eventually it was done on the 29th – so just nine days before that.

MR. ARGIROV: Correct.

MR. SIMMONS: And this is a memorandum and it's from Alison Manzer and – if we could go up a little bit, please? Okay. Scroll down. And it says: "RE Consolidated Comments and Instructions to Independent Engineer November 20, 2013."

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: Now, it says it's to file; it doesn't say it's to MWH or to you. So there are a number of specific instructions here – numbers 1 to 4: scheduling, North Spur, contingency and – go to the next one – and costs.

So my first question is, were these instructions given to you by Canada, November 20, 2013?

MR. ARGIROV: I am not sure if they were given to me or to the team.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: So even if they were given to me, I would have passed them to the team.

MR. SIMMONS: Right.

So we know that, for example, the comments would come back from Nalcor on draft reports –

MR. ARGIROV: Correct.

MR. SIMMONS: – and this memo continues with specific comments on draft.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: But the first four items here are described as instructions. So the relationship that MWH had to Canada, as client –

MR. ARGIROV: Yeah.

MR. SIMMONS: – that would allow Canada to instruct MWH as to how it was to prepare its report. Is –

MR. ARGIROV: Canada is –

MR. SIMMONS: – that correct?

MR. ARGIROV: – our direct client.

MR. SIMMONS: Yes.

MR. ARGIROV: We report to them.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: And, of course, if there is a need for instruction, we have to take the instructions.

MR. SIMMONS: Right, okay.

So there are instructions here on schedule, how schedule is to be approached and how costs were to be approached and contingency.

MR. ARGIROV: Mmm.

MR. SIMMONS: So these would be instructions that MWH would take from Canada and would then have to follow as moving forward in the preparation of the report?

MR. ARGIROV: Perhaps, but it doesn't mean that if the team is not happy with this, they will accept.

MR. SIMMONS: Yes.

MR. ARGIROV: Instructions could be passed –

MR. SIMMONS: Yes.

MR. ARGIROV: – but professional understanding is different, and the team may not agree on things.

MR. SIMMONS: And in contrast to Canada, Nalcor, of course, was not in a position to give instructions of this –

MR. ARGIROV: No, no.

MR. SIMMONS: – sort to MWH. Mm-hmm.

If we can look at item 4 – it's there. Item 4, costs. It starts out by saying: "We need to complete a reconciliation of the costs as they have come together against DG3, and" – we're – "looking for –

MR. ARGIROV: Mm-hmm

MR. SIMMONS: – direct reporting input to do so from Nalcor."

When I read that, that suggests to me that there is a difference between what is known about the costs that have come together and the DG3

budget at this point and that Canada is asking MWH to reconcile the two.

Am I reading that correctly?

MR. ARGIROV: I don't have a full understanding of –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – what is referred here.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: Maybe there is a – some difference in opinion and –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – Ms. Manzer is asking for reconciliation.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: And as far as I know – I knew – there is another also review by Canada, after all of this, which was separate from independent engineer.

MR. SIMMONS: Right.

And, of course, this is the 20th of November, and we saw that on the 19th of November Nalcor's reconciliation of DG3 costs and current final forecast –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – cost had been posted to the data room available to Canada and available to MWH.

So would I be off the mark as reading this as being an instruction to MWH to review that reconciliation?

MR. ARGIROV: It might've been.

MR. SIMMONS: Mmm, okay.

MR. ARGIROV: And perhaps that's why you pointed out to those three tables that were in our report, but ...

MR. SIMMONS: And, farther on, then, in that paragraph, there's – it's six lines up from the bottom, in the middle of the line there, there's a part that starts: "... this project is somewhat different"? You see that?

MR. ARGIROV: Correct.

MR. SIMMONS: "... this project is somewhat different in its cost analysis the Newfoundland equity funding commitment easing concerns regarding over runs which might be noted for the report."

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: Was that your understanding, by the 29th of November, that that was Canada's position regarding analysis of overruns?

MR. ARGIROV: Obviously, that's Canada's position.

MR. SIMMONS: Okay. Can we have Exhibit P-02220, please?

Now, this is one you've been brought to before, and it is at binder 4, tab 79, Mr. Argirov. So this was an email message. This is now November – well, this is November 20, 2013, actually. The same date as the last one we looked at. It's from Mr. Harrington to Mr. Meaney and a series of other people. And I'm gonna suggest that, with the exception of Xeno Martis, who was with counsel for Nalcor, all of these people are Nalcor people. So this was an internal message. Does that seem consistent to you based on your knowledge of who these people are?

MR. ARGIROV: Yes.

MR. SIMMONS: Yeah, okay.

So this is Mr. Harrington internally –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – making comments on the draft report. So did this come to MWH? Were these comments from Mr. Harrington sent in this form to MWH? Do you have any knowledge of that?

MR. ARGIROV: There was some certain comments that came to MWH –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – as –

MR. SIMMONS: Right.

MR. ARGIROV: – Mr. Learmonth presented.

MR. SIMMONS: Yes.

MR. ARGIROV: And I'm not sure if they were included –

MR. SIMMONS: Right.

MR. ARGIROV: – those comments were included or not.

MR. SIMMONS: Okay.

MR. ARGIROV: So I cannot comment on that.

MR. SIMMONS: So let's –

MR. ARGIROV: Sorry.

MR. SIMMONS: Let's take a look at Exhibit P-02225, please? Tab 84 of binder 4.

So this is the next day, November 21. This is a message to you from Mr. Meaney.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: "Hi Nik; Please find attached for discussion on the call this afternoon Nalcor's 'key' comments on the draft IE report dated Nov 15." And if you scroll – if we scroll down a little bit to the second page, please? We'll see that here there is a collection of comments here.

MR. ARGIROV: Yeah.

MR. SIMMONS: So this is actually the one that went to MWH.

MR. ARGIROV: Correct.

MR. SIMMONS: So my question really was, when we look at Nalcor's internal discussion –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – Mr. Harrington talking to – commenting to Mr. Meaney or to anyone else on that – does that matter at all to MWH? Because what matters to you is the comments that Nalcor settles on and sends to you, right?

MR. ARGIROV: Correct.

MR. SIMMONS: So as far as whether Mr. Harrington's comments are right or wrong or objectionable or not, they don't really matter, do they?

MR. ARGIROV: Not –

MR. SIMMONS: To you.

MR. ARGIROV: – to the IE work –

MR. SIMMONS: No.

MR. ARGIROV: – no.

MR. SIMMONS: Okay.

MR. ARGIROV: If they are not presented to the IE, it obviously don't matter.

MR. SIMMONS: Yeah.

Oh, I had another question for you about the – when you had spoken about the data room. You had said that MWH's clearance was not at the same level as Canada's other advisors? I wonder if you can just explain that for me a little more 'cause I didn't understand what you – what was meant by that.

MR. ARGIROV: This was not related to the data room.

MR. SIMMONS: Oh, okay. Yes.

MR. ARGIROV: This is the federal clearance.

MR. SIMMONS: Yes.

MR. ARGIROV: Which is, I would say, security clearance or something like that, so –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – nothing to do with –

MR. SIMMONS: So this is the (inaudible) –

MR. ARGIROV: – Nalcor or the project or –

MR. SIMMONS: Right.

So this is the federal government process for identifying what type of information is allowed to go to people outside of government –

MR. ARGIROV: Correct.

MR. SIMMONS: – is it?

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: Okay.

And the other advisors who had a higher clearance level –

MR. ARGIROV: It's a security clearance –

MR. SIMMONS: Yeah.

MR. ARGIROV: – which is well understood what –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – it means –

MR. SIMMONS: Yeah.

MR. ARGIROV: – I hope, when I mention it, 'cause – yes. The other consultants were at different level.

MR. SIMMONS: Okay. All right.

And that could in part explain why some information would be able to go to Blair Franklin, say, but not to MWH.

MR. ARGIROV: Correct as well. Yeah.

MR. SIMMONS: Yeah. Okay.

Okay, can we bring up exhibit P-02232, please? Volume 5, tab 91, Mr. Argirov.

And we're going to go all the way to page 171, Madam Clerk.

So this is –

MR. ARGIROV: Tab, sorry –

MR. SIMMONS: Yes?

MR. ARGIROV: – which tab?

MR. SIMMONS: (Inaudible) – 91.

MR. ARGIROV: Ninety-one, okay.

MR. SIMMONS: And if you use the numbers in red on the top right-hand corner, we're going all the way to page 171.

MR. ARGIROV: (Inaudible.)

MR. SIMMONS: Mr. Learmonth brought you to this as well.

MR. ARGIROV: Yeah, okay.

MR. SIMMONS: And scroll down, please, Madam Clerk?

Stop there.

You were asked about the paragraph here that begins: “The IE was not furnished with the actual cost estimate details as part of oversight effort.”

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: And I want to draw your attention to the comment that's linked to that, where it says: “Commented [PH95] ...” – and we're presuming PH may be Paul Harrington, although there are other people with that initial in Nalcor.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: And it says: “The IE has been provided with full access to the cost estimate ...”

So, do you know which of those statements is correct?

MR. ARGIROV: No.

MR. SIMMONS: Okay.

And the next page – page 172, please. I'd like to stop there.

The first full paragraph there refers to the “AACI Class 3” estimates and you were asked about that in your direct examination as well. And linked to that there's a comment there – “Commented [PH99]” where – and I won't read the full thing but it says: “this is not a full and accurate representation of a Class 3 Estimate according to AACEI 69R- 12.”

So, you can take a look at this if you want, but it appears to me that there's a debate here about how to interpret the – what is an AA – what the requirements are for an AACEI class 3 estimate.

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: Do you see that?

MR. ARGIROV: Yeah.

MR. SIMMONS: Okay.

MR. ARGIROV: But that's quite normal.

MR. SIMMONS: Yeah. Yeah.

MR. ARGIROV: People could argue about one end of the – that one group is here, the other group is there.

MR. SIMMONS: I'm sure if you got any kind of specification and two engineers you can get two different interpretations.

MR. ARGIROV: Absolutely.

And if there was no standards –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – they're just guidelines.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: People could argue based on their experience –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – and experience could vary very much. And finally they have to reconcile –

MR. SIMMONS: Yeah.

MR. ARGIROV: – something which Canada actually requested.

MR. SIMMONS: Yeah.

So, I'm – just want to bring you to the same passage now in the November 29th report, which is at P-01958, back in binder 6, tab 103 and, Madam Clerk, it's page – starting at page 211.

THE COMMISSIONER: 103.

MR. SIMMONS: Scroll down. Down to the bottom. And stop there. Okay, if we start reading in section 10.1.4 Capital –

MR. ARGIROV: Mm-hmm.

MR. SIMMONS: – Budget: “Based on the limited number of large contracts we have reviewed, it is our opinion that the DG3 cost estimate was robustly prepared, following the general procedures outlined in the AACEI for a Class 3 estimate. We differ from Nalcor's opinion as to the level of accuracy of the estimate in that we strictly follow the recommendations of AACEI for this level of estimate wherein they allow a -20% to a + 30% allowance ...”

So, the final report recognized that there was some disagreement on this point and recognized the debate as pointed out in the draft.

MR. ARGIROV: Sure, yeah.

MR. SIMMONS: Yeah. Okay.

MR. ARGIROV: There's nothing to say about this.

MR. SIMMONS: Okay.

And the only other thing I wanted to ask you about was you made some comments about

quality review when you described for me, earlier, what you do in phase 3? And if I understand correctly, for major components or important parts of what are going to make up the plant, you have tracked the quality processes in the fabrication plant and, as well, reviewed Nalcor's oversight of the quality.

MR. ARGIROV: Correct.

MR. SIMMONS: Right.

And –

MR. ARGIROV: Phase 2. Let me –

MR. SIMMONS: Pardon me?

MR. ARGIROV: – correct – let me correct you, phase 2.

MR. SIMMONS: Phase –

MR. ARGIROV: You mentioned phase 3.

MR. SIMMONS: Oh, I'm sorry. I'm sorry.

MR. ARGIROV: Yeah.

MR. SIMMONS: Yes, in phase 2, yeah.

And I presume that's important for major components like the turbine and the work that ANDRITZ is doing in China and all the rest.

So, can I ask you, from the work that you've done in phase 2 to monitor the quality of ANDRITZ's work in China, have there been any significant concerns as a result of that?

MR. ARGIROV: No. That's a straight answer, no.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: Actually, we were surprised –

MR. SIMMONS: Mmm.

MR. ARGIROV: – with the quality that was achieved in this shop.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: We had very big concerns on our way there.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: However, we observed ANDRITZ had established a very good system.

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: They actually created internal school to bring the welders –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – to North American standards –

MR. SIMMONS: Right.

MR. ARGIROV: – because here any welder has to be certified –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – to a certain level, and they’ve done this over there.

So, ANDRITZ has their – had, and still has, their quality review team, and M – sorry, Nalcor –

MR. SIMMONS: Nalcor.

MR. ARGIROV: – had, on top of that, another quality team –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – that were constantly looking at the performance, at the execution of the –

MR. SIMMONS: Mm-hmm.

MR. ARGIROV: – equipment –

MR. SIMMONS: Right.

MR. ARGIROV: – in the project.

MR. SIMMONS: Good, okay.

Thank you very much. That’s all the questions I have for you.

MR. ARGIROV: Okay.

THE COMMISSIONER: I know it’s 10 to 5 but I’m gonna push on a little bit farther.

So, the next is Concerned Citizens Coalition. I don’t intend to go beyond 5:30, so if you aren’t finished by then, Mr. Budden, that’s fine.

MR. BUDDEN: (Inaudible) finished by then.

THE COMMISSIONER: Okay.

MR. BUDDEN: Good day, Mr. Argirov.

My name is Geoff Budden. I’m the lawyer for the Concerned Citizens Coalition.

MR. ARGIROV: Good day –

MR. BUDDEN: And –

MR. ARGIROV: – Mr. Budden.

MR. BUDDEN: – good day to you, Sir, and the coalition is a group of individuals who, for a number of years, have been critics of the project, both before sanction and since sanction, and who have standing at this Inquiry. So I’ll be asking you questions today; I expect I’ll be about a half-hour. And I have two main areas of focus: one is the dismissal of those two gentlemen from the team; the other is the North Spur, but I also have a few questions beyond that.

MR. ARGIROV: Okay.

MR. BUDDEN: Firstly, we’ve heard a fair bit of evidence of your role on the team, and would it be fair to characterize it as a fairly high-level management, your own position on the IE team?

MR. ARGIROV: At which phase?

MR. BUDDEN: Phase 1 I’m thinking of in particular.

MR. ARGIROV: Correct.

MR. BUDDEN: Okay. And in phase 2 you transition more into –?

MR. ARGIROV: Direct.

MR. BUDDEN: And that was because that was a better reflection of your own skill set?

MR. ARGIROV: Well, I cannot brag about this. You have to ask Canada.

MR. BUDDEN: Okay. The – well, we can't.

But anyway, that's – and one, actually, one other preliminary question: How, to your knowledge, did MWH become aware of the Nalcor RFP with regard to the IE engineering position? Were you recruited or respond to an advertisement? Can you tell us about that?

MR. ARGIROV: The RFP is publicly posted so MWH responded to this information –

MR. BUDDEN: Okay.

MR. ARGIROV: – from the RFP.

MR. BUDDEN: Fair enough.

The two gentlemen who were the subject of some of the Nalcor criticism, Mr. Hokenson and Mr. Loucks, did you – they occupied, obviously, senior positions within the day-to-day work of the independent engineer in phase 1. I'm correct on that, aren't I?

MR. ARGIROV: Incorrect.

MR. BUDDEN: Yes –

MR. ARGIROV: It was actually bigger team, it wasn't just those two.

MR. BUDDEN: No, but Mr. Hokenson, I believe, was head of the team.

MR. ARGIROV: Mr. Hokenson was the manager.

MR. BUDDEN: Right.

MR. ARGIROV: Yeah.

MR. BUDDEN: And Mr. Loucks is – am I pronouncing his name correctly?

MR. ARGIROV: Yes, he was one of the team members.

MR. BUDDEN: Okay. And what were his –

MR. ARGIROV: The same level.

MR. BUDDEN: And what were his particular responsibilities?

MR. ARGIROV: Full cost –

MR. BUDDEN: Okay.

MR. ARGIROV: – and schedule evaluation.

MR. BUDDEN: Sure.

So they – and I understand, they were not – and correct me if I'm wrong because I may well be – they were not employees of MWH, they were contracted for this particular job, am I correct on that?

MR. ARGIROV: No.

MR. BUDDEN: Okay.

MR. ARGIROV: They were direct employees of MWH.

MR. BUDDEN: Okay, so they were as you were, you're all employees.

MR. ARGIROV: Correct, yes.

MR. BUDDEN: Okay. And so long had they been employees of MWH?

MR. ARGIROV: How?

MR. BUDDEN: How long had they been employees?

MR. ARGIROV: Oh, I don't know.

MR. BUDDEN: Several years?

MR. ARGIROV: Oh, at least, yes.

MR. BUDDEN: Okay. So you knew them fairly well, I would assume.

MR. ARGIROV: I knew them fairly well, depends how you define fairly well.

MR. BUDDEN: You'd worked with them before?

MR. ARGIROV: I worked with some of the team, yes.

MR. BUDDEN: I'm thinking in particular of Mr. Hokenson and Mr. Loucks. Have you worked with them before?

MR. ARGIROV: Not with Mr. Loucks. And Mr. Hokenson, I didn't work with him but I knew of him.

MR. BUDDEN: Okay.

Did you select them for your team or were they assigned to you by somebody else?

MR. ARGIROV: No, the proposal was prepared by a Seattle team, and we didn't have capacity at the time to put people from Canada because we were very busy with another five projects.

MR. BUDDEN: Yes.

So to answer my question, how did they come to be on the team? Do you know?

MR. ARGIROV: There was – put as a team during the proposal.

MR. BUDDEN: Okay.

MR. ARGIROV: And that's normal process.

MR. BUDDEN: Okay.

Going in to this project, did you have any concerns or reservations about their skills, their qualifications, their suitability for the project?

MR. ARGIROV: Not at all.

MR. BUDDEN: Not at all.

MR. ARGIROV: No.

MR. BUDDEN: Okay.

Were you aware of any previous problems either of them had had with previous owners along the lines of their competence or their being able to get along with the owners?

MR. ARGIROV: No. Mr. Hokenson is a very competent engineer.

MR. BUDDEN: Okay.

And is Mr. Loucks – did you know him for having a reputation for being argumentative and antagonistic?

MR. ARGIROV: I couldn't say that. I never seen any comments like this.

MR. BUDDEN: Fair.

Well, that's answering my question. You weren't – nobody else to your knowledge –

MR. ARGIROV: No, no, no.

MR. BUDDEN: – no other owners had alleged he was argumentative or antagonistic?

MR. ARGIROV: No, no, no.

MR. BUDDEN: Okay.

Perhaps we'll call up Exhibit 02194, Madam Clerk?

THE COMMISSIONER: 02194.

MR. BUDDEN: Yes, and perhaps –

THE COMMISSIONER: Tab 52 in volume 3.

MR. BUDDEN: And if we can scroll down just a little further. It's the corral comment I'm looking for. Yes. Perhaps if you could – actually, just go back to the beginning just to contextualize this. This is an email from James Meaney of Nalcor – an internal email from him to Harrington and Clarke.

MR. ARGIROV: Mm-hmm.

MR. BUDDEN: And it's dated November 1, 2013, which was a little before the beginning of

this exchange of drafts and evolution of drafts that – my timelines there would be correct, I believe.

MR. ARGIROV: Well, no, there were already at least four drafts that were exchanged.

MR. BUDDEN: By November 1?

MR. ARGIROV: Yes.

MR. BUDDEN: Okay.

MR. ARGIROV: I think they were in the exhibit that started from March. There was a – some back in July; there was another one in October, and I'm probably missing something.

MR. BUDDEN: Okay.

Perhaps you could just read the – we've all been through this before, but just to move this along, perhaps you could read the last paragraph? The one that begins, "She" – and in this case, she is Ms. Manzer.

MR. ARGIROV: Mm-hmm.

"She suggested we need another face-to-face session with Canada, CBB, MWH and BF in short order to address these issues and put them to rest once and for all to get a clean IE report by Nov 15. She acknowledged this will be painful, but has committed to being there to coral MWH and BF."

MR. BUDDEN: Okay.

I'm assuming by coral, it's actually meant corral, which I take to mean rein in, control and so forth. Assuming my meaning is correct, when did you first become aware, I guess, of this plan or effort to corral yourself – your team.

MR. ARGIROV: I'm not aware of that and that has nothing to do with me, nor with Canada. I think it was language by – did you say by Mr. Meaney?

MR. BUDDEN: It's Mr. Meaney reporting –

MR. ARGIROV: Okay.

MR. BUDDEN: – to other Nalcor members of that –

MR. ARGIROV: So it's an internal communication in Nalcor so I cannot comment on the base of their language that they're using.

MR. BUDDEN: Well, I suggest you can in this regard. Were you aware in anything in the first two weeks of November that in retrospect you would regard as any kind of an effort to corral your team, arising out of these expressed concerns? Anything that comes back to you now – meetings ...?

MR. ARGIROV: No. I (inaudible) – there was meeting, I believe, that was schedule for – we already saw this in exhibit – November 6, which I did not attend so ...

MR. BUDDEN: Okay. You didn't attend?

MR. ARGIROV: No.

MR. BUDDEN: Okay.

What do you make of this? If, indeed, Ms. Manzer is promising to Nalcor to – committing being there to corral your team, what do you make of that?

MR. ARGIROV: I don't make anything of this because I was never told by Ms. Manzer that anything needs to be corralled.

MR. BUDDEN: Okay. So you, personally, weren't told.

MR. ARGIROV: No.

MR. BUDDEN: Okay. But you did miss a meeting in this time span?

MR. ARGIROV: Yeah, I was not in this meeting.

MR. BUDDEN: Okay.

MR. ARGIROV: If it was important, probably Canada would have asked me to be in this meeting.

MR. BUDDEN: Perhaps we could move on to Exhibit 02212, please, Madam Clerk?

THE COMMISSIONER: 022 ...

MR. BUDDEN: 12.

THE COMMISSIONER: 02212.

MR. BUDDEN: That's the one.

This, again, is another email about –

THE COMMISSIONER: Tab 70.

MR. BUDDEN: That's correct, yes. A couple of weeks – do you want to – do you have it in front of you, Sir? There's a couple of things there I'm gonna be referring to.

THE COMMISSIONER: Book number 4.

MR. ARGIROV: Yes, sure.

MR. BUDDEN: So we'll start with the first sentence: "Alison" – who – which again, I assume, is a reference to Ms. Manzer – "has already indicated she is open to an MWH line-up change following delivery of the IE report....they would be the first 2 to go." And assuming the two in this case which, I think, will be established in a moment, are referring to Mr. Hokenson and Mr. Loucks.

Again, you have there Canada and Nalcor essentially agreeing among themselves that two members of your team would be the – quote – "the first 2 to go." What do you make of that?

MR. ARGIROV: The only thing that I knew, and was in a later day that I was introduced to that, was that Canada has concern of the organizational skills of Mr. Hokenson, and also his health, because – and I cannot reveal personal information because that's not correct for me to do it.

MR. BUDDEN: Okay, well –

MR. ARGIROV: Mr. Hokenson was 78 years old, and there was another personal needs that he had to attend. His wife had health conditions as well.

MR. BUDDEN: Yes, and died a couple of years later, I'm aware of that.

The – however, going into this project, that wasn't a concern such as would keep you from assigning him to the project.

MR. ARGIROV: No, because he was very much okay at that time.

MR. BUDDEN: Sure.

Perhaps scroll down a little further please, Madam Clerk. I didn't note what page the quote was on but – yeah, here it is. This is Paul Harrington, again, internal, but can you just read it to us? It's pretty short.

MR. ARGIROV: "Well if he was added he can be removed - I do not believe he adds any value so when we get through the IE report we should get Loucks and Rey removed from" – them. "Rey because of his poor organization and general performance and Loucks because he is argumentative and antagonistic" –

MR. BUDDEN: Okay.

MR. ARGIROV: – "towards Nalcor."

MR. BUDDEN: Okay.

Now, you were the manager of this team. Did you, at any time, have a sense that Mr. Loucks was argumentative and antagonistic towards Nalcor? Those are pretty heavy words.

MR. ARGIROV: I cannot suggest anything like this.

MR. BUDDEN: Okay.

MR. ARGIROV: Now, Mr. Loucks is a very academic person, and he's – he comes from the water industry and was providing this support to Mr. Hokenson,

MR. BUDDEN: Okay.

The reference to academic, are you suggesting he was perhaps a stickler, he was particular?

MR. ARGIROV: Well, he was a little bit in this fashion, yeah. That's right. Because he was a little bit in this fashion, yeah, that's right, because he was a little bit by the book –

MR. BUDDEN: Okay.

MR. ARGIROV: – person.

MR. BUDDEN: Now you – this came up in – near the end of your examination with Mr. Simmons and I'd like to return to it as well. Ultimately, beyond the responsibilities to the client, your team – you're all professional engineers, I assume, you have ethical responsibilities to deliver an honest report. I'm correct on it?

MR. ARGIROV: Absolutely.

MR. BUDDEN: Okay.

MR. ARGIROV: Correct.

MR. BUDDEN: What do you – I guess what concerns do you have about being, essentially, instructed by the subject of a report or encouraged by the subject of a report to remove key members of your team in the middle of preparing a report? What do you think of that?

MR. ARGIROV: I was never instructed.

MR. BUDDEN: Okay. So this –

MR. ARGIROV: That was – never happened.

MR. BUDDEN: Okay.

But the gentleman did leave the team.

MR. ARGIROV: Rey Hokenson actually stay in a team for another year, more than year 'cause –

MR. BUDDEN: But in a different role.

MR. ARGIROV: Yes, because he couldn't – he couldn't travel.

MR. BUDDEN: Okay.

MR. ARGIROV: And the next phase is very much involved, as that's – I explained very much, and there is a lot of site visits and travel, and travel to vendors, shops. And also, Mr. Hokenson had one of the conditions that he developed – he couldn't speak up as his voice

was very quiet and it was difficult to be heard during conference calls.

MR. BUDDEN: Okay.

MR. ARGIROV: Once again, please, don't ask me further questions about his personal health on (inaudible).

MR. BUDDEN: Am I doing so?

MR. ARGIROV: No.

MR. BUDDEN: Okay. Mr. Loucks –

MR. ARGIROV: That's what –

MR. BUDDEN: – what happened to Mr. Loucks?

MR. ARGIROV: Well, he had many other assignments. And position like this was not necessary anymore.

MR. BUDDEN: Was it always intended he would leave at this time? Was that the plan from the get-go?

MR. ARGIROV: Together with another five, six people.

MR. BUDDEN: So it was always intended –

MR. ARGIROV: Correct.

MR. BUDDEN: – right from the beginning.

MR. ARGIROV: Oh, yeah. Yeah.

MR. BUDDEN: Okay.

MR. ARGIROV: And then, as I explained, this was even more incentivised because of the exchange rate which – it was not prudent from company business point of view to maintain Americans on the team.

MR. BUDDEN: Okay.

So you're testifying that Nalcor's displeasure, whether expressed to you directly or otherwise, with him for being argumentative and antagonistic had nothing at all to do with him moving on from his role on the team? Nothing?

MR. ARGIROV: Correct.

MR. BUDDEN: Okay.

The – you do acknowledge that if the client – rather, if the owner had a sense that could simply complain about people on an engineering team and they'd be moved out, it wouldn't be much of an independent team, would it?

MR. ARGIROV: If that was executed, then, yes, but that was not the case and why Rey was then removed from the management position. While he was removed, he still remained a SE/QA/QC, which is even more important position than being manager because he had the final control over –

MR. BUDDEN: Okay.

MR. ARGIROV: – whatever is produced.

MR. BUDDEN: Perhaps we'll go to Exhibit 02343, one of the very last ones Mr. Learmonth brought up. That's the email from, I believe, June of 2018. Yeah, here we go.

I must say, Sir, I was surprised that the subject of your independent engineering overview would send an email like that to you. I mean, it suggests a very personal, cozy relationship.

Was that the nature of your relationship with Mr. Harrington?

MR. ARGIROV: No. That's your opinion.

MR. BUDDEN: Pardon?

MR. ARGIROV: That is your opinion, obviously, it's not mine.

MR. BUDDEN: It is my question, not my opinion.

MR. ARGIROV: Oh.

MR. BUDDEN: But you would agree that it would be – don't you find it rather remarkable that the head of the project team from Nalcor would be basically writing to you with a sign-off shame on Nalcor?

MR. ARGIROV: This was result of my email when I expressed big concern because I see this as a risk that individuals will be shaken and the project team will be shaken. And that's what he was, I assume only, that that's what he was following.

MR. BUDDEN: Okay.

MR. ARGIROV: This is the sentiment. And at this time, I think Mr. Harrington was already removed from the overall – being overall project director of the project to only generation side.

MR. BUDDEN: Okay.

MR. ARGIROV: And there might have been some sentiment there – you better ask him.

MR. BUDDEN: Oh, we will. We certainly will.

MR. ARGIROV: Yeah.

MR. BUDDEN: But in the meanwhile, we have you.

MR. ARGIROV: Yeah.

MR. BUDDEN: And, I guess I'm almost done with this, but I do have another question or two.

MR. ARGIROV: Mm-hmm.

MR. BUDDEN: So you said you just expressed an opinion as to some personnel decisions within the project management team or some concerns.

MR. ARGIROV: Correct.

MR. BUDDEN: Okay.

I – if I recall, I don't have the quote at my fingertips because I wasn't expecting it, but did you not say in your interview and perhaps in your evidence today that it is not your role as an independent engineer to express opinions of that nature?

MR. ARGIROV: Oh no, it's in my role to identify risk.

MR. BUDDEN: Okay.

MR. ARGIROV: If I see potential for increasing risk or risk rising up, I have to flag it. This is our role.

MR. BUDDEN: So you've got this sweeping mandate across everything that –

MR. ARGIROV: Of course.

MR. BUDDEN: – if you see risk from any source, you flag it.

MR. ARGIROV: Of course, because I will – little bit expand on risk of losing project management structure. Any team, a project team, particularly when they start, as a first project, to being together. But even if not, still, there is several phases of development of this team. They are known as forming, storming, norming and performing. And –

MR. BUDDEN: Okay.

MR. ARGIROV: – it's almost like one S-curve. And for team to achieve the level of performing, I would say – because we've seen the evidence that the team was really performing, it is a risk to eliminate the structure and to remove people, which are key people, from management position because that will bring all kinds of uncertainties.

MR. BUDDEN: Yeah. Well, that wasn't in your report. That was just a personal opinion expressed – or that was an opinion you expressed directly to the team. I mean, you're not –

MR. ARGIROV: That was opinion that – expressed directly to Canada.

MR. BUDDEN: Okay, but you also expressed it to Mr. Harrington, did you not? Or am I misunderstanding you?

MR. ARGIROV: I'm not sure, but my email is directly to Canada.

MR. BUDDEN: Okay.

Let's move on for now, anyway. The – yeah, here's – perhaps we can call up 02233. This is a bit of a one-off, but I do have a question about this exhibit. And it's the last page of that – I

don't think it's a very long exhibit, it's the very last page.

THE COMMISSIONER: (Inaudible), book 5.

MR. BUDDEN: Yeah.

Okay. Perhaps scroll – is that the very last page?

MR. ARGIROV: Sorry, which – which one?

UNIDENTIFIED MALE SPEAKER: Five.

MR. BUDDEN: Yeah.

The – it's somewhere in that exhibit, I can't lay my finger on it right now. But you were asked if you – your opinion on the overall Lower Churchill Project schedule – rather, there's an insertion in there to the effect that the overall LCP schedule is very achievable and realistic. And Mr. Learmonth asked you to – here it is, I believe.

MR. ARGIROV: I just have to find it –

MR. BUDDEN: Yeah.

MR. ARGIROV: – the tab, which tab, sorry?

MR. BUDDEN: Perhaps, Madam Clerk, if you could scroll a little more. It's – there's a particular quote I'm looking for that, if we can find it, it would be great.

Yeah, I have the quote, I wrote it down. So what it is, in any sense, is the – there's a quote in there that the –

THE COMMISSIONER: Page 27.

MR. BUDDEN: Page 27, is it?

Thank you, Mr. Justice.

MR. ARGIROV: Page 27.

UNIDENTIFIED MALE SPEAKER: What page are we at?

MR. BUDDEN: No. It – as I have it, it is: "The overall LCP schedule is very achievable and realistic." And you were asked to comment on that and you said that you wouldn't speculate.

That was in your direct evidence. And I guess I'm struck by that. I mean you, after all, were the manager and have been for a number of years now of this IE team. And do you feel you lack the knowledge to comment on that or do you feel that it's inappropriate for you to do so?

MS. O'BRIEN: (Inaudible.)

MR. BUDDEN: Which would it be?

THE COMMISSIONER: Page 6.

MR. BUDDEN: Yeah, page 6.

MR. ARGIROV: This was comment over what (inaudible) –

MR. BUDDEN: The very last –

MR. ARGIROV: No –

MR. BUDDEN: – bullet point.

MR. ARGIROV: – what's this document here that I see? I see only on the screen and I don't know which –

MR. BUDDEN: It's a Nalcor document.

THE COMMISSIONER: Sir, it's at tab 92, book 5.

MR. ARGIROV: Okay.

MR. BUDDEN: Now, I think the date of this is early 2014, but I didn't note that. It's on the cover page.

THE COMMISSIONER: November 25, 2013.

MR. BUDDEN: November 2013.

MR. ARGIROV: Mm-hmm, okay.

MR. BUDDEN: And you were asked to comment on that and you said that you, if I got it correctly, that you wouldn't speculate. And I guess I'm asking you why is it that you won't speculate? Do you feel you lack the knowledge or you lacked the knowledge of circumstance at the time, or why?

MR. ARGIROV: No, because our report was actually suggesting different –

MR. BUDDEN: Yes.

MR. ARGIROV: – conclusion.

MR. BUDDEN: Yes.

MR. ARGIROV: So that's why I don't want to speculate on a conclusion of my team, of MWH team.

MR. BUDDEN: Okay. So can I put it this way: You have confidence in the conclusion of your team –

MR. ARGIROV: Correct.

MR. BUDDEN: – which would suggest that you have doubts about whether this is accurate. Would that be correct?

MR. ARGIROV: It's conclusion of my team that I stand for.

MR. BUDDEN: Okay. Which contrasts, you would acknowledge, with the conclusion that's stated here.

MR. ARGIROV: Perhaps.

MR. BUDDEN: Well, a bit more than perhaps, isn't it?

MR. ARGIROV: Sure, yeah.

MR. BUDDEN: Okay.

Let's move on to – it's Exhibit 00434, page 6. But I have a bit of a question too before that, but just to save time. Where –

THE COMMISSIONER: What's the exhibit number?

MR. BUDDEN: 00434, it's the Bernander report of the summer of 2018.

MR. ARGIROV: And this is which –

THE COMMISSIONER: No, it's going to be one your screen.

MR. ARGIROV: Oh, okay –

THE COMMISSIONER: You don't have this one.

MR. ARGIROV: – all right.

MR. BUDDEN: Yeah, you won't have that one, I don't believe.

MR. ARGIROV: Okay, yeah.

MR. BUDDEN: And just before we get to it you were asked, by Mr. Learmonth, several questions about the North Spur –

MR. ARGIROV: Mm-hmm.

MR. BUDDEN: – and I'm gonna address them now –

MR. ARGIROV: Yeah.

MR. BUDDEN: – in the next couple of minutes.

But he said, and I'm paraphrasing, but he basically put it to you about concerns that you might've had about the North Spur. And you said that you had it reviewed by your own experts and that that satisfied your concerns. By your own experts, were you referring to experts on or retained by the MWH team?

MR. ARGIROV: Correct.

MR. BUDDEN: Okay.

And who would those individuals be? Could you name them?

MR. ARGIROV: Yes, John Young.

MR. BUDDEN: Okay.

MR. ARGIROV: And Tim Little.

MR. BUDDEN: Okay.

And you were I presume – or maybe you're not. Are you aware that this summer of 2018, there – well, just to back up a bit. There's an original Bernander report, there's a peer review, and you're familiar with both those documents because you discussed them both.

MR. ARGIROV: Correct, yes.

MR. BUDDEN: Are you aware that Dr. Bernander and others at his university filed a response to the peer review that was filed with this Commission in July of 2018, and which appears and has been an exhibit of the Commission since October of 2018? Are you even aware of that version?

MR. ARGIROV: No.

MR. BUDDEN: Okay.

I'm surprised by that. You continue to be the independent engineer. Would that not be part of your mandate, to keep up with further developments on such an important issue?

MR. ARGIROV: The North Spur has been discussed so many times. And it's been constructed and right now is under a monitoring program. And I received dam safety report on a regular basis that we review and we see what the parameters are and so on. And the report that was – the geotechnical peer review report was very conclusive.

MR. BUDDEN: Okay.

Well, let's turn to page 6 –

MR. ARGIROV: Yeah.

MR. BUDDEN: – if we may, Madam Clerk.

The Abstract of the report is there. If we can scroll down, it's about half a page. I don't know if we necessarily need it in the record, but – need it read in, but perhaps you can take a moment to review it and particularly the parts in boldface. So perhaps take a moment, if you would, Sir.

MR. ARGIROV: Yeah. Sure, yeah.

MR. BUDDEN: Okay.

And I would suggest to you, Sir – perhaps you can read us the very last paragraph of the abstract. The one that begins: As no up-to-date analysis. Could you read that, please?

MR. ARGIROV: “As no up-to-date analysis of the stability of the North Spur has been

provided, our conclusion is that an independent group of experts, appointed by government, should be entrusted with this important task.”

MR. BUDDEN: Okay. You’re – so you’re seeing this abstract for the first time?

MR. ARGIROV: Yes.

MR. BUDDEN: Okay.

MR. ARGIROV: And I’m not sure if there was a – if this is a creditable statement here, because stability reports are – many, actually –

MR. BUDDEN: Yeah.

MR. ARGIROV: – stability analyses have been performed.

MR. BUDDEN: You do regard Dr. Bernander as a creditable professional?

MR. ARGIROV: I don’t know Dr. Bernander and I have no – any experience with him nor his capacity.

MR. BUDDEN: Okay. Well, let’s turn to –

MR. ARGIROV: I have the experts –

MR. BUDDEN: Pardon?

MR. ARGIROV: I have experts that have reviewed Dr. Bernander reports and I think there was a master’s thesis report, I forget the name of the student, which was also presented.

MR. BUDDEN: Yes.

MR. ARGIROV: And our conclusion is actually listed in one of the publications by the independent engineer.

MR. BUDDEN: Okay.

I’d suggest to you, Sir, as the independent engineer –

MR. ARGIROV: Mm-hmm.

MR. BUDDEN: – that it would be, at the very least, prudent for you to review this document and would you not agree that that would be a

prudent exercise of your role as an independent engineer?

MR. ARGIROV: I have to make one point here: If something has been built and finished and another study has come five years later, do you think we need to still keep reviewing and reviewing something? I mean, here is an opinion –

MR. BUDDEN: Do you not, as an engineer?

MR. ARGIROV: Not if everything is perfectly functioning. Do you review the structural stability of this building?

MR. BUDDEN: The reservoir has yet to be filled, I understand.

MR. ARGIROV: Sure, yes. Yeah.

MR. BUDDEN: Okay.

MR. ARGIROV: But what I am saying is there’s so much reports and what matters is that they’re done and arguments between two sides probably will never settle and I’m not saying that we will not review that. We were not informed first to have this. But there is a –

MR. BUDDEN: (Inaudible) –

MR. ARGIROV: – practicality of one level of study.

MR. BUDDEN: Okay.

In your –

MR. ARGIROV: And we have – sorry, just to finish.

MR. BUDDEN: No, you go ahead. Sorry.

MR. ARGIROV: We have so many professional organizations that have been involved and they have sealed, with their professional seals, their reports and their design. I wonder if this counts for something. In Canada we follow these professional standards.

MR. BUDDEN: Mm-hmm.

MR. ARGIROV: And they're important because those professional engineers are members of associations and professional societies.

MR. BUDDEN: You acknowledge, obviously – in your interview, you acknowledge the importance of the North Spur because there are safety concerns, obviously, if the thing failed – do you –

MR. ARGIROV: Of course.

MR. BUDDEN: – still agree with that?

MR. ARGIROV: Of course.

MR. BUDDEN: Okay.

MR. ARGIROV: It is very important.

MR. BUDDEN: And I believe that you – in your interview you made some comment that the – maybe it was another joke, but Mr. Learmonth said there are still a body of people that are worried about it and that's why it's still an issue. And you said: I think there are still people that worry that the Eiffel Tower might collapse.

Was that the way you sort of equate this? Concern about the North Spur is like concern about the Eiffel Tower collapsing? Is that the way you see it?

MR. ARGIROV: I just mentioned about this building. Are we concerned about collapsing the building right now?

MR. BUDDEN: I would assume if an academic –

MR. ARGIROV: It's the same thing I said because Eiffel Tower, obviously, hasn't collapsed for a century.

MR. BUDDEN: Yeah.

I would answer it this way: If I was aware of an academic paper saying that this building was in danger of collapsing, I think it would be worried.

MR. ARGIROV: Well, there are several academic opinions on the other side. Actually,

there are more academic opinions and papers on the other side than this one and the first several reports actually up until this one here – I'm not sure what is here. These papers that were by another academics and engineers have discovered that Dr. Bernander didn't have the proper information –

MR. BUDDEN: Okay.

MR. ARGIROV: – and didn't have enough data. And that's why, the same as we – the study of the master's student – that they were using erroneous data input.

MR. BUDDEN: You may wish to read this report. The final thing –

MR. ARGIROV: (Inaudible.)

MR. BUDDEN: – really on that topic is – you made a comment about Cabot Martin there, something about him being perhaps in the pay of Hydro-Québec. I assume that's another joke. You're not seriously suggesting that Cabot Martin was somehow affiliated with Hydro-Québec and that was why he was being critical of the North Spur. You're not saying that, I assume?

MR. ARGIROV: No –

MR. BUDDEN: It was a joke?

MR. ARGIROV: Yes.

MR. BUDDEN: Okay.

With respect to quality control – and I won't be long at this because I think you've covered a fair bit of it. So, was the review of quality control and assurance processes, was that generally part of the mandate of the independent engineer?

MR. ARGIROV: Correct.

MR. BUDDEN: Okay.

And the – and you've talked about the proud stranding and so forth. So generally speaking, I guess, how would you effect that mandate? How would you – like would it be proactive? Would it be responsive? Tell me a little bit of, I guess, how you would act out that mandate.

MR. ARGIROV: In terms of overview of the quality, well, that's what I explained. For example, when we go, we visit fabrication yards and we observe the quality. For example, if we – let's take the gates. It's very important how the machining of different elements is done, how the welding is done, how the painting is done. And you could see right away that there might not be good quality if, for example, the painting has been done outside, not in a special chamber with controlled conditions. If the welding is not quality, you could see right away if there was a problem.

And then, the other thing is the test program – that is very important – so-called non-destructive testing, and all the examination that needs to be performed when it comes to welding. And we examine to see if that has is being followed.

MR. BUDDEN: Okay.

MR. ARGIROV: What is the outcome, and it's very important to see how they monitor that.

MR. BUDDEN: Okay.

So, it was almost like a process of spot checks or –

MR. ARGIROV: Correct.

MR. BUDDEN: – or a –

MR. ARGIROV: Yes.

MR. BUDDEN: – checklist or something.

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

MR. BUDDEN: Okay.

MR. ARGIROV: Because we visit the place for a day or two and we tried to examine as much as possible and to observe how the work is done on the – in the shop.

MR. BUDDEN: Sure.

A couple of questions about the reliance of the Government of Newfoundland and Labrador on your report. Now firstly, I do understand that you had one client here and –

MR. ARGIROV: Mm-hmm.

MR. BUDDEN: – that was Newfoundland, and I think it explicitly says in the contract that you had no reporting duty to the Government of Newfoundland and Labrador; I understand all that. Notwithstanding all that, we've heard other evidence just a week before last that certain politicians of our government of the day – I'm talking 2014, 2015, in particular – were essentially relying on the reports of the independent engineer to reassure the public that things were going well with the project.

Firstly, I guess, were you engaged in any way – officially, unofficially, telephone, email, anything – by Government of Newfoundland officials reaching out to you looking for feedback or reassurance with respect to their public use of your reports?

MR. ARGIROV: No, never.

MR. BUDDEN: Okay.

Were you even aware that they were doing that?

MR. ARGIROV: No.

MR. BUDDEN: Okay.

We also know, obviously, that an Oversight Committee was struck and I want to ask you to repeat your evidence there. I do have one particular line of questioning. Our understanding is, and there'll be more evidence about this in due course, but that in, I believe, April of 2017 the Oversight Committee was supplemented by six additional people, including some professional engineers and – were you aware of that?

MR. ARGIROV: I think that there was additions to the Oversight Committee and there was some change.

MR. BUDDEN: Yes.

MR. ARGIROV: That's all.

MR. BUDDEN: Okay.

MR. ARGIROV: And I met with the Oversight Committee.

MR. BUDDEN: Okay.

MR. ARGIROV: I had a meeting; that was the summer of '18. I don't remember the date but it was, I think it was end of July or –

MR. BUDDEN: Sure.

MR. ARGIROV: – something like that, yeah.

MR. BUDDEN: My question is this: With the addition of those new outside experts to the Oversight Committee, did the quality of, I guess, the questioning or the engagement from the Oversight Committee – did that change or improve in any respect that you noticed?

MR. ARGIROV: I don't have this direct observation to the Oversight Committee. The people that I regularly deal are just one person and this has been always through Canada. So if we are in a conference call with Paul Carter –

MR. BUDDEN: Mm-hmm.

MR. ARGIROV: – the call is organized by Canada, and a person from Natural Resources participates on the call.

MR. BUDDEN: Okay.

MR. ARGIROV: And that's always the case. And Mr. Carter comes to site visits. So he's been one that has been coming on the site visits in the last two years, so, really, there's no much change in the –

MR. BUDDEN: Okay.

So you weren't engaging –

MR. ARGIROV: communication.

MR. BUDDEN: – directly –

MR. ARGIROV: No.

MR. BUDDEN: Sorry to interrupt, but just to get to my point, you weren't engaging directly with the outside members of the Oversight Committee?

MR. ARGIROV: No.

MR. BUDDEN: You, personally, were not.

MR. ARGIROV: No.

MR. BUDDEN: Okay. And you're –

MR. ARGIROV: Not (inaudible).

MR. BUDDEN: – unaware of other members of your team – you can't speak to any reporting back they may have done of their – any contact they may have had with the outside – I'm thinking of the outside members of the committee in particular.

MR. ARGIROV: Of my team? No.

MR. BUDDEN: The – okay, fair enough.

MR. ARGIROV: No.

MR. BUDDEN: Last question – or couple of questions. I'm gonna start with a brief quote from your interview with Mr. Learmonth and others. And it reads as follows.

Mr. Learmonth asked you a question: Is your work on the Muskrat Falls – in your work on the Muskrat Falls Project, did you or your team do any studies on the figures that Nalcor was using for labour productivity. And you said: No. We never seen this. And he goes on to say: Wouldn't that be something that you would ordinarily do in examining a project on its merits? And you say: No, we – as I said, we were evaluating whether the process is followed correctly and that was it. And he says: Okay. So you did nothing on labour? You say: No. Productivity? And you say: No, we don't get to those. And then you go on.

But that leads into my question – I think I know the answer, but just for completeness. Would the IE have engaged at all with the estimating process in terms of looking how it – who is doing it, how the integration between the SNC and Nalcor estimating teams took place, all of that where it was anything done beyond reviewing that, really, that there was an estimating process?

MR. ARGIROV: No. No, nothing. If you're talking about the integrated team, but not in the relation to cost estimate. Yes, we observed

integration. And this is normal process. I've been, personally, in integrated –

MR. BUDDEN: Mm-hmm.

MR. ARGIROV: – teams. Not just once. To start with one here that maybe people are more familiar – it was Granite Canal project. We were an –

MR. BUDDEN: Yes, of course.

MR. ARGIROV: – integrated team. I was the engineering manager. People from Nalcor were project managers and so on.

MR. BUDDEN: Okay.

MR. ARGIROV: Actually, his name is Bob Barnes – Robert Barnes – so maybe you recognize the name.

MR. BUDDEN: Sure.

MR. ARGIROV: And I've been in different integrated teams as well. Even right now, I know for sure that Site C Project is absolutely the same pattern, integrated team. The project management is from BC Hydro, project managers, and the director is BC Hydro, and there's an engineering team. And they're mixed all together in the same office downtown Vancouver. And it's actually SNC-Lavalin joint venture with Klohn Crippen.

MR. BUDDEN: Okay.

So just to make sure I understand, and this is really it for me today. So your concerns have been raised throughout this Inquiry about how accurate the estimating process was and some of the issues within it.

MR. ARGIROV: Mm-hmm.

MR. BUDDEN: And I'm assuming from your answer that you weren't delving into the estimating process at that level.

MR. ARGIROV: Correct.

MR. BUDDEN: Okay, thank you, Sir.

MR. ARGIROV: You're welcome. Thank you.

THE COMMISSIONER: All right, it's 5:30, and I appreciate everybody's patience. We'll start again tomorrow morning at 9 o'clock with Mr. Argirov and we'll continue on – oh, sorry. I got a cold, so I'm trying to turn it off so I'm not annoying people.

So we'll start tomorrow morning at 9 o'clock and we'll continue with cross examination. I'm assuming, Ms. O'Brien, I know we have another witness on for tomorrow, but I understand hopefully we can get that one done as well.

MS. O'BRIEN: Yes, I think we'll finish him tomorrow.

THE COMMISSIONER: Okay.

All right, so 9 o'clock tomorrow morning then. Thank you.

CLERK: All rise.

This Commission of Inquiry is now concluded for the day.