



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 19

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*Commissioner: Honourable Justice Richard LeBlanc*

Wednesday

27 March 2019

**CLERK (Mulrooney):** All rise.

**MR. BÉCHARD:** (Inaudible.)

**CLERK:** This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc  
presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** All right, before we begin this morning, obviously the news is out related to Justice O'Brien's appointment, and I want to make an announcement this morning on behalf of the Commissioner and Mr. Learmonth, as well as the staff of the Commission.

This morning I would like to advise that as a result of the appointment of Justice Katherine O'Brien as a judge of the Supreme Court of Newfoundland and Labrador, I have appointed Irene Muzychka, QC, to replace her as Commission co-counsel. Ms. Muzychka joins a team committed to respond to the Commissioner's Terms of Reference, including Mr. Learmonth, who acts as the other Commission co-counsel.

Ms. Muzychka is an experienced litigator in our province's courts and has been a partner of the law firm Curtis Dawe since 1994. She holds a Bachelor of Commerce degree from Memorial University of Newfoundland and Labrador and an LL.B. from the University of New Brunswick. Ms. Muzychka will join – will immediately join the Commission staff on a full-time basis. Arrangements are in place for her transition into her new role, and it is expected that she will be engaged in the Commission's hearings in the near future.

As Ms. Muzychka's law firm represents Newfoundland Power Inc., which has been granted special standing at the Commission's hearings, she will not have any involvement in any matters that impacts or could impact the interest of Newfoundland Power Inc. as far as this Commission of Inquiry is concerned.

As is to be expected, Justice O'Brien's appointment to the Supreme Court of Newfoundland and Labrador means that the

Commission is losing a key and important member of its team. She has made an enormous contribution to this Commission of Inquiry since its inception, and the Commission's loss will certainly be the gain of our system of justice in the province. On behalf of all of the Commission staff, I wish to thank Justice O'Brien for her tireless work and effort in assisting this Commission to carry out its mandate up to now, and I wish her well in her judicial career.

The Commission is extremely appreciative and fortunate to have Ms. Muzychka become an integral member of the Commission's team

Just to advise everyone, I don't think that Ms. Muzychka will have any role in the next week and a half hearings. We do have a break after that, but when we begin back up in May, Ms. Muzychka will be, obviously, fully involved in the hearings.

So that's the announcement. I do not expect any delays or any sort of impact to the Commission, other than obviously we're losing somebody very important. And – but we will continue on, and I expect, again, we will continue to meet our mandate and also to conclude the Inquiry on time.

So having said that, Mr. Learmonth, are we ready to continue with Mr. Béchard this morning?

**MR. LEARMONTH:** Yes, we are.

Before we start, I'd like to enter one new exhibit.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** It's Exhibit P-02701. It's a note that Mr. Béchard made of the May 28, 2013, meeting with Paul Harrington and J. D. Tremblay. And that's the only additional exhibit we wish to enter.

**THE COMMISSIONER:** Okay.

And that's been disclosed to everybody now.

**MR. LEARMONTH:** Well, it hasn't. I just got it this morning. Well, it was in our documents, but I became aware of it this morning. So I think

the other counsel will have seen it before, but it's not entered as an exhibit.

**THE COMMISSIONER:** Okay. All right, that's fine.

All right. Mr. Béchar, you remain under oath at this time.

**MR. BÉCHARD:** Yes.

**THE COMMISSIONER:** And next up for questioning is Kathy Dunderdale.

**MS. E. BEST:** No questions, Commissioner.

**THE COMMISSIONER:** Thank you.

Former Provincial Government Officials.

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

**THE COMMISSIONER:** Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** No questions, thank you.

**THE COMMISSIONER:** Thank you.

Robert Thompson.

Not here.

Consumer Advocate.

**MR. HOGAN:** Good morning.

Is this on now, Mr. Béchar?

**MR. BÉCHARD:** Yeah. Good morning.

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

**MR. BÉCHARD:** Nice meeting you, John.

**MR. HOGAN:** Mr. Béchar, I just – I wanna talk about the EPCM contract and the integrated team. I know you've given some evidence on it, but I just wanna maybe get some more detail from you if it's possible this morning.

So I think you said when you first arrived, the EPCM contract, in your view, was never a true EPCM contract.

**MR. BÉCHARD:** That's right.

**MR. HOGAN:** And can – what do you mean by that? Can you elaborate on that? And maybe in doing so you can provide the Commission and the members of the public as well –

**MR. BÉCHARD:** Okay.

**MR. HOGAN:** – what an EPCM contract is and what your role –

**MR. BÉCHARD:** Okay.

**MR. HOGAN:** – would have been?

**MR. BÉCHARD:** So when an owner or a developer decide to take the EPCM contract management strategy to do a project, it got to be set on principle. And the main principle is the owner act as an owner and the EPCM contractor is performing the execution of the project. And acting as an owner means that you got a small structure, and this structure is mirroring a few position within the EPCM contractor just to make sure that the execution is aligned with the owner's strategy of executing the project.

So this being said, then the EPCM contractor under the contract – and you probably have seen the contract – that all the requirements of the owner, the way that the execution will be managed and this is the role of the EPCM contractor to manage the contract as per the owner requirements. This being said, an EPCM contractor, so to be successful managing, got to have authority. Without no authority, it's going nowhere.

**MR. HOGAN:** Was that the problem when you showed up and you said that it wasn't –

**MR. BÉCHARD:** Yes.

**MR. HOGAN:** – a true EPCM contract?

**MR. BÉCHARD:** Right at the start, even if it was at the engineering phase, the EPCM contractor was not having the necessary authority to perform under the contract.

**MR. HOGAN:** So normally it would be – the owner would be – I’m putting words to you – it would be, sort of, hands-off approach and let the EPCM contractor conduct the project?

**MR. BÉCHARD:** That’s right. Hands off for the portion covered by the EPCM contract doesn’t mean hands off on the owner obligation.

**MR. HOGAN:** Okay. But it was the opposite for this project.

**MR. BÉCHARD:** Yes.

**MR. HOGAN:** Okay. Thank you.

When the transfer was made to the integrated team, were you involved at all in determining what roles needed to be filled on that – leadership roles on that team?

**MR. BÉCHARD:** If your question is about I have been – do I have been involved in selecting the people of the integrated team? No, I was not involved.

**MR. HOGAN:** Okay.

Were you involved in identifying what roles should be filled and what expertise should – are required for those roles?

**MR. BÉCHARD:** No.

**MR. HOGAN:** No involvement whatsoever?

**MR. BÉCHARD:** No.

**MR. HOGAN:** Do you feel like you should’ve been involved in that?

**MR. BÉCHARD:** That will be good for them to involve me because of my experience and my capacity to build a strong team, yes.

**MR. HOGAN:** Okay.

So when the management roles, the leadership roles in the management team – the leadership roles in the integrated team were filled, did you have a chance to sit back and look at who was in those positions?

**MR. BÉCHARD:** What do you mean by sit back?

**MR. HOGAN:** Well, I want – did you – once the integrated team was complete –

**MR. BÉCHARD:** Yeah.

**MR. HOGAN:** – and there were people in these leadership roles –

**MR. BÉCHARD:** Yeah.

**MR. HOGAN:** – you would’ve obviously known who was in what role at that point in time.

**MR. BÉCHARD:** Oh, yeah, they present me the org chart –

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** – stating here’s the new organization, here’s the people that are going to fill that role, that role and that role. Yeah, that’s right.

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** The – they give me the new structure.

**MR. HOGAN:** At that point in time, did you – what were your thoughts on – were there any gaps in expertise lacking in any of those roles?

**MR. BÉCHARD:** Oh, for sure. If I had –

**MR. HOGAN:** (Inaudible) specific examples.

**MR. BÉCHARD:** – and (inaudible)? Oh yeah, for sure. But I was not necessarily allowed to express those concerns.

**MR. HOGAN:** It wouldn’t have gotten you anywhere.

**MR. BÉCHARD:** Beg you –?

**MR. HOGAN:** There wouldn’t have been any point to express any concern.

**MR. BÉCHARD:** No, because the idea was made, the decision was done. So – and I knew that my advice was no more required.

**MR. HOGAN:** So looking back now to when that was done in the spring, what expertise was missing at the leadership level of the integrated team?

**MR. BÉCHARD:** Oh, you know, your question is wide like that.

**MR. HOGAN:** I know. I'm looking for some specifics from the expert here as to, you know ...?

**MR. BÉCHARD:** I'd say that there was – to me the main expertise that was missing was the management of such a huge project. Like, this project is really, really huge. You got a lot of logistic. You got contract management. You got procurement. There's a lot of details in those type of project, so you need to have seasoned people that have been living in their life, through the steps to get to that position.

You see, to be – in my mind and this is only my opinion – to be a good component manager of a project like this, people should have at least 20 to 25 years of experience in the field. Not in the office, because this isn't the field where the game is going. So having played a role in an office, doesn't make you capable of driving such a project.

**MR. HOGAN:** So was that something that stood out that a lot of the Nalcor or the client-assigned leaders –

**MR. BÉCHARD:** There was –

**MR. HOGAN:** – were office people as opposed to field?

**MR. BÉCHARD:** There was people that, in their experience have been involved not necessarily working in the field in such a project. And what I mean field, I mean an area like Labrador.

**MR. HOGAN:** You mean winter conditions in Labrador for hydroelectric –

**MR. BÉCHARD:** That's right, exactly.

**MR. HOGAN:** – projects. So that was lacking.

**MR. BÉCHARD:** That was lacking.

**MR. HOGAN:** Okay. Can you think of anyone specific – can you name anyone specific who was put in a role that you think they weren't suited for?

**MR. BÉCHARD:** Scott O'Brien.

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** He was lacking that.

**MR. HOGAN:** Okay, anyone else?

**MR. BÉCHARD:** Darren DeBourke was lacking that.

**MR. HOGAN:** Okay, anyone else?

**MR. BÉCHARD:** Maybe there's other but I just don't have those names –

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** – coming up.

**MR. HOGAN:** Other than you from SNC, was there anyone else from SNC involved in leadership roles? I thought I heard evidence that it was just you.

**MR. BÉCHARD:** From SNC?

**MR. HOGAN:** Yes.

**MR. BÉCHARD:** We were – sometime we were 200, 250 people from SNC working on this project.

**MR. HOGAN:** Yeah, but in leadership roles on the integrated team, how many SNC people were there?

**MR. BÉCHARD:** Nick Gillis has been involved. Who else from SNC? Laird Paton has been involved from SNC. Stan Wynne, Serge Guerette – jeez, many from SNC has been involved.

**MR. HOGAN:** The last question I have on the integrated team switch. It took place – I guess

the process started around the spring of 2012, is that correct?

**MR. BÉCHARD:** April.

**MR. HOGAN:** April of 2012.

**MR. BÉCHARD:** Yeah.

**MR. HOGAN:** Sanction was later on that year, I just wonder if you have any comment with regards to the fact that this switch took place just several months before sanction. Was that an issue at all, the timing of the switch?

**MR. BÉCHARD:** No.

**MR. HOGAN:** Not to you?

**MR. BÉCHARD:** No, I don't think so.

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** If – anyway, I was in a position to know if there was an issue, so if they decide to make it in the spring, this is probably because this was not creating an issue with sanction.

**MR. HOGAN:** Okay.

I'll move off that topic.

So we've heard a lot of evidence about how your client wasn't happy with SNC's work. In your interview you referred to a lack of trust between the client – your client and SNC. And that's a bit of a heady phrase I think. Early on why was there a lack of trust right from the start? How did that develop?

**MR. BÉCHARD:** I'm not sure that I can answer to that because this lack of trust was already there when I arrived in July.

**MR. HOGAN:** Okay. So you have no – you can't comment on that, why it was already there?

**MR. BÉCHARD:** Not really.

**MR. HOGAN:** Okay. So you have no – you can't comment on that – why it was already there?

**MR. BÉCHARD:** Not really.

**MR. HOGAN:** Okay.

You were asked about the lack of geotechnical data with regard to the transmission lines yesterday. You remember that, and you refer to that as a huge risk. So we had heard some evidence that the geotechnical data was not obtained because there was a wait on release from the environmental process. Are you aware of this?

**MR. BÉCHARD:** There was a – what?

**MR. HOGAN:** They were waiting to – for it to be released from the environmental process.

**MR. BÉCHARD:** This was an answer that they were giving us, but by experience, having done such investigation during the process of getting the permit, it's – you've got – first of all, if you want to do those investigations during the process of getting the permit, your plan got to be ready and you got to – when in your permitting process, you are getting the authorization to do the investigation during the process.

**MR. HOGAN:** In your experience, even though these processes are ongoing, you've gotten permission to go in and to get – collect the geotechnical information.

**MR. BÉCHARD:** Yes.

**MR. HOGAN:** And in any event – I'm going to ask you – should they have at least waited to get that data before proceeding?

**MR. BÉCHARD:** Should they what?

**MR. HOGAN:** Was that data critical – they should have at least waited to – for whatever opportunity they needed to get that data?

**MR. BÉCHARD:** To me they should have been willing to make the effort to get the necessary authorization to do those investigation even during the permitting process.

**MR. HOGAN:** So were they not making the effort? You talked about that a little bit in the transcript. I think you said they weren't willing to get the permits or to go through the process.

Was there just no recognition that – or effort to get this data in the first place?

**MR. BÉCHARD:** No, I think they were recognizing the fact that we were missing geotechnical. I think they were just scared to delay the permitting process – getting involved in the field and having to negotiate with the Aboriginal to get there, so they were scared on delaying the permit process.

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** But this is manageable.

**MR. HOGAN:** It is manageable.

**MR. BÉCHARD:** Always did that.

**MR. HOGAN:** Always before, you've done it?

**MR. BÉCHARD:** Yeah.

**MR. HOGAN:** Okay. Thank you.

If we could just, please, bring up P-00860, please? It's binder 2 –

**MR. BÉCHARD:** Is it going to be shown on the screen?

**MR. HOGAN:** It will, yes.

**MR. BÉCHARD:** Okay. Yeah.

**MR. HOGAN:** Is that okay? Page 2. So this is the estimates that you were asked about.

**MR. BÉCHARD:** This is a summary of the direct cost estimate.

**MR. HOGAN:** Yes. So if we can just go to page 2, please.

So I know you were asked about this yesterday, and I think I understand your evidence, but I want to make sure. So the direct cost of – is 4.464 in December 2011, correct?

**MR. BÉCHARD:** Yup.

**MR. HOGAN:** So was your evidence that you would normally – Hydro-Québec – as a rule of thumb – you held up two thumbs – would

double that cost for the – would double this number and that would be the project cost?

**MR. BÉCHARD:** Within Hydro, the rule of thumb will show that the final capex cost will be around \$8.8, \$9 billion.

**MR. HOGAN:** And that includes financing, from what I understand.

**MR. BÉCHARD:** Yes.

**MR. HOGAN:** Okay. But you don't double the 5.1; you double the 4.4?

**MR. BÉCHARD:** Yes, because it got to be the direct cost not including the EPCM because EPCM is part of the soft costs.

**MR. HOGAN:** So doing it the way you would do it, in December of 2011, the total project costs including financing would have been 8.9 –

**MR. BÉCHARD:** Should be around – not very far from \$9 billion.

**MR. HOGAN:** I just want to get that on the record. That would have been – your number, in December 2011, would have been \$9 billion?

**MR. BÉCHARD:** Mm-hmm.

**MR. HOGAN:** Yes? You can say yes.

**MR. BÉCHARD:** I say yes.

**MR. HOGAN:** Yeah, okay. Thank you.

Yesterday you said you recommended to the client to add a year to the schedule. Do you recall saying that?

**MR. BÉCHARD:** No, no, no. I didn't say that.

**MR. HOGAN:** Okay. What did you say?

**MR. BÉCHARD:** We – what I did mention is we advised the client that the schedule was aggressive.

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** They decide to add a year afterward.

**MR. HOGAN:** After what?

**MR. BÉCHARD:** I know that the – oh, first of all, they got a delay in the spring getting the EA and –

**MR. HOGAN:** Spring of what year?

**MR. BÉCHARD:** Eh?

**MR. HOGAN:** Spring of what year?

**MR. BÉCHARD:** 2012.

**MR. HOGAN:** Okay.

**MR. BÉCHARD:** So they got some delay also in the Gate 3 or the sanction project, so those delay, because of the critical path of the schedule, delayed the diversion of the river by one year.

**MR. HOGAN:** Okay.

So you – I guess they did suggest an extension of the schedule or not? I'm a bit confused.

**MR. BÉCHARD:** I don't remember mentioning that we suggest extension – that I did suggest extension. We just – in the workshop and the discussion that we were having, we always been stating your schedule is too aggressive.

**MR. HOGAN:** Okay.

And what was the response? That they were staying with the schedule?

**MR. BÉCHARD:** The response is – was mainly that we got to stick to that because our management is looking – originally that there was – they stipulate in the project chart, and there was – the – their management was sticking to those original date.

**MR. HOGAN:** Okay.

Yesterday you were asked questions about the Hebron project, and you commented about how winter conditions here on the Island would be different than winter conditions in Labrador.

**MR. BÉCHARD:** Yup.

**MR. HOGAN:** You recall that?

So were you aware that Nalcor were looking at options here on the Island to do, and they compared it to the – the cost of the Muskrat Falls Project, before sanction was done?

**MR. BÉCHARD:** No.

**MR. HOGAN:** So you weren't aware of that.

Would you be able to comment at all about the risk exposure for doing smaller hydro projects on the Island, compared to the risk exposure for doing –

**MR. BÉCHARD:** Small hydro project?

**MR. HOGAN:** Smaller hydro projects on this Island, as opposed to the risk exposure, the financial exposure, for the Muskrat Falls Project.

**MR. BÉCHARD:** Okay, so, about only exposure, or about the costs?

**MR. HOGAN:** Any – risk exposure, cost exposure.

**MR. BÉCHARD:** You know, a hydro project is always – is mainly and always – compare the final cost per kilowatt or megawatt produce. When you lower the size of a generation project, the unit cost per kilowatt is just going up, just going up. So, then it's really difficult to justify to do small project because that the cost per kilowatt is too high.

**MR. HOGAN:** What about in terms of risk in winter conditions and things like that?

**MR. BÉCHARD:** What about what?

**MR. HOGAN:** You've talked about the risk of winter conditions in Labrador.

**MR. BÉCHARD:** Yeah –

**MR. HOGAN:** I guess –

**MR. BÉCHARD:** – that's right.

**MR. HOGAN:** – those risk conditions wouldn't exist here on the Island, would they, to the same effect?



**MR. BÉCHARD:** You got less risk on winter condition, but this is not necessarily the impacting factor on the costs.

**MR. HOGAN:** Okay, it's only one portion of it.

**MR. BÉCHARD:** That's right.

**MR. HOGAN:** Okay, that's all –

**MR. BÉCHARD:** There's –

**MR. HOGAN:** – the questions.

**MR. BÉCHARD:** – other costs.

**MR. HOGAN:** I think – that's all the questions.

Thank you.

**MR. BÉCHARD:** Okay.

**THE COMMISSIONER:** Thank you.

Astaldi Canada Inc.

**MR. BURGESS:** No questions, Commissioner.

**THE COMMISSIONER:** Thank you.

Former Nalcor Board Members.

**MS. G. BEST:** No questions, Commissioner.

**THE COMMISSIONER:** Okay.

Newfoundland and Labrador Building and Construction Trades Council and Resource Development.

**MS. QUINLAN:** No questions, Commissioner.

**THE COMMISSIONER:** Okay.

Dwight Ball, Siobhan Coady. Not there, I don't believe.

ANDRITZ Hydro, Grid Solutions, Barnard-Pennecon.

Counsel for SNC-Lavalin.

**MS. MURPHY:** No questions, Commissioner.

**THE COMMISSIONER:** All right.

Redirect, Mr. Learmonth?

**MR. LEARMONTH:** No redirect.

**THE COMMISSIONER:** All right.

Mr. Béchard, thank you very much.

**MR. BÉCHARD:** Thank you.

**THE COMMISSIONER:** I appreciate your time and you're free to go.

**MR. BÉCHARD:** Thanks a lot.

**THE COMMISSIONER:** Okay.

**MR. BÉCHARD:** It has been a pleasure.

**THE COMMISSIONER:** Okay.

Mr. Learmonth, what's our next –

**MR. LEARMONTH:** Well, the schedule is to have Mr. Sturge start at 11 but I'm ready to go as soon as he gets here, so if he gets here a little earlier, say 10:30, then we can go as soon as he's ready.

**THE COMMISSIONER:** Okay.

All right.

So, we're waiting for Mr. Sturge then and when he arrives –

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** – do you know – is he coming around 11, is that the understanding that –

**MR. LEARMONTH:** Well, what we asked was 11 because I didn't think it would be over so quickly this morning.

**THE COMMISSIONER:** Right.

**MR. LEARMONTH:** But, as soon as he gets here and is ready we can start.

**THE COMMISSIONER:** Okay.

All right.

**MR. LEARMONTH:** So, why don't we say tentatively, maybe 10:40?

**THE COMMISSIONER:** 10:45 or so.

**MR. LEARMONTH:** 10:45.

**THE COMMISSIONER:** When he gets here you just let me know –

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** We're ready, I'll come down.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** All right.

So, we'll adjourn until Mr. Sturge's arrival.

**MR. LEARMONTH:** Okay.

**CLERK:** All rise.

**Recess**

**CLERK:** All rise.

**THE COMMISSIONER:** All right.

**CLERK:** Please be seated.

**THE COMMISSIONER:** Mr. Learmonth.

**MR. LEARMONTH:** Yes, the next witness is Derrick Sturge.

Could Mr. Sturge be sworn or affirmed?

**THE COMMISSIONER:** Okay –

**MR. STURGE:** Yeah –

**THE COMMISSIONER:** – I can't recall if you were sworn –

**MR. STURGE:** – affirmed, please.

**THE COMMISSIONER:** Affirmed last time. If you could just stand, Sir, please.

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

**MR. STURGE:** I do.

**CLERK:** Please state your name.

**MR. STURGE:** Derrick Sturge.

**CLERK:** Thank you.

**MR. LEARMONTH:** I'd like to enter the following exhibits: P-02507 to P-02562, P-02627 to P-02631, P-02646 to P-02650, P-02671 to P-02678.

**THE COMMISSIONER:** All right. Those exhibits, then, will be marked as numbered.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** Just before we begin, Mr. Learmonth, I notice that you have one of our associate counsel joining you at the table, Michael Collins, and I don't think he's been on a public broadcast – or maybe you have been, I can't recall, but I just want to (inaudible).

**MR. LEARMONTH:** He was in Labrador.

**THE COMMISSIONER:** Oh, correct.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** Okay, good.

**MR. LEARMONTH:** But anyway, I'd like to thank Michael Collins for helping me in this –

**THE COMMISSIONER:** Okay, yep.

**MR. LEARMONTH:** – with this witness.

Mr. Sturge, what is your position at Nalcor?

**MR. STURGE:** My position is executive vice-president of Finance and chief financial officer.

**MR. LEARMONTH:** All right. And what is your educational background since high school?

**MR. STURGE:** I've got a Bachelor of Commerce from Memorial University.

**MR. LEARMONTH:** In what year?

**MR. STURGE:** 1982.

**MR. LEARMONTH:** Yes.

**MR. STURGE:** I've got an MBA from the University of Durham in the United Kingdom, 1996, a chartered accountant designation in 1984, and a certified management accountant designation in 1986, and they are now combined as a CPA –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – two designations.

**MR. LEARMONTH:** What is your work history since you completed your education?

**MR. STURGE:** I've had a number of roles and I'll just quickly touch on 'em. When I first left public practice – well, when I left university I worked with Touche Ross, which is now Deloitte, for a couple of years. I got my CA designation, left there, worked with a company called Rhodi Services, which operated a hundred and some odd retail operations throughout Canada and the United States, based in Newfoundland. From there I left and joined Newfoundland Hydro, and I was there for eight years. And for 7½ of that I was the director of rates and financial planning, so –

**MR. LEARMONTH:** What time period are we talking about?

**MR. STURGE:** This is from 1996 to 2000 – I'm sorry, from 1989 to 2006.

**MR. LEARMONTH:** All right.

**MR. STURGE:** And then 2006 – I left Hydro, became the chief financial officer of Voisey's Bay Nickel Company from 1996 to 2000, and then they shut the project down and I left. I went to CHC Helicopters as VP finance and corporate secretary from 2000 to 2005, basically. And then I had a short stint back with Deloitte as a partner in their corporate governance practice. And then I joined what was Hydro at the time in 2006.

**MR. LEARMONTH:** And then after you joined Hydro in 2006, what was your – what was the progression –

**MR. STURGE:** Well, I've –

**MR. LEARMONTH:** – (inaudible).

**MR. STURGE:** – I've effectively been in the same job since 2006. I mean, it was initially called vice-president Finance and CFO; now it's executive VP Finance, but it's essentially been the same role – the most senior financial role in the company during that period.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And my people reporting to me have changed over that period, but my role is essentially the same.

**MR. LEARMONTH:** Okay, so you're the chief financial officer –

**MR. STURGE:** That's correct.

**MR. LEARMONTH:** – the top person dealing with finance.

**MR. STURGE:** That's correct.

**MR. LEARMONTH:** And who reports to you? We've heard from James Meaney; what – where is he in the chain of –

**MR. STURGE:** Yeah, so –

**MR. LEARMONTH:** – command?

**MR. STURGE:** – it's changed over time, and actually it's changed as recently as last month, but at this current point, my direct reports would be four people – would be Jim Meaney, the VP Finance for power supply. It would be Carla Russell, who is our chief accounting officer on the corporate side. It's Natalie Templeman, who's the chief information officer who manages all the technology side of the business. And it's Auburn Warren, who's the director of financial planning and, you know, those types of functions – financial planning, insurance and those types of things.

**MR. LEARMONTH:** So those are the senior people that report –

**MR. STURGE:** Those would be my four senior direct reports, yes.

**MR. LEARMONTH:** All right.

And before we get into the questioning, I just wanted to go over a couple of points arising from the two Grant Thornton reports. We may have covered them before, but just for continuity I wanted to perhaps repeat the evidence on this. The first Grant Thornton report is on the sanctioning phase, and it's dated July 16, 2018. It's Exhibit P-00014. It's not in your documents, but it'll come up on the screen.

**MR. STURGE:** Okay.

**MR. LEARMONTH:** If we could turn to page 9 of that report, please.

So page 9, please.

All right. Lines one to six: "Financial Analysis. The following relate to cost estimates of the option that was selected by Nalcor, the Interconnected Island Option (i.e. Muskrat Falls):

"Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation. We have been informed by Nalcor's Project Team, that strategic risk exposure was to be funded through contingent equity from GNL."

When did you first become aware of the existence of this approximate \$500 million of strategic risk –?

**MR. STURGE:** The \$500 million would have been with – in connection with this report when it was released. Yes.

**MR. LEARMONTH:** Okay.

So, you didn't know anything about that?

**MR. STURGE:** Not the 500 million, no.

**MR. LEARMONTH:** You're the chief financial officer. This information was not provided to you?

**MR. STURGE:** Well, I was aware of the estimate, but it wasn't included in the estimate so, no, I wasn't aware, no.

**MR. LEARMONTH:** Okay.

Can you offer any explanation why you would not have been aware of that –?

**MR. STURGE:** I can't really, no.

No, I can't.

**MR. LEARMONTH:** No.

All right.

Now, just turning to page 64 of this same report, please; 64, well actually, go to the top of page 65 and the – okay, it says – once again, Exhibit P-00014: "The above image notes that July 15, 2017 schedule 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 that 'there was a low probability that a mid-2017 First Power ... 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' ..."

Now, when did you first become aware of the existence of this P1?

**MR. STURGE:** When the Grant Thornton report was released.

**MR. LEARMONTH:** You had no –

**MR. STURGE:** No.

No knowledge if it was a P1 schedule, no.

**MR. LEARMONTH:** Yeah.

And, you know what a P1 schedule is?

**MR. STURGE:** Yeah, yeah.

**MR. LEARMONTH:** Yeah, in reality it was upgraded to a P3 –

**MR. STURGE:** Yeah (inaudible).

**MR. LEARMONTH:** – before sanctioning.

But this information was not provided to you?

**MR. STURGE:** No.

**MR. LEARMONTH:** No.

Do you think it should have been?

**MR. STURGE:** I think it was – I think we had this discussion in Phase 1 and yeah, I think it's, you know, it's a relevant discussion. Well, I don't know what I would have done different, but I think it's relevant, you know.

**MR. LEARMONTH:** Yeah.

Well, it affects – I mean, how is it relevant, I can suggest to you one way it's relevant. That if there's a P1 or a P3 schedule, then – and that is not taken into account in the cost estimate –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – then that obviously has a financial impact and –

**MR. STURGE:** Yeah.

No, I wasn't suggesting that it wasn't relevant, I was just sort of thinking what I would've done differently and I hadn't really processed that.

**MR. LEARMONTH:** No, I – my – I guess my point is if this information has been provided to you or anyone else in your department, that you would've seen right away that there's a problem with the 6.2 capital cost estimate if there is a P3 schedule. Wouldn't you?

**MR. STURGE:** Certainly – it looks so, yeah.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Okay.

Now the other reference I want to make is to the December 7, 2018, construction phase Grant Thornton report, and that's Exhibit P-01677. And I'd like you to turn first to page 12 of that exhibit.

Now the first paragraph says, "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 DG3 budget was insufficient. Furthermore, Nalcor should have known that by April 2013 when the CH0007 bids" – that's the Astaldi 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."

When did you become aware of that information, Mr. Sturge?

**MR. STURGE:** This discussion here in this report.

**MR. LEARMONTH:** Yeah. So – and now I think that the fact that the contingency was exhausted was contained in the – one or more of the reports of the independent engineer prior to financial close on November 29.

**MR. STURGE:** Yes, you're right. I think you're right – yes.

**MR. LEARMONTH:** So –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – I think I'm correct on that but did you know that as a result of reading the independent engineer's (inaudible)? Because if you –

**MR. STURGE:** I don't think at the time it resonated with me, no.

**MR. LEARMONTH:** Okay.

So you stand by what you said –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – that the first time you’d became aware of the information –

**MR. STURGE:** Because at –

**MR. LEARMONTH:** – I just read to you on page 12 – oh just a minute, let me finish –

**MR. STURGE:** I’m sorry.

**MR. LEARMONTH:** – on page 12 was when you read the Grant Thornton –

**MR. STURGE:** Yes.

**MR. LEARMONTH:** – report.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay.

Next reference I want to make to the Grant Thornton report is on page 64. Sorry, that’s not right. It’s on page 19, please, of exhibit P-01677. If we go down to the bottom, just under line 13, there’s a reference to a July 13 final forecast cost deck prepared by the project management team. The comments, under the comment section, PMT comments “*July 2013 Final Forecast Cost deck, presented by Project team to CEO of ~\$7.0B.*”

And then how was this communicated to the 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 an excerpt from the presentation is “*We are forecasting the FFC to be ~\$7.0B which is 12% beyond the DG3...*” “*Exposure if mitigations are successful....FFC would be reduced to \$6.8 B.*”

Now this is well in advance of financial close. When did you come aware of this – become aware of it?

**MR. STURGE:** This one would have been before the Grant Thornton report because these presentations – the project team – this set of decks they put out included, I think, some of these presentations so it would have been in 2018 sometime.

**MR. LEARMONTH:** 2018? But –

**MR. STURGE:** 2018 and I recall somewhere around that same time, I remember Paul Harrington telling me that this had been the discussion in 2013, right?

But it – so it was before the Grant Thornton report but it would have been somewhere in that 2018 time frame.

**MR. LEARMONTH:** That you found out about it.

**MR. STURGE:** That I found out about it.

**MR. LEARMONTH:** Now when you found out about it, whether it was by reading the Grant Thornton report or by communications earlier from Mr. Harrington, what was your reaction to learning this?

**MR. STURGE:** I was a bit surprised because I, you know, I recall vividly, sort of the drawn out period we had to get the \$6.5 billion in 2013. But, you know, I mean, you know, I knew through 2013 that Ed and the project team had been having discussions over a lengthy period, and this is, I think, what caused this delay in getting the numbers.

So, you know, so I’m not – I wouldn’t have been totally surprised that the number, the final number, may not have been the only number they discussed, you know, in that sense, right, in that – I’m sure they didn’t come in and say here’s the number. I’m sure there’s always a discussion that takes place, so ...

**MR. LEARMONTH:** Well, I don’t understand what – how that answers the question.

**MR. STURGE:** No, I know, and, you know, I –

**MR. LEARMONTH:** You’ve got –

Okay, can I just –

**MR. STURGE:** No, I'll stick with my answer that I wasn't aware of that number until 2018.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** But in terms of being surprised, yes, I was surprised but –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – I would've expected that the discussion that would've ever taken place on these cost estimates probably would've been within a band of numbers, and it probably just wasn't a single point that they ever talked about.

**MR. LEARMONTH:** Okay, I'll put it to you this way: –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** You're the chief financial officer of Nalcor, correct?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** In July 2013, and this wasn't just a discussion, this was a final – forecast final cost, formal document, prepared by the project management team.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** It's before financial close, and you didn't know about it.

**MR. STURGE:** Right.

**MR. LEARMONTH:** Now, can you come up with any explanation or provide any explanation as to why you, as CFO, would not have been presented with this information before financial close; maybe not in July, but before financial close?

**MR. STURGE:** No, I can't, and I can, you know, 'cause I – I can't give you an answer. I mean, I can speculate, and the only thing I could speculate on is that there were discussions going on, on a number of issues that needed to be discussed before they got to a final number, that's all I could conclude, really, right?

**MR. LEARMONTH:** Yeah, but – but that information can still be presented –

**MR. STURGE:** Oh –

**MR. LEARMONTH:** – to you –

**MR. STURGE:** – absolutely –

**MR. LEARMONTH:** – with that caveat –

**MR. STURGE:** – yeah, absolutely, yeah.

**MR. LEARMONTH:** – that someone can say look – someone with the project management team or Mr. Martin could say look, we have this estimate in July 2013. Obviously, you have to know about it, it's \$7 billion. We're fine-tuning it –

**MR. STURGE:** Mmm.

**MR. LEARMONTH:** – and we'll, you know, we're doing more work, and when we – we'll keep you up to date. I mean surely that would've been the minimal – minimum level of communication that you should've had about this report.

Do you believe what I said is reasonable?

**MR. STURGE:** I think it would've been reasonable, and we were seeking to get an update at that point.

**MR. LEARMONTH:** That's what I mean. It's not just a question of you not turning your mind to it. You are looking for an update, and there was an update, and it was denied to you, correct?

**MR. STURGE:** I won't say it was denied 'cause we ultimately got it, and –

**MR. LEARMONTH:** When?

**MR. STURGE:** – but – we got it November 6, you know, so if –

**MR. LEARMONTH:** November 6 –

**MR. STURGE:** – and it – it was –

**MR. LEARMONTH:** – of what year?

**MR. STURGE:** It was very delayed, put it that way, yes.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And we were frustrated at the time, I – I'll give you that, absolutely.

**MR. LEARMONTH:** Yeah.

And why –

**MR. STURGE:** And so for –

**MR. LEARMONTH:** – were you frustrated?

**MR. STURGE:** Because it was becoming on the critical path and the financial close process, and ultimately it did become, you know, as you saw over the last little while. I mean, we've – the discussions with the independent engineer, with Canada, you know, sort of when people were starting to find out about the 6.5 and digest it, was very late in November so that was what we were trying to avoid and –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – and wanted to get that in play much earlier.

**MR. LEARMONTH:** Yeah and you were constantly at – requesting this information, is that correct?

**MR. STURGE:** Yes –

**MR. LEARMONTH:** Before November 6?

**MR. STURGE:** – yes, through like, sort of, the July, August, September, October period.

**MR. LEARMONTH:** Yeah, well who had control over the release of this information to you within Nalcor?

**MR. STURGE:** It would have been Mr. Martin, and it would have been not unlike any other time that it was a cost update.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** It would have been the same type process.

**MR. LEARMONTH:** Now Mr. Meaney, who reports to you, agreed that Mr. Edmund Martin had absolute control over the dissemination or release of cost information. Not only to the government and to the independent engineer but to you as CFO. Do you agree with that?

**MR. STURGE:** Yes. He controlled the flow of capital information, yes.

**MR. LEARMONTH:** Okay.

Well why did – you were aware of that – why didn't you do something about that? That seems to me it may – well, you know, it may seem to many people to be a very odd situation that the chief financial officer is not receiving capital cost updates. Do you agree with that?

**MR. STURGE:** Yeah.

I mean, we should –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – we should have been –

**MR. LEARMONTH:** Well –

**MR. STURGE:** – aware earlier, I would think.

**MR. LEARMONTH:** Well why, then, didn't you – maybe Mr. Warren, if he felt the same way, Mr. Meaney if he felt the same way, other people in your group – why didn't you confront Edmund Martin about this on the basis saying: Look, this has gone on long enough. We're not prepared to accept this, we want something done about it, and if you don't give it to us, we're going to the board of directors. Why wouldn't you have taken –

**MR. STURGE:** Well, you know, I think –

**MR. LEARMONTH:** – you know?

**MR. STURGE:** – I think once we got past 2013, it did change. I'm not saying we were always the first to know because I know we weren't; but I think as we got past 2013 we were involved earlier in the process.

**MR. LEARMONTH:** But you were still prohibited by Mr. Martin –



**MR. STURGE:** Couldn't release, you're right.

**MR. LEARMONTH:** – from using the information and that's why you got into trouble with the Government of Canada and we'll get into Ms. Manzer's letter later. That when they found out in August 16th that the cost overruns were not being reported to them –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – Mr. Argirov said he was very upset. So you may have been getting the information but by you getting the information without a corresponding right or permission to disseminate the information to the appropriate people what's the benefit of it?

**MR. STURGE:** Yeah. I mean it was probably a case of having the information put you in a harder position than not having it. (Inaudible.)

**MR. LEARMONTH:** Perhaps a slight improvement but not much. Do you agree?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah.

Okay and then just turning over to page 20 and 21 of the Exhibit P-01677. Once again, August 2013 report. These are, you know, they're, I guess, fine-tuning of the \$7 billion work and then September 2013 – the same thing. That's up to the time of financial close.

So the August – you didn't know about the August – the July 2013 report on page 19. Did you know about the August 13 report on page 20?

**MR. STURGE:** No. I mean, I think we were aware of that because we had been talking to Ed about getting an update so I think we had some – maybe some general awareness that they were looking at this issue. Right? But –

**MR. LEARMONTH:** Okay, well – why didn't you pressure him?

**MR. STURGE:** Well we, you know, we had set up a number – and an interesting – this is, what's the date on this – I don't know the date in August – I know we had a specific meeting on

August 27, 2013, and it was a meeting that Ed actually scheduled and the purpose of the meeting was to get a list of all the things we needed for – to hit a financial close date.

So, I remember Jim Meaney prepared a really good one-page summary – sort of a timeline of things we needed in September, October, November and so on. And I remember we had that meeting and one of the first items we talked about was the capital cost update.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** So, you know, we were – I mean, they were – Ed was very aware and Gilbert was very aware and the project team, of our need for it. But if they were still going through a process there was not much any of us could do to get the number if they weren't ready to give it to us. You know, that's – I think that's the situation we were in.

**MR. LEARMONTH:** Well why didn't you confront Mr. Martin and say: this isn't good enough? If you have an estimate, you're trying to refine it but we want to know all the final forecast cost estimates that you have. It seems that you just accepted the fact that Mr. Martin had complete control of this and you just passively stood by.

**MR. STURGE:** No. I don't think that at all. I think we were actively trying to get it but if we weren't being invited into that discussion then I don't know, you know, I mean – we were still in an organization, there's still norms about the way the organization operates and we were actively pushing to get the number, you know.

So, I don't know – I don't know really much – what else I could have done except continue to make this issue 'cause – and I was really bringing it to the forefront. I think it was the key issue and we needed it.

**MR. LEARMONTH:** But why didn't you take it to the board of directors?

**MR. STURGE:** I don't – you know, I mean it is easy to look at it now. If I put myself in my shoes at that point in time I just would never have thought that that would be something that I would bring to the board, I mean, for me to go to

the board and say: I've got an issue that needs to be dealt with, it would have to be pretty serious issue, you know, it would have to be something that felt fraudulent or, I mean – it just, it would be – you know, for me to go to the board and say the CEO is – that would be pretty serious stuff.

**MR. LEARMONTH:** Yeah, but you say that – but I suggest that that was an issue that had to be dealt with. The fact that you were kept in the dark and your – members of your team were kept in the dark about relevant financial information. I suggest that was an issue that you should – that should have been dealt with.

**MR. STURGE:** Well, I – you know, all I can say is I'll go back to my other answer of, you know – once 2013 passed – and that's the end of – 2012 and '13 seemed to be the years that had been a lot of discussions with the project team before it became public – 2013-14 – 2014 and '15 we were involved earlier in the process, so –

**MR. LEARMONTH:** But you weren't allowed to disseminate the information.

**MR. STURGE:** We weren't allowed to release it, so.

**MR. LEARMONTH:** Yeah, But, you know, 2014, that's fine. Do you agree that financial close on November 29 is a critical date?

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** Yeah. So, I'm talking about –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – more specifically up until financial close.

**MR. STURGE:** Yeah. I totally agree. In 2013 it was frustrating, we tried to get it and we eventually got the number, so we weren't denied the number but it took way too long for us to get it.

**MR. LEARMONTH:** You got a number, yeah, which was –

**MR. STURGE:** We got a number –

**MR. LEARMONTH:** But –

**MR. STURGE:** – and I – at the time, I would have believed that that was the best number that could have been given to us at the point. I don't believe –

**MR. LEARMONTH:** Do you still believe that, looking back? Or do you think it was low?

**MR. STURGE:** I don't know, I haven't really assessed that – I know that there's numbers here – 7, and I know there's 6.9s and 6.8s – so I haven't really digested sort of what would have brought it from 6.5 to 6.8 and 6.9 and whether that was valid or not, I don't know.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** But what I will say is that – and I did feel weird about this, is that we had the 6.5 in November and closed in December; and I remember in early 2014 there became this discussion back on the table, I think in February, of a \$7 billion number which, you know, seemed like a big jump in a short period.

**MR. LEARMONTH:** Yeah, but that was after financial close.

**MR. STURGE:** After, yes –

**MR. LEARMONTH:** So you – that's the point, you're using a \$6.531 billion for financial close –

**MR. STURGE:** Yup.

**MR. LEARMONTH:** – or at least some people knew about that 6.531; that's in the financing documents.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** And early, like a month later, all of a sudden you're talking about 7 billion. I mean, isn't there a problem there, on the surface anyway? What happened to cause that jump?

**MR. STURGE:** Yeah.

And I'm not gonna say it was wrong because, you know, I mean, what I do know was going on

through this period and – is that, I mean, there were bids coming in. So, and I'm sure there was a level of uncertainty. You know, I'm sure when they looked at the numbers there was a set of factors that they had a fairly good comfort level on, and there was another set of factors they had a less – a lower degree of certainty on. And I'm sure their discussion would have always been around that one – that set of factors they had less certainty on.

So, you know, I mean the fact that a number it lands on is 6.5 – and there might have been other discussions that could have been 6.5, 6.6, 6.7 – that doesn't necessarily, totally concern me because, you know, there's always a discussion around factors and assessments and views, and numbers get modified.

So, you know, if it was done for the right reason I wouldn't be totally concerned about that. Because it's no different now than we do with budgets. We, you know –

**MR. LEARMONTH:** Yeah, well are you saying it was done for the right reason?

**MR. STURGE:** I don't know.

If it was –

**MR. LEARMONTH:** You don't know if it was.

**MR. STURGE:** If it was I perfectly, you know – that's the discussion that should take place in some regards in that, you know, if you sort of think about the project team walking in saying here's a number and then that is the only discussion – it's never challenged or anything changed – then that's probably not a good process either. So I understand there's a process of discussion and when we do budgets outside of a capital process we do the same thing. People come in and put budgets in front of me and it may never be the final budget because we talk about different ways to do things and what's the assumptions in this, and is there risks.

So, I understand that discussion takes place.

**MR. LEARMONTH:** Well, I mean, they're only – what you're saying is they're only estimates. You know, they can change.

**MR. STURGE:** There're estimates, yes.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And there's variables in all of (inaudible) –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I understand.

**MR. LEARMONTH:** And an AFE is an estimate.

**MR. STURGE:** I agree. I agree.

**MR. LEARMONTH:** Yeah.

But at financial close the 368-billion tactical contingency allowance was exhausted. Do you agree?

**MR. STURGE:** Yeah.

Well –

**MR. LEARMONTH:** Do you agree with that or not?

**MR. STURGE:** Well, no, I don't really because when you look at the 6.5 billion breakout that was provided by the project team, in that it shows 182-million contingency. So –

**MR. LEARMONTH:** But where did that come from?

If the 368-million contingency was exhausted –

**MR. STURGE:** Yeah. Well –

**MR. LEARMONTH:** – how is it possible that with a figure of 6.531 there was still a contingency amount of a hundred and some odd million remaining?

**MR. STURGE:** I'm not saying –

**MR. LEARMONTH:** It just doesn't add up, does it?

**MR. STURGE:** – I'm not saying the Grant Thornton –

**MR. LEARMONTH:** Do you agree with me it doesn't add up?

**MR. STURGE:** No, I don't think I totally agree, and I'll just tell you why. And maybe I do, but I'll tell you why and then maybe we can revisit it. Because – just because Grant – 'cause I'm trying to reconcile in my mind – Grant Thornton say that the contingency was exhausted, yet the project management team was saying there was 182 million in the contingency. So somewhere there's a reconciliation in that that I don't – I can't tell you which is the right one or the wrong one.

**MR. LEARMONTH:** But the independent engineer said the same thing. It came to the same conclusion and it didn't know about Grant Thornton's conclusion because Grant Thornton's report had not –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – not been prepared. So you got –

**MR. STURGE:** So –

**MR. LEARMONTH:** – two people.

**MR. STURGE:** So if they were right, then I'm confused by these – contingency in the 6.5 then.

**MR. LEARMONTH:** Yes.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah. It doesn't add up, does it? Do you agree?

**MR. STURGE:** Yeah, doesn't add up. There's something there inconsistent.

**MR. LEARMONTH:** Yeah.

And do you have any reason to doubt the correctness of the conclusion of Grant Thornton or the independent engineer on that point?

**MR. STURGE:** No, I don't. The only thing that just hit me, though, is that (inaudible) –

**MR. LEARMONTH:** So you don't? You don't have any reason.

**MR. STURGE:** No, I don't. I have no doubt that they're both highly qualified people.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** The only thing going through my mind, though, is that I think the Grant Thornton – or the independent engineer comments may have been probably on the 6.2 billion, whereas I was – the contingency I was talking about was in the 6.5. So maybe –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – there's something in that reconciliation.

**MR. LEARMONTH:** Yeah.

But, you know, if the \$368-million contingency was gone, it doesn't add up, does it?

**MR. STURGE:** It doesn't, but – there does seem to be an inconsistency there, yes.

**MR. LEARMONTH:** But you haven't taken the time to explore that issue and so that you could come to the Commission and explain it.

**MR. STURGE:** I haven't no, 'cause it – I mean, it's five years back and we've clearly moved on, so ...

**MR. LEARMONTH:** Okay.

When you testified in – earlier in Phase 1, I believe you gave some evidence about this problem with – that developed in or about March 2013 about the – whether the condition –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – precedent for Canada with respect to sanctioning of the project had been met.

**MR. STURGE:** Right.

**MR. LEARMONTH:** Is that correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** And is – was your understanding that in – upon this finding of the

sanction agreement in December 2013 – 2012 – that the condition precedent for sanctioning had been met? Was that your understanding?

**MR. STURGE:** That was my understanding, yes.

**MR. LEARMONTH:** Okay, now how did you come to that understanding? Was it based on your own assessment or legal advice?

**MR. STURGE:** It was – there was legal involved in it, but the sanction agreement, really – because as we completed the federal loan guarantee, one of the very last items we had was this delinking, and it was the item that wasn't really discussed at the negotiating table and it kept getting punted, so we were negotiating all the other items.

The issue of whether the Maritime Link would be delinked from sanction of other projects was an issue that Canada wouldn't really discuss at the table. It was gonna be the final one that would be dealt at a higher level, and that's the way it played out. And the agreement reached between Nalcor and Emera, 'cause we'd have the sanction agreement, we'd do a concurrent sanction of both projects – the Emera project and the Nalcor projects – in December 2012 –

**MR. LEARMONTH:** Right.

**MR. STURGE:** – and then that would give us – and we had, you know, behind that we had a set of commercial arrangements that we would share the pain if things went off the rails with the UARB and those types of things, so we had that behind us.

But we did believe that that agreement and the two sanctions would give us the CP cleared.

**MR. LEARMONTH:** And you were wrong, right?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Yeah.

Now –

**MR. STURGE:** But –

**MR. LEARMONTH:** My –

**MR. STURGE:** – but I think –

**MR. LEARMONTH:** – question is this –

**MR. STURGE:** – I think it would've.

**MR. LEARMONTH:** Okay, go ahead.

**MR. STURGE:** I think it – I think had Emera sanctioned as we did, I think we probably would've been fine.

**MR. LEARMONTH:** But they didn't.

**MR. STURGE:** They didn't.

**MR. LEARMONTH:** And you knew that.

**MR. STURGE:** We didn't know –

**MR. LEARMONTH:** They hadn't even filed their application to the UARB until January.

**MR. STURGE:** Yeah, no, but the arrangement in the sanction agreement is that they were gonna sanction in December of 2012, before the UARB filing, and – as we did, on the Maritime Link. And from then on they'd still go through the UARB process; they'd make their filing, UARB would rule, and the UARB may have conditions. And what the sanction agreement effectively said was once those conditions come out, and it was a, you know, a range of different types of outcomes, is here how – here's how Nalcor and Emera would share the pain or – and continuing to move forward. But we had already sanctioned the project, and that was effectively the, you know, the – what the sanction agreement was giving us.

**MR. LEARMONTH:** Yes, and –

**MR. STURGE:** But we didn't –

**MR. LEARMONTH:** – the Government of Newfoundland and Labrador had sanctioned the project, and Emera signed a sanction agreement in December 2012, but the commitment of Emera was subject to approval of the UARB, and they hadn't –

**MR. STURGE:** That's right.

**MR. LEARMONTH:** – even filed an application for that approval yet.

**MR. STURGE:** That's right.

**MR. LEARMONTH:** Is that correct?

**MR. STURGE:** That's correct, yeah.

**MR. LEARMONTH:** It's correct.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Okay, well anyway, to come to the point –

**MR. STURGE:** But even with the sanction agreement – so let's assume that it all had played out, Emera sanctioned, we sanctioned, we cleared the CP, Emera still would've needed the UARB approval to move forward with the Maritime Link.

**MR. LEARMONTH:** That's right.

**MR. STURGE:** The only difference is that it wouldn't've gotten tied to our financing, I think, was the distinction.

**MR. LEARMONTH:** Oh okay. If you were – you can come with whatever explanation you want, of course, that's your right, but my question is this: If you and Emera were convinced in December 2012 that this met the condition precedent, why didn't you send a letter to Canada saying: Here's the sanction agreement, can you confirm to us that this meets the condition precedent with respect to sanction?

Why didn't you do that rather than base it on your own impression or interpretation, why didn't you do that?

**MR. STURGE:** Yeah, well I think the – and I can't totally give you a full answer on this one because – would you like me just to give a little bit of context on how it arose –

**MR. LEARMONTH:** No, I don't want context –

**MR. STURGE:** – no, no not context –

**MR. LEARMONTH:** – I want an answer –

**MR. STURGE:** – but some facts.

**MR. LEARMONTH:** – to the question as why didn't you, and Emera, go to Canada and say: Here's the sanction agreement, please confirm that, now that we have this document signed, that the condition precedent has been met. Why didn't you do that?

**MR. STURGE:** I think the reason – and there was a series of meetings on the 29th of November in Ottawa. And the previous evening, there had been a meeting on the 28th of November. That was a very late meeting; it ran three, four hours, it went well into after midnight. And it was a meeting that was attended by Mr. Martin, I believe it was Chris Huskison from Emera, their CEO, and the chief of staff for the premier of Nova Scotia, and the chief of staff for the premier of Newfoundland. So Brian Taylor and, I think it was Paul Black was the Nova Scotia person. So four of those folks met with Canada, and I think these – this issue was discussed.

**MR. LEARMONTH:** But you weren't at that meeting.

**MR. STURGE:** I wasn't at it, no.

**MR. LEARMONTH:** So you're basing this on information provided –

**MR. STURGE:** That would've –

**MR. LEARMONTH:** – to you by whom?

**MR. STURGE:** – that would've been reported back to us, after.

**MR. LEARMONTH:** By whom?

**MR. STURGE:** It would've been by Mr. Martin and the others at the meeting. And the next day, there was a letter, and I think it's an exhibit here somewhere.

**MR. LEARMONTH:** That's from Joe Oliver?

**MR. STURGE:** To Joe Oliver. And –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – in that letter, it references a November 26 letter. And between those two letters, effectively what was laid out to Canada is that what the two companies had arrived at, is, they were gonna move forward by, effectively, contractually resolving this issue between themselves.

**MR. LEARMONTH:** Okay. So are you saying that the letter, and we'll turn to that, from Joe Oliver provided the confirmation that I suggested you should've received – or requested.

**MR. STURGE:** No, I – but I think –

**MR. LEARMONTH:** Because I – well, my reading it doesn't do that but –

**MR. STURGE:** Well – well, I think it acknowledged that – you know, we acknowledge that this is a project –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – that is not de-linked and they are ultimately linked, and this was our way around it. But I know there were discussions at that meeting at a political level that – around those things.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** So, cutting through all that, we believed that if both parties sanctioned, we were good to go.

**MR. LEARMONTH:** Yeah. But isn't the business approach to this is to get something in writing? I mean, if you are interpreting the sanction agreement is to satisfy a condition precedent that's been imposed by Ottawa, isn't the normal business practice to go to Ottawa – in this situation, to go to Ottawa and say: Here's the sanction agreement, please confirm that the condition precedents were met.

Wouldn't that be a reasonable thing to have done?

**MR. STURGE:** I think –

**MR. LEARMONTH:** Do you agree it would be reasonable or not?

**MR. STURGE:** Not necessarily because –

**MR. LEARMONTH:** Okay.

**MR. STURGE:** – because the issue there was that what Ottawa wanted – or Canada wanted was sanction, they wanted the project sanctioned. So that was effectively what we had agreed. So, we were giving them exactly what they wanted – we were sanctioning the project.

**MR. LEARMONTH:** Well, if they – if you gave them exactly what they wanted, why did this thing blow up in or about March 2013?

**MR. STURGE:** I think – I think the reason it blew up is that when they dug in a bit more, they found that Emera hadn't really sanctioned.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I think –

**MR. LEARMONTH:** And because they hadn't given you written confirmation, then they were entitled to take the position that it hadn't been met. Right?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah. Okay, after –

**MR. STURGE:** Well, they could have given us written confirmation that if you both sanction, that we'll be fine, and I think they both have done that.

**MR. LEARMONTH:** I'm not talking about that. I'm talking about sending the sanction agreement that you and Emera had signed to them and say: Here's the agreement, please confirm that this meets the condition precedent.

**MR. STURGE:** And my belief is they would have said that is – that works. I think the issue became is when they –

**MR. LEARMONTH:** Well – so you think –

**MR. STURGE:** – found out that Emera didn't sanction, because they sanctioned with a budget, conditional qualifiers.

**MR. LEARMONTH:** Yeah. Because – and that was provided for in the sanction agreement.

**MR. STURGE:** It was but I think – and it's going back a ways, and there was a lot of meetings over two or three months on it but I think the issue became – is that what they wanted from Emera was a clean sanction that said: We sanctioned the Maritime Link.

Separate from that, Emera could've been approving the sanction agreement at their board, but I think where it got very mucky here is that Emera had some form of sanction that linked their sanction to somewhat conditional to the sanction agreement.

**MR. LEARMONTH:** Right.

**MR. STURGE:** And I think what Ottawa was saying is that: No, you – you sanction.

**MR. LEARMONTH:** Exactly.

**MR. STURGE:** Right.

**MR. LEARMONTH:** So –

**MR. STURGE:** Had that happened, I think we would have been fine.

**MR. LEARMONTH:** But it didn't happen, it didn't happen.

**MR. STURGE:** Had the –

**MR. LEARMONTH:** And the reason it didn't happen is because Ottawa had not confirmed that the condition precedent had been met and you didn't seek that. So, it was open to them when they decided to decide whether the condition precedent had been met to say yes or no, and they said no.

**MR. STURGE:** I –

**MR. LEARMONTH:** Correct?

**MR. STURGE:** – I don't totally agree with that, no. I'm not trying to argue with you, but I think the issue became – is that the process as laid out, had it played out that way, I think would've been fine. I think the issue is that Emera –

**MR. LEARMONTH:** But it didn't play out that way.

**MR. STURGE:** No, I agree –

**MR. LEARMONTH:** I'm sorry for interrupting you.

**MR. STURGE:** – I agree with you.

**MR. LEARMONTH:** You're talking about "if it had." I'm saying that it didn't play out that way, so let's talk to reality rather than what could've happened or what might've happened.

**MR. STURGE:** Before Emera –

**THE COMMISSIONER:** Excuse me just for a second.

**MR. STURGE:** – I'm sorry.

**THE COMMISSIONER:** I think we may be talking about two different things here and I just want to make sure I'm understanding the question here.

If there had been an unconditional sanction by Nova Scotia, I think what you're saying is that if there'd been an unconditional sanction by Emera and if Newfoundland had sanctioned, then you believe that Canada would've been satisfied with that.

**MR. STURGE:** I think we – yes.

**MR. LEARMONTH:** Yea.

**THE COMMISSIONER:** But the issue was that there was no unconditional sanction because the sanction was conditional on UARB approval.

**MR. STURGE:** Yeah.

**THE COMMISSIONER:** And as a result of that, that's why you're saying that Canada then took these steps that it took.

**MR. STURGE:** Yes.

**THE COMMISSIONER:** Am I right?

**MR. STURGE:** That's correct because the – what the agreement was was that it was gonna



be a sanction and not a somewhat conditional sanction. And that, I think, became the problem.

**MR. LEARMONTH:** And it was a conditional sanction.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Yeah.

All right. Now in – after you testified in Phase 1, we had evidence from Kathy Dunderdale, I believe it was on December 17 or 18, probably December 18. And she recalled a tense meeting attended by people from Nalcor and her and perhaps other government officials when she found out that the condition precedent was not met according to Ottawa. She couldn't recall the exact date, but knew it would – she believed it was sometime after sanction, sometime in early 2013.

And she stated very clear that she was very concerned about the implications for the project given her announcement, you know, that everything had been approved and she was concerned that she may have been accused or it may have been suggested that she was misleading the people of the province by saying that everything was green light when it wasn't.

Do you recall her giving that evidence?

**MR. STURGE:** I do recall that –

**MR. LEARMONTH:** Okay.

**MR. STURGE:** – yes.

**MR. LEARMONTH:** Okay.

Did you attend this meeting?

**MR. STURGE:** I can't –

**MR. LEARMONTH:** I can't give you the exact date.

**MR. STURGE:** – I can't recall it and I can't – but I can't say I wasn't there. But I know – but I'm not surprised that that meeting would've taken place, right.

**MR. LEARMONTH:** Okay.

So my – before I show you the letter from Joe Oliver, I just want to get your answer. How is it that you believe that the sanction condition precedent had been met when the sanction agreement was clear that Nova Scotia's UARB had to approve the deal?

**MR. STURGE:** Because – and the sanction agreement is a complex agreement. But what we were agreeing is that we would each sanction the project, and then if there were outcomes, there was a process of how we would deal with those between ourselves.

**MR. LEARMONTH:** Yeah, okay.

That's your answer, fine.

Now, this is the tab 1 of your book of documents. Mr. Sturge, that's in volume 1, if you can turn that up.

**MR. STURGE:** Volume 1, yeah.

**MR. LEARMONTH:** Now, this is a letter from Ed Martin and Chris Huskison dated –

**MR. STURGE:** What tab are we at?

**MR. LEARMONTH:** – November – tab 1.

**MR. STURGE:** Oh tab 1.

**MR. LEARMONTH:** November 29.

**THE COMMISSIONER:** P-02507.

**MR. STURGE:** Yes, yes, yes.

**MR. LEARMONTH:** P-02507.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah.

Is this the letter you were referring to or –?

**MR. STURGE:** This was one of them, and this refers to a November 26 letter. And I think the November 26 letter, in fact, may even lay out this process even in greater detail. But it does refer to it here, yes.

**MR. LEARMONTH:** Okay.

Now, if we go to tab 2 and tab 3 – tab 2 is Exhibit P-02508, and tab 3 is P-02509.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Can you go through those documents just before I ask you a question on it.

**MR. STURGE:** Yeah.

I'm familiar with those, yeah.

**MR. LEARMONTH:** You are?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay.

Now, is it correct that in these documents it's clearly – you're assisting in drafting the board resolutions for Emera to get them in a form that Canada would accept. Is that correct?

**MR. STURGE:** In one of these cases, I think the first email – or 02508 – I think in this one Emera was doing some drafting and they were sending documents back and forth to us for comment, and I think in the second one, 02509, I think I actually took it and said, in my view, here's the resolutions needed just to try to –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – simplify it.

**MR. LEARMONTH:** So you're assisting Emera in drafting the resolutions, correct?

**MR. STURGE:** Yeah.

But we had been in a lot of discussions on this so that –

**MR. LEARMONTH:** Okay.

**MR. STURGE:** – wouldn't have been too surprising.

**MR. LEARMONTH:** Do you agree that Emera would not sign these resolutions until they got the UARB accepted – the UARB had accepted the Energy Access Agreement?

**MR. STURGE:** The resolutions that I – as I had it drafted here, they didn't sign and wouldn't sign, no.

**MR. LEARMONTH:** Why not?

**MR. STURGE:** Because I think – I think the issue, as it played out, is that they had gone to the board. They got resolution – they had a resolution that talked about sanctioning, but it had a number of other conditions. So I think they believed, as we got into this discussion – because this went on subsequently for two or three months – I think they subsequently believed that to sign the resolution, for example, that I would have drafted here, they were taking on a risk that they hadn't got their board to approve –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – originally. I think that was the issue.

**MR. LEARMONTH:** Are you – do you agree that they wouldn't sign these resolutions until they got the UARB to accept the Energy Access Agreement?

**MR. STURGE:** As I drafted them here, I would agree, yes, that's the probably the case, yeah.

**MR. LEARMONTH:** That was the case.

You agree with that, do you?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** All right.

**MR. STURGE:** Because their resolution was conditional, so it –

**MR. LEARMONTH:** Exactly.

**MR. STURGE:** – it didn't need – you know, it ...

**MR. LEARMONTH:** The – please turn to volume 2, tab 67, Exhibit P-02628.

There's a –

**MR. STURGE:** (Inaudible) on the screen.

**MR. LEARMONTH:** 02628? Do you have that?

**MR. STURGE:** Yeah,

It's on the screen, anyways, so I can see it.

**MR. LEARMONTH:** Yeah. So this is page 1 of your notes.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** And there's a reference to a meeting on the top right-hand side, Meeting with Premier. I believe it's – give us the date, please.

**MR. STURGE:** The date is October 28. So this would have been the meeting where we were getting our financing approved.

**MR. LEARMONTH:** This is October 28?

**MR. STURGE:** October 28, 2013.

**MR. LEARMONTH:** Yeah. (Inaudible) –

**MR. STURGE:** So this is where we are appointing TD as a lead arranger.

**MR. LEARMONTH:** Yeah.

But this is a long time after the meeting when Ms. Dunderdale –

**MR. STURGE:** Oh yes, yes.

**MR. LEARMONTH:** – expressed –

**MR. STURGE:** Yes.

**MR. LEARMONTH:** But you have a note here: Premier not aware of NL sanction UARB issue – and then you got exclamation points – thought we had the FLG.

Did you –

**MR. STURGE:** Yeah, and I –

**MR. LEARMONTH:** Was she not aware at that time?

**MR. STURGE:** No, I mean, I know she was aware of the issue with the UARB in – back from May. I know that for a fact. So I was trying to understand, as when I saw this again, what could have been going on here. And what I believe may have been the case was that we just are landed on the EAA, the Energy Access Agreement, with Emera. And that was filed October 22, 2013, so six days before this.

So it could have been just some confusion that I sense that maybe she thought that was the conclusion of the process, but it still had to get approved, ultimately, by the UARB. That's all I could read into because I know she was well aware of the process.

**MR. LEARMONTH:** Yeah. But why do you have exclamation points? It seems like –

**MR. STURGE:** Because it just seemed – because in our own mind, we knew that we still had to get this final UARB approval that was two or three weeks out, and I – it was obviously something said that, you know, twiggged me to say that I wasn't sure that the premier understood that. I can't say she didn't, but obviously I'd heard something said there that made me believe that maybe she didn't.

**MR. LEARMONTH:** Oh, you say now you can't say you didn't, but in this record you said she didn't.

**MR. STURGE:** Right.

**MR. LEARMONTH:** Yeah, so you said –

**MR. STURGE:** I –

**MR. LEARMONTH:** – premier not aware.

**MR. STURGE:** I knew she was aware of the issue, but whether she was aware – that's all I could figure – 'cause that was the only outstanding piece there is we still needed UARB to ratify it in November.

**MR. LEARMONTH:** So why the exclamation points?

**MR. STURGE:** 'Cause I – 'cause to me it was – I – I'm – you know, we were living that every

day, and I just assumed everybody understood that, I suppose.

**MR. LEARMONTH:** And you were wrong when you assumed everyone understood.

**MR. STURGE:** I – well, that was my impression of what I thought the premier understood. I can't categorically say she didn't, but I sensed that she didn't, you know? So I – but it may have just been a confusion there.

**MR. LEARMONTH:** Yeah.

We referred to the July 2013 capital cost estimate on page – I think it was 19 of the Grant Thornton report –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – or thereabouts.

Now, at tab – volume 1, tab 4, we have Exhibit P-02510. Could you turn to that, please?

**MR. STURGE:** Yup.

**MR. LEARMONTH:** Do you see that document, P-0 –

**MR. STURGE:** I do, yes.

**MR. LEARMONTH:** – 25 – yeah, is that the – to your knowledge after reviewing it, is that the July 2013 final forecast cost that Grant –

**MR. STURGE:** It –

**MR. LEARMONTH:** – Thornton refers to?

**MR. STURGE:** It looks to be the one that they would've reviewed with Mr. Martin and that Grant Thornton referred to. I – but I – I'm only saying that 'cause of the dates, you know, so ...

**MR. LEARMONTH:** Yeah, well it has the same amounts, doesn't it?

**MR. STURGE:** Same amounts –

**MR. LEARMONTH:** Just go through –

**MR. STURGE:** – yes, yeah.

**MR. LEARMONTH:** So do you agree that –

**MR. STURGE:** It –

**MR. LEARMONTH:** – it looks –

**MR. STURGE:** – looks like very well it probably was the same one. I ...

**MR. LEARMONTH:** All right.

Could we bring up exhibit – I don't believe it's in your – in the documents, but Exhibit P-00880. And your notes – I just wanted to – you may have answered this, but this September 12, 2013, entry in your notes, would that confirm that you knew that there was gonna be a change to the 6.2, but you didn't know what the new number was?

**MR. STURGE:** Well, yeah 'cause this – yes, 'cause – well, I don't know if we knew but we knew that it was being discussed because we had met with Ed and the project team on August 27 and laid out the requirements we needed to get to financial close and this would have been a few weeks later.

**MR. LEARMONTH:** Yeah.

And at that point you were frustrated by the fact that you couldn't get any clarification on what the update was. Is that correct?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** And Mr. Martin wouldn't give you any information on it.

**MR. STURGE:** I guess it wasn't ready to give it to us. I don't like to say he wouldn't give it to us because I'm sure if it was ready he would give it to us but clearly it was not ready for us to get yet.

**MR. LEARMONTH:** In final form, but there was – there were – there was information –

**MR. STURGE:** (Inaudible.)

**MR. LEARMONTH:** – that was available.

**MR. STURGE:** Yeah.

Now, in reality, we did need the final form. That was, ultimately, what we wanted.

**MR. LEARMONTH:** Right.

The – tab 72 of – that’s volume 2 and that’s Exhibit P-01826.

**THE COMMISSIONER:** What tab, Mr. –?

**MR. LEARMONTH:** That’s tab 72.

**THE COMMISSIONER:** Thank you.

**MR. LEARMONTH:** P-01826. Now, this is the presentation to Nalcor executives – Final Forecast Cost Update September 12, 2013. Correct?

**MR. STURGE:** That’s what it seems to be, yes.

**MR. LEARMONTH:** And you were on this invite. You –

**MR. STURGE:** No. I think there’s some confusion with these papers because what’s – yeah, there’s a few things here and I was confused when I looked at them because there’s a series of calendar invites that were sort of internal to the project team. It looks to be still a couple. And then there’s one there that says LCP ExCom, which my name is on. But this deck wasn’t discussed at ExCom.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** That’s why I was confused when I saw – so – and I know I wasn’t at that ExCom because I’m pretty sure I was in a financing meeting that day.

**MR. LEARMONTH:** Okay, well this – if we turn to page 14 of Exhibit P-01826. Can we do that?

**MR. STURGE:** Page 14. Yeah.

**MR. LEARMONTH:** See that it says: Final Forecast Cost Update, Presentation to Nalcor Executives, September 12, 2013.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Are you saying you weren’t at that meeting?

**MR. STURGE:** I wasn’t at that meeting, no.

**MR. LEARMONTH:** For sure?

**MR. STURGE:** For sure.

**MR. LEARMONTH:** Okay.

Were you aware about the existence of this final forecast cost estimate, because I believe Mr. Meaney was?

**MR. STURGE:** No, I don’t think Jim was.

**MR. LEARMONTH:** Okay, well we’ll confirm that.

Now, the key message on page 15 –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – says: “We are forecasting the FFC to be in the range of ~\$6.7 to \$6.95B (8 to 12 per cent beyond DG3 estimate).” High side – and then there’s reasons for it, the drivers and so on.

So, on September 12, 2013, the information provided to the Nalcor executive was this, and it was the forecast of the FFC to be in the range of 6.7 to 6.95.

Were you aware of this on or about September 12, or at any time before (inaudible) –?

**MR. STURGE:** No, ’cause they used the term Nalcor executive pretty loosely here. It’s not all of Nalcor executive. It was – it would be –

**MR. LEARMONTH:** But you are a Nalcor executive, are you?

**MR. STURGE:** Absolutely, but this would have been there – these presentations they would have been having with Mr. Martin and Mr. Bennett. So it would have been –

**MR. LEARMONTH:** How do you know that?

**MR. STURGE:** Because I just know that’s the way that plays out.

I'm assuming Mr. Bennett would have been there. I'm certain Mr. Martin would have been there.

**MR. LEARMONTH:** Yeah.

But you wouldn't be there –

**MR. STURGE:** I wouldn't have been there.

**MR. LEARMONTH:** – because you had information on cost estimates, is that right?

**MR. STURGE:** Yeah. I mean –

**MR. LEARMONTH:** That would be the reason.

**MR. STURGE:** Pardon?

**MR. LEARMONTH:** That would be the reason because there was information provided on cost estimates and you weren't to be given access to the cost estimates until Mr. Martin said so. Is that correct?

**MR. STURGE:** I think what was happening there –

**MR. LEARMONTH:** Would you agree with what I said?

**MR. STURGE:** I think that they get aligned with Mr. Martin before it gets rolled out, yes.

**MR. LEARMONTH:** Yeah.

So, if you had been invited to this meeting you would have known this information, and until Mr. Martin wanted you to know the information you were not going to get the information. Correct?

**MR. STURGE:** That's probably fair.

**MR. LEARMONTH:** Yeah. Okay.

So this is – so you weren't aware of this information on September 12, is that correct?

**MR. STURGE:** No, that's correct.

**MR. LEARMONTH:** Now, the next document I'd like you to turn to is tab 9; that's volume 1, and it's Exhibit P-02515.

And if we go to the email that's covered in this exhibit, P-02515, at the bottom of page 1 there's an email from Paul Myrden, and he's a debt management –

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** – official at the Department –

**MR. STURGE:** Yup.

**MR. LEARMONTH:** – of Finance. October 18, 2013 to you, Rob Hull, James Meaney, Auburn Warren, copied to Paul Morris – I believe he was the assistant deputy minister of Natural Resources at the time.

**MR. STURGE:** That's correct, yes. That's correct.

**MR. LEARMONTH:** And Donna Brewer, who was the deputy minister of Finance at the time, right?

**MR. STURGE:** That is correct, yep.

**MR. LEARMONTH:** Okay. So he says: "Hi guys" – turn now to page two.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** "Minister Marshall has asked to be provided with the following financial information:

"A breakdown of budgeted project costs by component showing total project costs along with the portion which is the responsibility of Nalcor/NL;

"For the portion of each that is our responsibility, the details of the funding split between debt and equity;

"For equity requirement, the split between what is already in and what is still required;

“For the anticipated future equity requirement, the expected timing of the requirement broken down by government fiscal year; and

“The most recent update on expected total project costs by component vs. budget (DG3?) if available. If not available, a reason why might be helpful along with an indication of when it might be available.”

So that’s pretty plain what Mr. Marshall is looking for, is that –

**MR. STURGE:** Yes.

**MR. LEARMONTH:** – correct?

**MR. STURGE:** That’s correct, yes.

**MR. LEARMONTH:** Yeah.

Now, if we go to – so that’s tab 9 and that’s the request, October 18.

Now apparently Mr. Martin, if we go back to page 1 of the exhibit. So you forward – you got this request, correct?

**MR. STURGE:** It was – I was on the original email along –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – with others, yes, yeah.

**MR. LEARMONTH:** So you did an email to Ed Martin, copied to James Meaney and Auburn Warren: “Hi Ed, see attached from Paul Myrden on behalf of Minister Marshall. We can start working something based on DG3 costs, but will ensure that you see it first. Note on number 5 they are looking for an update on DG3 costs.”

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Now at this point you knew – you may not have known the figure, but you knew that there were increases, correct?

**MR. STURGE:** I don’t know if we could categorically say there were, but the fact that Ed and the project team were meeting is that we would’ve been anticipating that there was probably something coming, yes.

**MR. LEARMONTH:** Yeah, you would’ve known that.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I mean, we were anticipating a change.

**MR. LEARMONTH:** Yeah.

And this is on October 18 you were anticipating a change. And then at the top we see Ed Martin on October 18, same date. Ed Martin sends this to Charles Bown: “Fyi ... Ed.”

“Fyi” – so he’s sending it to Charles Bown, who was the deputy minister of Natural Resources at the time. Can you give us any reason why, to your knowledge, Mr. Martin would be sending that to Charles Bown?

**MR. STURGE:** I’m not certain. I mean, Ed had – I mean, that was Ed’s primary relationship in government, so maybe he was just trying to keep DNR looped in with what –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – another minister was looking for. I –

**MR. LEARMONTH:** What do you mean that Charles Bown was the prime – or Ed’s prime relationship was with Charles Bown? Can you expand on that, please?

**MR. STURGE:** Well, I guess, you know, I mean, Ed obviously had relationships along all parts of the chain with the premier and the minister. But he did have a close working relationship with Charles and he would’ve – you know, in this case, I guess, he just wanted to keep Charles in the loop because this came from Finance and, you know, want him to be aware of it, I suspect.

**MR. LEARMONTH:** Okay.

Next exhibit is at tab 10, Exhibit P-02516. This is October 24, 2013, so six days after the request came from Paul Myrden requesting information on behalf of Minister Marshall.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Correct?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** So it says – this is from Derrick Sturge to Ed Martin and Gilbert Bennett and James Meaney – “... as we mentioned some time ago, under our project finance agreements with Canada, we will be required to provide a current project capital cost and schedule that is certified by the officers of the project subsidiaries. In order to achieve a Dec 2 Financial Close date we will require the Canada FLG to be issued by Nov 13 in order to start marketing / execution. Prior to issuing the FLG we will obviously need all CP’s cleared, but more importantly for the purpose of this email, we will need to have executed and delivered the project financing agreements to Canada with the cost and schedule certifications attached. In order to have these documents executed prior to Nov 13 we will need to start talking about cost and schedule soon. Jim and I are available at your convenience ....”

So why did you send that to Mr. Martin at that time?

**MR. STURGE:** Well, you know, I mean, we were now getting close to – time was passing and we needed to get the – you know, continue to get the capital cost and schedule updated.

**MR. LEARMONTH:** Yeah, because you knew an update was coming.

**MR. STURGE:** Well, you know, I don’t know if any of us were certain –

**MR. LEARMONTH:** Well –

**MR. STURGE:** – but –

**MR. LEARMONTH:** – just read your email. I mean, you said earlier that you knew that there was something –

**MR. STURGE:** We knew they were having discussions –

**MR. LEARMONTH:** Wait until I finish the question.

**MR. STURGE:** Yeah, yeah.

**MR. LEARMONTH:** You knew that there was some work or focus put on revising capital cost estimates, you knew that. I presume you knew that they weren’t going to be going down, correct?

**MR. STURGE:** I – that’s a fair assumption.

**MR. LEARMONTH:** Yeah, so you knew that they were going up.

**MR. STURGE:** I don’t know if we categorically could’ve said they were going up, but we knew they were having discussions, you know, and ...

**MR. LEARMONTH:** At tab 13, please. That’s –

**MR. STURGE:** Because there were two things we were looking for here: cost and schedule.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And schedule, I think we were more confident was changing, because it had changed early in the year. So we suspected that at least it probably was gonna be factored in there somewhere.

**MR. LEARMONTH:** Well, I mean, a schedule change is – always attracts a cost increase if it’s a delay, correct?

**MR. STURGE:** It could, yes. It could –

**MR. LEARMONTH:** Oh, it does, doesn’t it?

**MR. STURGE:** – but I’d be speculating to say it always would. I think the reality of what we’re saying here is we need to get the number –

**MR. LEARMONTH:** Yeah –

**MR. STURGE:** – if there is gonna (inaudible) –

**MR. LEARMONTH:** – and in the background, you’ve got this request from Mr. Marshall, correct?

**MR. STURGE:** Yes.



**MR. LEARMONTH:** Okay.

Then tab 13, which is Exhibit P-02519. Ed Martin sends an email to you November 1: "Just checking status of info request from Minister Marshall's office - he is asking."

Do you – can you tell me why ...?

**MR. STURGE:** So we – I mean, through this period we were – this is when we were awarding TD, so we were probably – it was an extremely busy period. So I would say a few days had passed and somehow I guess the minister's office perhaps contacted Mr. Martin.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I suspect.

**MR. LEARMONTH:** But the situation here is – I suggest unusual – that Minister Marshall wants the current forecast cost, and you're saying that you're trying to get that information from Ed Martin, and here, Ed Martin is asking you about the status.

**MR. STURGE:** Well, what he was asking –

**MR. LEARMONTH:** Is that correct? Is that correct?

**MR. STURGE:** Not totally because what he – what Ed was asking about was the status of the – because at this point, all we – we were on this –

**MR. LEARMONTH:** He's asking about the status of the request from Minister Marshall.

**MR. STURGE:** And we were working on it based on DG3 at this point.

**MR. LEARMONTH:** Yeah, but you knew that the DG3 numbers were going to be revised.

**MR. STURGE:** We knew that was a possibility, yes.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Then tab 14, we see a table prepared by Auburn Warren sent for Ed Martin's review. That's Exhibit P-02520.

Auburn Warren sends to Ed: "As discussed for your review. Myrden has asked that we ship across" – I guess that means sends it to him – "ASAP." So this is November 1.

**MR. STURGE:** That's correct.

**MR. LEARMONTH:** We turn to page 2, and in the right column, four or five lines down, we see that the figure of 6,202, which is the DG3 number – is what Mr. Warren has provided, correct?

**MR. STURGE:** It's correct, yes.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And that's all he would've had at that point in time.

**MR. LEARMONTH:** Yeah. But Mr. Martin would've known that wasn't right. Is that correct?

**MR. STURGE:** Quite likely, yes.

**MR. LEARMONTH:** Yeah.

So were you content to – that this information should go to Mr. Marshall who had made a very specific request?

**MR. STURGE:** Well if –

**MR. LEARMONTH:** Were you content to send that information to Mr. Marshall, because you did?

**MR. STURGE:** Well – I was, yes, because it was the latest data we had at that point.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** So I think our view at that point was that – because we worked a lot on trying to get the format. So the information in there would be helpful. I totally agree that if the costs came back and were higher, the data would need to change. But the data as it – we sent it to him was valuable still.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Because it still gave him some sense of how much equity and the timing and all those types of things.

**MR. LEARMONTH:** Well, I think you didn't – that this was misleading, I suggest, to send this to Mr. Marshall because you knew that there was going to be a revised cost estimate and you also knew that Mr. Marshall had asked in paragraph 5 of the request that came from Mr. Myrden and I'm going to quote: "The most recent update on expected total project costs by component vs. budget ... if available. If not available, a reason why might be helpful along with an indication of when it might be available."

Did you ask – did you answer that question or did –?

**MR. STURGE:** I don't think we did. I know at one point I went back – there's another email, it may not be in the package there – I went back to Paul Myrden on October 23 and I said that we had a format that we are working. We reviewed a few drafts with Ed. Ed had been out of town.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And I said: no cost update at this point. And that was true. There was none at this point.

**MR. LEARMONTH:** Okay, but you didn't answer the question: When he might be able to –

**MR. STURGE:** Because truthfully we didn't know. We didn't know that.

**MR. LEARMONTH:** Yeah, but don't you think, you know, I mean, you're going back and forth. I understand you're answering the questions. But you're asking – a senior minister is asking for a cost update. You know that there are pressures on the thing and that a new cost update is in the works, we'll say, and you send a document to Mr. Marshall that says everything is fine. It's DG2 numbers. No comment about there will be a final forecast cost adjustment or anything like that. Are you comfortable with that level of communication given the fact that the

minister had asked you specific questions about cost increases?

**MR. STURGE:** I think given what we knew at that point, we did the best we could do to provide the data that we had available because truthfully, as you saw from the email the week earlier, we were frustrated at that point of when we were gonna get data and if we were gonna get data.

**MR. LEARMONTH:** Well, why didn't you put that in the email, that you're expecting data and you will provide it to them as soon as possible?

**MR. STURGE:** I don't know. I mean, it – there was no intent to mislead them on that. We were giving them the latest data we had, and it was all we could do at that point.

**MR. LEARMONTH:** No, it isn't, because you could've answered question 5 that I just read to you.

**MR. STURGE:** Yeah, but the only thing – I wouldn't –

**MR. LEARMONTH:** Do you agree?

**MR. STURGE:** – even know what it would tell them –

**MR. LEARMONTH:** Do you agree?

**MR. STURGE:** – at that point.

**MR. LEARMONTH:** Well –

**MR. STURGE:** And –

**MR. LEARMONTH:** – you could've told 'em that you expect to have an increase in the capital cost estimate and, as soon as you get it, you'll send it to 'em so he would know that this is probably not a final figure.

**MR. STURGE:** I suppose I could've done that, yes, could've done that.

**MR. LEARMONTH:** But don't you agree you should've, reporting to a minister?

**MR. STURGE:** I think we gave what we had at the time, you know?

**MR. LEARMONTH:** Okay.

Did you ever give an update to Minister Marshall? I'm not talking about these conversations you say you had with Ms. Brewer or Department of Finance.

Did you ever, when you found out that there was an increase in the capital cost to 6.531 – the earlier figure was 6.5 – did you ever say: Look, we've given Minister Marshall a figure which we now know is incorrect. Now that we have an update thing, we wanna make sure he knows about it.

Did you ever –

**MR. STURGE:** I –

**MR. LEARMONTH:** – send to Mr. Marshall that information?

**MR. STURGE:** I –

**MR. LEARMONTH:** I'm not talking about the department; I'm talking about Mr. –

**MR. STURGE:** Yeah –

**MR. LEARMONTH:** – Marshall.

**MR. STURGE:** – I would never have had any direct communications with Minister Marshall, as was the case here. We were always going through, in this case, Paul Myrden.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And Paul would've been aware that we had the new update. You know, it would've been a few weeks later, but again it was the time frame we were operating in as well.

**MR. LEARMONTH:** Yeah, but I'm talking about updating the report that Nalcor sent to Minister Marshall –

**MR. STURGE:** I think this –

**MR. LEARMONTH:** – on November 1.

**MR. STURGE:** Yeah, I think –

**MR. LEARMONTH:** I'm talking –

**MR. STURGE:** – this –

**MR. LEARMONTH:** – about that it would've been reasonable for when you found out about the new number, to send an email to Mr. Myrden saying, look, can you please advise Mr. Marshall, now that we have the figure, of what the figure is so that you would know that you had answered Mr. Marshall's request (inaudible) –

**MR. STURGE:** I think we were well into November –

**MR. LEARMONTH:** – wait 'til I finish –

**MR. STURGE:** I'm sorry.

**MR. LEARMONTH:** – that you had finished – that you had addressed his concerns and provided all the current information. Why wouldn't you do that?

**MR. STURGE:** 'Cause Paul would've known – and in reality we didn't have the data to update this until well into November.

**MR. LEARMONTH:** Yeah, well okay, well into November, so two weeks later.

**MR. STURGE:** (Inaudible) a lot of things going in November.

**MR. LEARMONTH:** But why wouldn't you have sent it then, well into November? I mean, we're only talking about two weeks.

**MR. STURGE:** Yeah, we could've updated it, but there were a lot of things we were doing in late November so –

**MR. LEARMONTH:** I'm saying you should've updated. Do you agree?

**MR. STURGE:** No, I don't think I could necessarily say we should've. I mean, they were aware of the new cost number and –

**MR. LEARMONTH:** Who's they?

**MR. STURGE:** Finance.

**MR. LEARMONTH:** Who was the clients – who knew?

**MR. STURGE:** I know Paul Myrden knew and –

**MR. LEARMONTH:** Okay, how – on what basis do you know he knew about the revised cost estimate?

**MR. STURGE:** There are emails – there's an email dated November 22 from Mr. Warren. It went to Paul Morris and Paul Myrden, and in that, Auburn said: We're about to send off some revised language on the cost overrun provision to Canada –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – I want your sign off before we do it.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And in that provision that he gave them to sign off on included the \$6.5 billion.

**MR. LEARMONTH:** Okay.

Well –

**MR. STURGE:** So I know they knew about it.

**MR. LEARMONTH:** Okay.

So you know – you're saying you know Mr. Myrden knew about it.

**MR. STURGE:** I know Mr. Myrden knew; I know Mr. Morris from that email. But there was a subsequent email where Canada came back on November 25 and actually accepted our proposal. And that email went to a broader group, and I think it was Paul Myrden, Paul Morris, I think Todd Stanley, Randy Pelletier, and I think BLG was on that one. I don't know if there was any more than that, but it was, you know, a pretty broad group there from two to three different departments.

**MR. LEARMONTH:** Okay.

Did you – in terms of – did you ever advise Mr. Myrden, in a conversation, that there was a firm estimate of 6.531 before financial close?

**MR. STURGE:** Well, he would have been in all the meetings with us as we were talking about this, so I can't see we wouldn't have because we were having these discussions around –

**MR. LEARMONTH:** You can't say you wouldn't have, but you can't say you did. Is that right?

**MR. STURGE:** Well, we were sending him the documents with the language –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – with the capital cost in it so clearly we weren't – if he didn't know about the 6.5, we weren't just springing this on him saying here's a (inaudible) 6.5. You know, clearly he knew of the 6.5, and we were just showing the language (inaudible) –

**MR. LEARMONTH:** Six-five or 6.531?

**MR. STURGE:** Well, it's the same – it was reference to the same number.

**MR. LEARMONTH:** Yeah.

So you're saying that you're satisfied beyond any doubt that Mr. Myrden knew before November 29, 2013, that there had been a revised cost estimate to \$6.531 billion. Is that what you're saying?

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** Absolutely.

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** Okay.

And what about Mr. Bown?

**MR. STURGE:** Mr. Bown –

**MR. LEARMONTH:** Charles Bown.

**MR. STURGE:** Yeah, I'm not sure because I – there was somewhere in my notes that – there was a discussion with Charles around the 13th of November, so I think at that point it was apparent that he was aware there was a change

in the estimate. Whether he had the 6.5, I couldn't say for certain.

**MR. LEARMONTH:** No.

**MR. STURGE:** But I know that Mr. Morris, who reported in to Charles, did have it in the November 21, 22, 25 period. So whether he had communicated that to Mr. Bown, I can't 100 per cent say.

**MR. LEARMONTH:** But you didn't communicate it to Mr. Bown?

**MR. STURGE:** I can't say I didn't, but I can't find a piece of paper that has his name on it.

**MR. LEARMONTH:** Okay. Now at 02522 – it's tab 16.

Okay, we've just gone through that. That's all right.

Okay, tab 9, 02515, please. Now, this is a series of emails. On page 2 – it starts – this is the, you know, the request from – the bottom of page 1 is the request from Paul Myrden, correct?

**MR. STURGE:** Yes. That's correct, yes.

**MR. LEARMONTH:** And then you're sending Derrick – we've referred to this attached email on behalf of (inaudible) – we will “start working something based on ... but will ensure you see it first.”

Why would you want him to see it first if you – I mean, you must have had some information that would help – that would provide a basis for, you know, work on a revised cost estimate?

**MR. STURGE:** Yeah. I mean, I think, in this case, why I would have been saying that is that there are no new capital costs in it, but I think the fact that it was going to a minister would have been just a bit of a – put us on notice that, you know, if it's something going to a minister, it's a good chance that Ed could get a call from that minister or another minister on it. So it was really making sure he was aware of what the minister was getting. If we were sending it to somebody else, it may not have been the case,

but I think it's probably the fact that it was for the minister here that ...

**MR. LEARMONTH:** Yeah. Because the minister should have all the up-to-date information, correct?

**MR. STURGE:** As up to date as we have it.

**MR. LEARMONTH:** Yeah. But how is it that you can start working on something based on DG3 costs if you don't have any information?

**MR. STURGE:** Well, we had DG3 costs.

**MR. LEARMONTH:** Yeah. I know that.

**MR. STURGE:** Yeah. So –

**MR. LEARMONTH:** But you said: “We can start working something based on DG3 costs, but will ensure you see it first.”

**MR. STURGE:** Yeah

**MR. LEARMONTH:** It suggests that you have some information, you're going to prepare something and then send it to Mr. Martin.

**MR. STURGE:** Yeah. A big part of what went on –

**MR. LEARMONTH:** Is that correct?

**MR. STURGE:** Yes. We were going to send him something, yeah.

**MR. LEARMONTH:** So you had some information that would lead you to believe that there was going to be an increase from the 6.2.

**MR. STURGE:** I don't know – I mean, we knew they were talking about the capital cost estimates. So whether it was going to be an increase, I don't know if we categorically knew that.

**MR. LEARMONTH:** Okay. Well, you had a strong belief or indication –

**MR. STURGE:** (Inaudible.)

**MR. LEARMONTH:** – that there was going to be an increase.

**MR. STURGE:** Right.

**MR. LEARMONTH:** And I just wanted – and I'll ask you for the last time: do you feel comfortable with the way that you communicated this information to Mr. – or Nalcor communicated this information to the government in response to Paul Myrden's October 18 email?

**MR. STURGE:** I –

**MR. LEARMONTH:** Wait 'til I finish. You feel that you – you feel comfortable with the reporting that you did on that point, is that correct?

**MR. STURGE:** I do, yes.

**MR. LEARMONTH:** Okay.

But when did you first learn of the new number of 6.5 or 6.531?

**MR. STURGE:** The new number – it was around – I think it was at the 6th of November meeting that – with the IE that it got rolled out.

**MR. LEARMONTH:** Did you go to that meeting?

**MR. STURGE:** I wasn't at that meeting, no. I was –

**MR. LEARMONTH:** Okay, well how did you learn about it if you weren't at the meeting?

**MR. STURGE:** I would've learned it through Jim and Auburn who – Auburn Warren and Jim Meaney, who would've been there.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** And there is a series of emails that same afternoon where Auburn then triggers – because there is a couple of layers to the number. So at that point, all we knew was this plus-300 million, which equates to the 6.5. There's a couple of, then, layers of detail that's required that – the next important level of detail is the spend profile at 6.5. So how is that gonna be spent over what years?

**MR. LEARMONTH:** Okay.

Was anyone – this November 6 meeting, that's the one that was attended by representatives of the independent engineer –

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** – and Canada. Was anyone from the Province of Newfoundland?

**MR. STURGE:** I don't think so –

**MR. LEARMONTH:** No.

**MR. STURGE:** – from what I saw of data somewhere (inaudible) –

**MR. LEARMONTH:** Right.

**MR. STURGE:** – I don't think so.

**MR. LEARMONTH:** Okay.

Now, tab 19, Exhibit P-02208 is a slide deck which appears to have been presented by Jason Kean at that meeting. Do you agree with that?

**MR. STURGE:** That looks to be what that is, yes.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** And then tab – page 24 of that Exhibit P-02208, is a reference to a facilities capital cost, 5 per cent, \$300 million, correct?

**MR. STURGE:** That is correct, yes.

**MR. LEARMONTH:** Yeah, okay.

And you were aware of that on November 6?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay.

Well, why didn't you send the information to Mr. Myrden? There's no one at the Government of Newfoundland present there. You knew that Mr. Marshall had asked for any updates. Why didn't you –?

**MR. STURGE:** Because the next thing that needed to happen, and you'll see there's – I don't know if they're in the materials here, but there was an email immediately that Auburn Warren sent to the project team because for us to do anything with that 300-million increase, we now needed the spend profile. So we needed to know how it was going to be spent.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Auburn immediately triggered that process to start running the models to update data.

**MR. LEARMONTH:** Yeah.

But you weren't allowed to communicate that information to the Government of Newfoundland and Labrador without Mr. –

**MR. STURGE:** Probably at that point –

**MR. LEARMONTH:** – wait 'til I finish –

**MR. STURGE:** – (inaudible).

**MR. LEARMONTH:** – the question, please.

You weren't allowed to communicate that information to Mr. Marshall or anyone else at the Government of Newfoundland until you had the approval of Mr. Martin. Is that correct?

**MR. STURGE:** That would've been correct, yes.

**MR. LEARMONTH:** Yeah.

So you couldn't, even though you had something that was relevant – that estimate. You knew Mr. Marshall had wanted to know about any revisions, so you knew about this \$300 thousand – million-dollar figure. But on November 6, six days after you'd communicated the DG3 numbers to Mr. Marshall through Mr. Myrden, you didn't do anything with it.

**MR. STURGE:** Yeah, until I was absolutely certain who knew what about the capital cost estimate, I would've erred on the side of not communicating it.

**MR. LEARMONTH:** Of not disclosing it.

**MR. STURGE:** Yeah, because I just didn't know who knew –

**MR. LEARMONTH:** Yeah, okay.

**MR. STURGE:** – and that would've been –

**MR. LEARMONTH:** But this information was solid enough that it was presented to the independent engineer and representatives of the Government of Canada. So if it was solid enough or reliable enough for that purpose, why wouldn't it have been solid enough or reliable enough to report to the Government of Newfoundland? In other words, not on the basis of this is the final thing, but on this basis: Look, we gave you information about the DG3 numbers when Mr. – in response to the request from Mr. Myrden. We're working on a new figure but it looks like it's gonna be at least 300 million. We'll keep you up-to-date.

I suggest that you should've been able to pick up the phone and call Mr. Myrden on that, even if – or send him an email on that when you found that out on November 6, but you didn't.

**MR. STURGE:** No, because like I said, at that point I don't think we would've been aware what level of communication that Mr. Martin would've had with the province at that point.

**MR. LEARMONTH:** Say that again?

**MR. STURGE:** At that point, we wouldn't have been aware of what, if any, level of communication that Mr. Martin would've had with the province on the new capital cost number.

**MR. LEARMONTH:** Did you ask him what level of communications he would have had at that point?

**MR. STURGE:** Well, I think there's – I think where you're probably headed on this will lead to, probably, a bit – a related discussion, I think –

**MR. LEARMONTH:** Well if you just answer the question we'll have a related discussion –

**MR. STURGE:** – I –

**MR. LEARMONTH:** – later.

**MR. STURGE:** – I don't think I asked him, no.

**MR. LEARMONTH:** Why not?

**MR. STURGE:** Because our first focus was to get the detail on it, 'cause we didn't, I mean, know what we were gonna do with plus-300 million; we needed now to run that through our models in order to understand what the equity and the timing considerations were to be able to do anything meaningful with it, and that's what we started immediately.

**MR. LEARMONTH:** Yeah, but what does that have to do with communicating the \$300 million on November 6 to the Province of Newfoundland?

Why wouldn't you call up Mr. Martin and say: Look, we got some new information; we sort of left things out there with Mr. Marshall in terms of our question 5. I wanna be able to call him and tell him about this \$300 million, or send an email saying we're gonna update this figure but it looks like it's at least 300 million.

Why wouldn't you have done –

**MR. STURGE:** Because –

**MR. LEARMONTH:** – why didn't you do that?

**MR. STURGE:** – any communication – and any communication of these numbers into the province always would've come from Ed at the top before we communicated anything. That's always the way it played out.

**MR. LEARMONTH:** Yeah.

So that's the reason then?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** You weren't allowed to?

**MR. STURGE:** Not until Ed would've – and there's – there probably is a logic for it. I'm not saying it's always right, but the logic is that, you know, that sort of data flowing in through the bottom of the system up – going up to the top, it

leads to chaos sometimes if it goes that way. So it does need to happen at a fairly senior level.

**MR. LEARMONTH:** Well, that's assuming the information is communicated on a prompt basis – on a timely basis.

**MR. STURGE:** Fair enough.

**MR. LEARMONTH:** Correct?

**MR. STURGE:** Fair enough, yes.

**MR. LEARMONTH:** Yeah.

Now on page – Exhibit 02524, that's tab 20. So it appears here – this is a meeting from – an email on page 3 from Jason Kean to you – well, you're on this email.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** He says: “Hi there. Can I get the updated cash/cost spend profile that we would normally have gotten in past as I need to update all our models for the new \$6.5B? I need asap as we are presenting updated models to Canada on Tuesday plus may need to update for the \$300M financing savings issue.”

Now – so Mr. – the focus here is on providing information to Canada, not to the Government of Newfoundland and Labrador. Is that correct?

**MR. STURGE:** That seemed to be the focus here, yes. And this was largely 'cause I think the IE report and all those things –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – were – but that was the focus there, yes.

**MR. LEARMONTH:** So why would the priority be to update in Canada as opposed to, at the same time, reporting the information to the Government of Newfoundland and Labrador, which on behalf of the taxpayers, was going to be on the hook for this additional \$300 million? Why the focus on Canada –

**MR. STURGE:** I don't think there was an intent not to do it, but I think the intent of this was that I think everyone knew the IE report at this point



was on the critical path and the people in the middle of this – that was their focus at that point, you know? So I don't think it was an intent not to share, but that would – they were probably singularly focused on the IE report at that point in time.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Trying to get that data.

**MR. LEARMONTH:** And at this point it wasn't on your mind that – look, we have to report this – all this information to the Government of Newfoundland, correct?

**MR. STURGE:** I mean, at that point there were probably a hundred things on my mind, so – and I'm not trying to diminish that, but there were a lot of things we were working on at that point, so ...

**MR. LEARMONTH:** Yeah, but that should've been, I suggest to you, a very important priority – communicating information to the Government of Newfoundland and Labrador.

**MR. STURGE:** Yes, it – it's always – that's always a priority.

**MR. LEARMONTH:** Yeah, but you didn't –

**MR. STURGE:** It's always important.

**MR. LEARMONTH:** – you didn't consider it to be a priority at the time.

**MR. STURGE:** At that point, I don't think we were in a position to do anything with it (inaudible).

**MR. LEARMONTH:** Because you weren't allowed to?

**MR. STURGE:** No, I think largely because we had to – going through this process that we were going through.

**MR. LEARMONTH:** And then –

**MR. STURGE:** Because we had no – we really had nothing meaningful at that point. We had to run the models before we had any –

**MR. LEARMONTH:** Well, you –

**MR. STURGE:** – meaningful data.

**MR. LEARMONTH:** – you know, I'll say this for the last time. You say you don't have anything meaningful, but you had enough that was meaningful that you could communicate that to the Government of Canada at the meeting on November 6. Why didn't you –

**MR. STURGE:** Yeah – I had – well, I – you know, I guess there were a series of emails – I guess Ed had signed off on the presentation that Jason gave, and it was for that purpose. And I guess that was the sign-off he had at that point.

**MR. LEARMONTH:** Yeah. But the information was of sufficient value that you could pass it on to the Government of Canada, correct? On November 6, correct?

**MR. STURGE:** It was but –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – they weren't very impressed with it on the sixth, and it lead to –

**MR. LEARMONTH:** Well, you thought they –

**MR. STURGE:** – but they had it.

**MR. LEARMONTH:** – you thought there would be helpful information. It was in your mind, obviously, or you wouldn't have presented it, the \$300 million, correct?

**MR. STURGE:** It was the first part of an update, yes.

**MR. LEARMONTH:** So why would – why wouldn't you have treated the Government of Canada just like you did the Government of Newfoundland: until we get something firm, we're not providing any information?

**MR. STURGE:** Well, I guess they were pushing. I guess Jason had gotten clearance with Ed to provide this to Canada. And that process played out. I can't –

**MR. LEARMONTH:** So are you saying it was incumbent on the Province of Newfoundland to

push for this information if they wanted to get it?

**MR. STURGE:** No, I don't think I'd go that far. I think this was a specific purpose that we were trying to address, and as you saw, you know, Ed signed off on this, and he massaged the deck and made whatever changes he felt needed to go in it. And he signed off for that purpose.

**MR. LEARMONTH:** You said massaged?

**MR. STURGE:** Well, I guess he'd made some comments, and I think there were some emails somewhere I saw that he made some revisions to it or –

**MR. LEARMONTH:** Yeah so –

**MR. STURGE:** – maybe massaged is the wrong word but –

**MR. LEARMONTH:** Well, you used it.

**MR. STURGE:** Yeah, I know, but that's what I'm saying. Maybe it was the wrong word. But he would've made some – I think he had some comments on the deck that Jason was working.

**MR. LEARMONTH:** Yeah, and what's this about \$300 million in savings?

**MR. STURGE:** Yeah, so that was a – I mean, it's a – it's somewhat related but not. So as we went through the financing process – well, let me go back. In DG3, we made an estimate of what the financing costs with a loan guarantee would be. And as we went through the year – and at this point, we had now locked in – or we hadn't locked in our financing, but we got the proposals and had accepted TD's proposal. So we now compared the financing costs, compared to DG3, and they're a \$300-million NPV less.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And so that's what that was – and that was a number we'd given Ed, separate from the capital cost process, as part of the financing process.

**MR. LEARMONTH:** So wasn't it up to the Government of Newfoundland to decide whether

this was a proper offset? You're suggesting to use it as an offset –

**MR. STURGE:** Well, I think what –

**MR. LEARMONTH:** – are you?

**MR. STURGE:** No, I wasn't suggesting – we gave it to Ed as a piece of data of where the financing's at. I think he used it here, not – I think what he was doing – and, you know, I'm sure Ed will speak to this, but he likes to talk about the full value piece when he talks about stuff. And what he was saying is that if you look at it from a value perspective, you got capital up; you had financing costs down, and then there was a piece there for the EAA agreement as well. So he was looking at it from a value perspective.

**MR. LEARMONTH:** Right, so was he – did he – was he entitled to do that? I mean, isn't that for –

**MR. STURGE:** I think he was.

**MR. LEARMONTH:** – isn't that for the Government of Newfoundland to –?

**MR. STURGE:** No, I think he's perfectly entitled to do that. I mean, it's effectively – I guess in his own mind what he was trying to get at is – you know, these are some moving pieces from a CPW perspective that he was trying to arrange in his mind, I guess.

**MR. LEARMONTH:** Yeah, but you weren't – we weren't talking about CPW here; we were talking about capital cost.

**MR. STURGE:** Yeah. It's his prerogative to do it that way. I probably wouldn't have done it that way but –

**MR. LEARMONTH:** You wouldn't have? Why?

**MR. STURGE:** I probably wouldn't have –

**MR. LEARMONTH:** Why not?

**MR. STURGE:** – 'cause this was talking about the capital cost –

**MR. LEARMONTH:** That's right.

**MR. STURGE:** – and this wasn't really an offset to the capital cost –

**MR. LEARMONTH:** Right.

**MR. STURGE:** – it was an offset to overall –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – overall cost or (inaudible) –

**MR. LEARMONTH:** So you wouldn't have approached that subject the same way –

**MR. STURGE:** I probably wouldn't have, but that doesn't mean what Ed did is wrong, you know. It was just – probably wouldn't have been my focus.

**MR. LEARMONTH:** Tab 25, that's Exhibit 02529.

**MR. STURGE:** Yup.

**MR. LEARMONTH:** Now, what – this is page 3. It's an email from you to Ed Martin, November 8, Board Papers. You say: "Hi Ed; we are working to get a technical briefing package for the various Boards of Directors .... The agreements that are being approved will now have the revised capex number included. As a result, it will be necessary to revise all our models to reflect the \$6.5.....this info would be included ..." et cetera.

So you're getting ready for a board of directors meeting?

**MR. STURGE:** Yeah –

**MR. LEARMONTH:** Excuse me, this was dated – this was – yeah, November 8.

**MR. STURGE:** Yes, we were doing a – it wasn't a formal meeting; it was more of a briefing session for the Nalcor board, the Hydro board and all of the LCP boards that would be impacted by any one of the NL agreements or the financing agreements. And this would have been a – it was like a four- or five-hour briefing to bring them up to scratch on the things I talk

about here: corporate structure, the commercial agreements, the financing agreements, the FLG.

**MR. LEARMONTH:** So why would you want to give Ed Martin a heads-up on that information?

**MR. STURGE:** So all I was doing is we had a deck here, a presentation, and it was quite lengthy; it was over 100 pages. And included in that – and it's important to note the date: it was November 8. So the new, updated capital cost number was fresh at that point.

In the deck that we were preparing, we had, in two places, a reference to \$6.5 billion, the new capital cost number. And I was giving Ed a heads-up here from the perspective that I wasn't certain that the directors at this point knew of the 6.5. I really wasn't. Because at this point, we weren't even in Hydro Place; we were operating off site.

So I wasn't sure who knew what. So I was giving him a heads-up that that number would be in our presentation and that –

**MR. LEARMONTH:** Well, you'd have to tell the board of directors about it, right?

**MR. STURGE:** And that – but – yeah.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** And we weren't doing the capital cost update; we just had the number on a slide.

**MR. LEARMONTH:** Right.

**MR. STURGE:** But if the directors – I was giving him a heads-up that if the directors did know this, somebody should be prepared to speak to it at the meeting because at this point, all I knew was 6.5. I couldn't speak to any more than that.

**MR. LEARMONTH:** Yeah, but the directors had to be brought up to date on this, didn't they? The directors of the corporation?

**MR. STURGE:** On the updated capital costs? You would think so, yes.

**MR. LEARMONTH:** You would think so?

**MR. STURGE:** Yes, I would agree. Yes, they should.

**MR. LEARMONTH:** Yeah.

And then Mr. Martin on page 2 of this –

**MR. STURGE:** It wasn't our intent to bring them up to date. We were using it as an ancillary thing in a slide. So that wouldn't have constituted – what we had there wouldn't have constituted the capital cost update is what I'm trying to say.

**MR. LEARMONTH:** Well, what – I don't understand your point –

**MR. STURGE:** Yeah, so –

**MR. LEARMONTH:** – when you've got a – let me give you the background.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** You've got a board of directors. I suggest to you they should have all relevant information whether it's in final form or not. They're just about to sign off on a huge commitment of the province. And can you give me any situation where they would – the board of directors would not be entitled to complete and fulsome information on capital cost estimates, among other things?

**MR. STURGE:** I can't, no.

**MR. LEARMONTH:** No.

**MR. STURGE:** No.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** I can't.

**MR. LEARMONTH:** Now, the email at the bottom of page 2 of Exhibit P-02529, this is from Ed Martin, November 8, 2013. I guess that's in response to your earlier email that we referred to on page 3, correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** He says: Do we have to include the updated capital numbers at this time, as the offset financing and revenue savings are not included at this time. Not appropriate to do just one element.

What was your reaction to that?

**MR. STURGE:** Well, when I sent the email, I wasn't – what I was expecting is that I was giving Ed a heads-up that this number is in our presentation so somebody, he or Gilbert, should be prepared to talk to the cost update if they –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – hadn't already. So I wasn't expecting pushback on that context.

**MR. LEARMONTH:** But you got pushback.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** And the suggestion here is, like, why do we have to tell the board of directors about the updated capital cost numbers at this time? That's what he says, isn't it?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** And –

**MR. STURGE:** That seemed to be what he was saying, yes.

**MR. LEARMONTH:** Yeah, and you would've taken exception to that approach, I take it?

**MR. STURGE:** I was taken aback by it, but it was, ultimately, gonna be his call.

**MR. LEARMONTH:** Yeah, but you wouldn't have sanctioned that at all, would you, that approach?

**MR. STURGE:** Well, I mean, the reason that I was giving Ed a heads-up was two things: I was giving a heads-up that the 6.5 was in there, that somebody should be able to speak to that –

**MR. LEARMONTH:** Right.

**MR. STURGE:** – and I was also indicating that there were a number of new directors at this meeting, six brand new directors, and –

**MR. LEARMONTH:** Exactly.

**MR. STURGE:** – four that were relatively new.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** But I'd – rather than just us walking in with this big, complex financing deck, that somebody should at least brief these folks on the project itself –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – what is before –

**MR. LEARMONTH:** And what you're saying is –

**MR. STURGE:** – so that's – I was trying to be helpful.

**MR. LEARMONTH:** But you agree that what you're saying is obvious, especially where you have –

**MR. STURGE:** Seemed –

**MR. LEARMONTH:** – a new board –

**MR. STURGE:** – obvious –

**MR. LEARMONTH:** – of directors.

**MR. STURGE:** – to me.

**MR. LEARMONTH:** Yeah, but it didn't seem obvious to Mr. Martin, did it?

**MR. STURGE:** Probably not.

**MR. LEARMONTH:** No.

And then you reply, on page 2, to Ed Martin, November 8: "Hi Ed, we are now in a mad panic getting revised cost numbers and profiles from" – the – "project team on cost update. The revised financial models with the new capital costs are required to be attached to the NL Agreements which are being approved by the various Boards. Also, the financing agreements which are being

approved by the various Boards will also need to include the updated capex. Meeting with Canada next Tuesday to review these revised models."

So what was the – you're in a mad panic, right? That's a fairly strong term.

**MR. STURGE:** Yeah, I guess during that period, everything could've been categorized as a mad panic but we were – yeah, we were under a lot of pressure.

**MR. LEARMONTH:** Yeah.

And still, it never crossed your mind here to update Minister Marshall?

**MR. STURGE:** Well, I think what happened here is this – 'cause at this point, this now set me back in terms of – clearly, I didn't think having this number in the deck to the board was gonna be any issue, so it put me on a heightened sense of alert that – now I was very unaware or, you know, very concerned of who had the numbers. So clearly, I was now even less apt to communicate it to anyone at this –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – point.

**MR. LEARMONTH:** And then on page 1 of Exhibit P-02529, November 8, this is from Ed Martin to you: "I was under the specific understanding that we would not have to do new financial models at all, just provide an update the capital and other costs to the feds – have the feds now asked for it. If not, why do we just leave the info as a cost update. Doing new financial models will need extensive review, new cost flows, and a huge amount of work" – which – "is all news to me at this point. It will also require extensive engagement. I thought it was just an overview update. I am speaking in a few minutes."

So there seems to be resistance here from Mr. Martin to go through the process that you thought was appropriate and required. Is that correct?

**MR. STURGE:** Yeah, I mean that one there could've very well been just misunderstanding, it could've been that he understood that we

needed a cost update and not models but could've been an innocent misunderstanding there.

**MR. LEARMONTH:** Well, how – weren't you communicating with him throughout this?

**MR. STURGE:** Yes, and we – but we would've been talking about the cost update, but we would've been talking about the cost update for the purpose of updating the models, but maybe he hadn't just connected the dots on that.

**MR. LEARMONTH:** Now I guess he could answer that. And then at the top of that exhibit, P-02529, you say: "Hi Ed; at our meeting with Canada" – and that's November 6 meeting, correct? –

**MR. STURGE:** That would be the November 6 meeting.

**MR. LEARMONTH:** – "and Independent Engineer on Wednesday Canada request that much more detail on the updated capex be provided (Jim working with that ...) reflecting new costs and cost profile be available for available for review with them on Tuesday, recognizing that the financial models will form part of the agreements."

Well, isn't it completely obvious that if this is gonna be – if a figure is gonna be put in for capital cost estimates on the – in an important document like the, you know, the financial close documents, that it seems obvious that they're not gonna want an estimate, they're gonna want a little more work done than an estimate.

Doesn't that seem logical to you?

**MR. STURGE:** I think the confusion was probably that, I mean, I suppose there's two scenarios there, you could've said: Well, here's the updated estimate. And what we were doing then – and taking the estimate and running it through the financial models. So I suppose you could've done either-or of those, but what Canada wanted was, clearly, run-through the models and –

**MR. LEARMONTH:** And you felt that was reasonable, did you?

**MR. STURGE:** Yes, absolutely. That was our understanding from the get-go. It may have just been that Ed was thinking we were giving them a capital costs update because that was the trigger to get the new models in. Yeah.

**MR. LEARMONTH:** Okay, Exhibit 02531, which is tab –

**THE COMMISSIONER:** Just wondering, maybe is this a good time to break, Mr. Learmonth, before we move to that one or...?

**MR. LEARMONTH:** That's fine with me.

**THE COMMISSIONER:** Okay. Let's take our lunch break, it's 12:30 'till 2 o'clock.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

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

**MR. LEARMONTH:** Thank you.

Mr. Sturge, can you turn to tab 27, Exhibit P-02531 in volume 1 of your documents?

**MR. STURGE:** Yes, yeah.

**MR. LEARMONTH:** Have you got it?

**MR. STURGE:** Yes, I do.

**MR. LEARMONTH:** Okay, this is an email from Auburn Warren to Ed Martin and you, November 13, 2013, "Board Briefing." Now, this is in anticipation of a board meeting on November 14. Is that correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** Okay. So this is what was the current – that was the current draft as described by Mr. Warren, and it's to you and Ed Martin.

**MR. STURGE:** That's correct.

**MR. LEARMONTH:** Now, if you go to the next tab, 28, 02432 – no, 02532, please turn, first, to page 5. So you're saying to Mr. Martin: "Hi Ed, sorry to bother you, but we need to get materials out to the Boards for briefing tomorrow. Right now revised capex shows up on two slides – do you want us to proceed on this basis or remove those two slides?"

Now, this is the information on capex, correct?

**MR. STURGE:** That was the information, yes.

**MR. LEARMONTH:** Well, why on earth would you suggest or even put forward the suggestion that the information on capex be removed from the slides?

**MR. STURGE:** Well, the only reason I would've ever suggested it is the fact that Ed had, in the first instance, three or four days earlier, suggested that he didn't want it to go in the deck.

**MR. LEARMONTH:** The capital cost information?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Why?

**MR. STURGE:** I'm not totally certain. From the emails somewhere here, he – I think if you go up one or two levels – would you like me to do that or ...?

**MR. LEARMONTH:** Yeah, well, first just give me your understanding.

**MR. STURGE:** Yeah, I think –

**MR. LEARMONTH:** To set the background for the question, you've got a board of directors, four of whom are new board directors that – they're considering information that's of vital importance to not only Nalcor but the people of the province, and there's – I suggest that it's even frightening that there's a suggestion or a discussion about the removal from the presentation of two slide decks.

Do you understand what I'm saying?

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** Do you agree with what I'm saying?

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** You do.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Nevertheless, if we go to page 4, Mr. Martin replies, November 13: "What page numbers are the 2 slides? (Save me looking through the deck on my blackberry!). I need to see the slides, but am leaning to leaving them out and talking to it if necessary. I like to talk about overall value when talking" – about – "costs."

What is your interpretation of this?

**MR. STURGE:** I –

**MR. LEARMONTH:** I mean, costs are costs, right? We're talking about numbers, so why wouldn't you want to ensure that the actual numbers are presented to the board?

**MR. STURGE:** My interpretation here was that he wanted to talk about the costs in the context of other changes in the overall value, I think is what he was trying to get at.

**MR. LEARMONTH:** Okay. Do you agree with that approach?

**MR. STURGE:** It's one way to do it, certainly. It's not – I mean, you could just talk about the cost, or you could say here's the cost in the context of other things that have changed.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** So it's not inappropriate to do it.

**MR. LEARMONTH:** But you have to put the costs in.

**MR. STURGE:** But you have to put the –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – costs in, yeah.

**MR. LEARMONTH:** Yeah, and this removal of two slides removes the cost?

**MR. STURGE:** It does, yes.

**MR. LEARMONTH:** So they're not even there.

**MR. STURGE:** Correct.

**MR. LEARMONTH:** It's hiding the cost, correct? The effect of it.

**MR. STURGE:** I would have preferred if they were in there, for sure, because I put them in there in the first instance.

**MR. LEARMONTH:** Well, did you tell Mr. Martin that you objected or even strongly objected or vociferously –

**MR. STURGE:** I –

**MR. LEARMONTH:** – objected to this suggestion that information on cost would be denied to the board of directors by removing the slide decks that covered this subject?

**MR. STURGE:** No, I didn't. And the reason I wouldn't have is that in his note he indicated that he would talk to it, and so I had no reason to believe that he wouldn't – 'cause I wasn't giving the update on costs. All I would have said is that there's a new number which would have led to another discussion anyway. But when he said he wanted, you know, to talk to the overall value, I took that at face value that if he didn't want them in there – you know, I mean, I can't – there's no way I can sort of give you a good explanation of is it a logical thing to do. But I think where we were at that point is, as you'll see what was going on here, this was 5 o'clock in the afternoon on the 13th, and the board was meeting the next day. So for all –

**MR. LEARMONTH:** (Inaudible.)

**MR. STURGE:** – the deck needed to go out.

**MR. LEARMONTH:** Mr. Sturge, you're a senior person; please, you know, refrain from that it's late in the day. I mean, this is important

information, and it's not so late in the day that you can't deal with it appropriately. Do you agree?

**MR. STURGE:** It is but if the CEO makes the decision that it's not going to go in, is – it's really not much, at that point, I can do. I mean, he is the CEO. He has the ultimate – I mean, and the way we have always operated is that the CEO has full review of anything going to the board.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** That's not unique to this.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I mean, I'm not agreeing with that – 'cause I had it in there in the first place. So I – if I didn't think it would have been helpful to have it there, I wouldn't have put it there. But if it is the CEO's decision to take it out, then I'll abide by the CEO's decision.

**MR. LEARMONTH:** Without protest?

**MR. STURGE:** Well, I don't know what I – you know, how do I protest?

**MR. LEARMONTH:** Well, you protest by saying: I'm not having anything to do with removing this important information. If you want to do it, you get someone else to do it.

That's how you protest.

**MR. STURGE:** Well –

**MR. LEARMONTH:** And I'm not going to the meeting with this going on. I suggest that's how you protest.

**MR. STURGE:** It is, but, you know, you still have to survive in organizations as well so – you know, that is an option, I grant it.

**MR. LEARMONTH:** And you declined to take it?

**MR. STURGE:** Well, I did it because, you know, my true belief is that Ed would talk to the numbers.



**MR. LEARMONTH:** But is that a substitute from – for having a slide deck with the numbers clearly stated, especially when we’re talking to a board with four new members who really don’t – are not up to speed or may not be up to speed? Is that a substitute for that, talking about it?

**MR. STURGE:** In some regards it – having Ed talk to the numbers and explain the context behind them would have been better than what I was doing because I was just putting a number in there. So I had a number; there was no context of why the costs had changed because I didn’t know at that point.

**MR. LEARMONTH:** Yeah, but it’s not an either-or. It’s not like you either put them in and not talk about it or remove them and talk about it. I mean, you can do both. You can put it in writing and then you can speak to it.

**MR. STURGE:** I agree.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Totally.

**MR. LEARMONTH:** Yeah, yeah.

So this business about, like, doing it one way or the other, I don’t think holds much water, do you?

**MR. STURGE:** No, you could do both. I totally agree with you on that.

**MR. LEARMONTH:** If you wanted to make sure the information was put before the board, correct?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah, yeah.

And then on page 3 they’re talking about – so he says in an email to you – that’s Mr. Martin – November 13, 5:26: “Do these slides reflect both the reviewed facilities capex and the revised (lower) financing ... reflecting the outcome of the recent financing award, including negative carry benefit?” In – the total of 7.7B the same or close to the same, et cetera.

And then you’re replying. What’s the nature of these inquiries?

**MR. STURGE:** So I think he was – the table that we had in there – I think now it’s – the discussion here is now he was asking some questions on those tables for his own information, is how I interpret it. He was asking – ‘cause we had the table to show the sources and use of the cash flow, and he was asking some questions about data in that.

**MR. LEARMONTH:** Okay.

Now, let’s go back to tab 27. That’s 02531. Now, this is the draft that we started discussing at the beginning of this, right?

**MR. STURGE:** (Inaudible.)

**MR. LEARMONTH:** This is a draft.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** The first draft.

And then if you look at page – first, page 13, it’s Exhibit P-02531. Okay, so where is the – just interpret page 13, information on page 13.

**MR. STURGE:** What this is showing is for each of – each of the two projects, Muskrat Falls and LTA together, and LIL, in total, it’s showing the total sources of financing, the debt equity from the province and equity from Emera, adding up to \$7.7 billion. And it’s showing the uses of that cash.

**MR. LEARMONTH:** Right.

**MR. STURGE:** And that would be the construction of the facilities at \$6.5 billion.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** (Inaudible.)

**MR. LEARMONTH:** So that’s the figure, the 6.5 –

**MR. STURGE:** Yes.

**MR. LEARMONTH:** – that’s what we were talking about.

**MR. STURGE:** That's what it is.

**MR. LEARMONTH:** That's the information that the board should have had, correct? Correct?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay.

And then we go to page 46, and then we have a figure – can you explain those figures and – well, there's a 6.5 and then two lines down on the right-hand column, there's 6.6 and 7.7. What is – 7.7 was 7.2, so an additional \$500 million, not \$300 million.

Can you explain that?

**MR. STURGE:** Yeah. So what this is it's a similar table as what we just looked at. It's got a little bit more detail broken out on it and it's – so it's similar data that's presented in a little bit different way, with the debt equity ratios included. But included in here is a – under the very first line under Uses is "Construction capital expenditures."

**MR. LEARMONTH:** Mm-hmm.

**MR. STURGE:** And it shows \$6.5 billion.

**MR. LEARMONTH:** Okay. So that's consistent with page –

**MR. STURGE:** It is, yes.

**MR. LEARMONTH:** – 13?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** All right.

Now go to tab 29, that's P-02533. And this is an email from Ed Martin to you, Wednesday, November 13, 7:51 – that's later on in the day. Mr. Martin says: "Derrick,

"Just to confirm, I assume this is the deck for the board you and I have been emailing back and forth about, with the 2 slides we were discussing removed?"

**MR. STURGE:** That's correct.

**MR. LEARMONTH:** And that's what it is.

**MR. STURGE:** It is, yes. I believe it is, yes.

**MR. LEARMONTH:** Yeah. I just confirm that.

**MR. STURGE:** Yeah. They don't seem to be in there, those slides, so –

**MR. LEARMONTH:** Well, I –

**MR. STURGE:** – yeah.

**MR. LEARMONTH:** – they're not in there –

**MR. STURGE:** Yeah, yeah. Yeah.

**MR. LEARMONTH:** – they're not, no.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** So this is what you had been discussing with Ed Martin – what kind of discussing – discussions did you have with him about removing these –?

**MR. STURGE:** Well, I think it was the discussion – we just thought that – those emails is what he was referring to.

**MR. LEARMONTH:** Okay.

Now, and you went to this meeting on November 14, correct?

**MR. STURGE:** I did, yes.

**MR. LEARMONTH:** And you knew that this – that those two slide decks had been removed?

**MR. STURGE:** I did, yes.

**MR. LEARMONTH:** And you actually sat through the meeting knowing they had been removed and that the board members, including the four new members, didn't have access to the information.

**MR. STURGE:** I'm not – and I – one thing I'm not certain of is whether Mr. Martin did or didn't speak to it. I'm not certain of that.

**MR. LEARMONTH:** Well, there's no record that he did –

**MR. STURGE:** Not in –

**MR. LEARMONTH:** – is there?

**MR. STURGE:** – the minutes, I –

**MR. LEARMONTH:** There isn't. There's nothing in the minutes. There's nothing in your notes.

**MR. STURGE:** There's not. And I can't be certain he didn't, but you're right, those two sources would indicate no.

**MR. LEARMONTH:** Well, wouldn't you think that if he did mention it that you would've recorded it? Because this would've been on your mind – wouldn't this have been on your conscience that you're – at the time that you were at the board meeting? You're sitting there, you know there have been two slides removed, you knew that Mr. Martin was suggesting he might, you know, talk about it verbally. If he had done that, wouldn't have that been something, with that on your mind, that you would've definitely written down and made –

**MR. STURGE:** That is –

**MR. LEARMONTH:** – sure was in the minutes?

**MR. STURGE:** It is possible I would've done that, yes.

**MR. LEARMONTH:** Isn't it probable?

**MR. STURGE:** Probable, yeah.

**MR. LEARMONTH:** Yes, okay.

**MR. STURGE:** But I can't say – because I wasn't taking detailed notes, 'cause I was actually presenting material at that meeting, so –

**MR. LEARMONTH:** Yeah, but –

**MR. STURGE:** – I was –

**MR. LEARMONTH:** – you knew this was wrong, didn't you?

**MR. STURGE:** Well, it's not what I – it wasn't my preference and it wasn't my decision, but –

**MR. LEARMONTH:** No, I know that –

**MR. STURGE:** – but –

**MR. LEARMONTH:** – but that doesn't mean you can't comment on whether you thought it was wrong.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Did you agree with it – do you agree with me that it was wrong?

**MR. STURGE:** I would've preferred to have the slides in there, yes.

**MR. LEARMONTH:** Yeah.

But you were a – you acquiesced in this conduct, didn't you? I mean, you may not have – well, you know, we'll accept that, for the sake of this discussion, that Mr. Martin directed the two slides to be removed. But you acquiesced in that, didn't you, in that decision?

**MR. STURGE:** Well, I guess, in some regards, I had no choice. He is – I worked for the man. He is – he has the final call on what goes to the board. I –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – where else I go (inaudible) –

**MR. LEARMONTH:** But you went along with it. You acquiesced in it.

**MR. STURGE:** In the sense that it was the way he wanted to proceed, I would've had to, yes.

**MR. LEARMONTH:** Yeah.

Did you ever, even before you went into the board meeting, say: Ed, I want you to rethink this, this is not right? Did you ever admonish him or, you know, confront him and say we can't do this?

**MR. STURGE:** Can't recall I did.

**MR. LEARMONTH:** Okay, you can't.

**MR. STURGE:** This was happening over a pretty short period of time and I believe he was actually out of town at this time frame.

**MR. LEARMONTH:** But he was at the board meeting.

**MR. STURGE:** Yeah, he called in. I think he was –

**MR. LEARMONTH:** And you were at the board meeting too.

**MR. STURGE:** He was in Grand Falls, I believe.

**MR. LEARMONTH:** And you're sitting there and all this goes on and you can't even confirm whether the board – whether the figure of the \$300 million was discussed.

**MR. STURGE:** All I do know is that if I'm sitting in the board meeting and the CEO did not want the number in the deck – and assuming he didn't speak to it – me, working for the CEO, saying I'm going to tell the number anyway, is a pretty difficult thing to do.

**MR. LEARMONTH:** It's pretty difficult, but you could've done it, isn't that right?

**MR. STURGE:** Could've done it, but it's a – you know, I mean, I would never do that. I mean, if the person I work for is – unless somebody is asking me to do something that's very wrong, I'm – I would never – I mean, I worked for the man, I take direction from him.

**MR. LEARMONTH:** And you don't think this was very wrong, the removal of those two slide decks?

**MR. STURGE:** I think he should've talked about it. Maybe he did talk about it.

**MR. LEARMONTH:** Well, you can't confirm that. Assuming –

**MR. STURGE:** Okay.

**MR. LEARMONTH:** – that it wasn't raised at all, that's deception, isn't it?

**MR. STURGE:** The board should've been told. I –

**MR. LEARMONTH:** Do you agree it's deception?

**MR. STURGE:** – think they should, yes.

**MR. LEARMONTH:** Yes?

**MR. STURGE:** “Deception” is a big word, I don't know –

**MR. LEARMONTH:** Well, yes it is. But does this conduct not – isn't that an appropriate word for this conduct if there was no mention of the capital cost estimates increase.

**MR. STURGE:** Yeah, I don't think I'm going to answer your question that it's deception. I will say that I thought from the get-go the board should've seen the information.

**MR. LEARMONTH:** Okay. So you're not going to agree or disagree with the word I just put to you, which is “deception”? You won't agree with that?

**MR. STURGE:** No.

**MR. LEARMONTH:** Will you agree with the word “deceit”?

**MR. STURGE:** I would rather say that – they're sort of the same word. I would rather say that it would've been my preference to be in there. I thought it should've been. But I can't overrule a CEO.

**MR. LEARMONTH:** Hmm.

But you can decide not to go along with it by, say, boycotting the meeting, so that you're not a party to it.

**MR. STURGE:** (Inaudible), you know, I mean, the meeting wasn't really about the capital cost, the meeting was all about the stuff that I had to present.

**MR. LEARMONTH:** But the capital cost was important.

**MR. STURGE:** It was, but the essence of that meeting wasn't about the capital cost, it was all about the agreements.

**MR. LEARMONTH:** Yeah, but –

**MR. STURGE:** So I –

**MR. LEARMONTH:** – the capital costs –

**MR. STURGE:** – couldn't really boycott that meeting, you know.

**MR. LEARMONTH:** No. And I'm not saying that the sole item on the agenda was the capital costs but that was a main component of the discussion was it – or of the issues that the board should've been brought up to date on?

**MR. STURGE:** I think they should've been aware of it, yes.

**MR. LEARMONTH:** Yeah. Well, you're talking about \$300 million and they're – they have a duty to the corporation, they have a duty to the government and they're kept in the dark. But anyway, you don't agree that that's deceit or deception. Is that what you're saying?

**MR. STURGE:** I just don't like using strong words like that.

**MR. LEARMONTH:** Yeah, all right.

Now, turn to tab 73, P-00681, volume 2. See that?

**MR. STURGE:** I do, yes.

**MR. LEARMONTH:** Okay.

Now, this is the – these are the minutes of the meeting. Can you examine those minutes and see whether there's any reference to the 6.5 or 7.7?

**MR. STURGE:** Yeah, I've already looked at them and I noted it's not in there.

**MR. LEARMONTH:** It's not in there.

**MR. STURGE:** No.

**MR. LEARMONTH:** Next, please turn to tab 31, it's in volume 1.

**THE COMMISSIONER:** Sorry, what tab again Mr. –?

**MR. LEARMONTH:** Tab 31, and the Exhibit is P-00682.

Now, that's the meeting that was held – we were earlier – we just finished discussing – looking at the minutes of the November 14 board meeting, but there was another one at November 15, correct?

**MR. STURGE:** This is correct, yeah.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Please check the minutes I've just referred you to and tell me whether there's any mention of capital cost estimates; i.e., either the 6.5 or the 7.7.

**MR. STURGE:** There's not, no.

**MR. LEARMONTH:** Nothing?

**MR. STURGE:** No.

**MR. LEARMONTH:** In either, right?

**MR. STURGE:** That's right.

**MR. LEARMONTH:** Look at, please, tab 17, Exhibit 02533 [sp. P-02523].

And if you look at page 11, are these your handwritten notes?

**MR. STURGE:** They are, yes.

**MR. LEARMONTH:** Of what board meeting?

**MR. STURGE:** This would've been the November 14 briefing with all of the boards, the first of the two days.

**MR. LEARMONTH:** Can you review your notes and see whether there's any record of –?

**UNIDENTIFIED MALE SPEAKER:** Mr. Learmonth, we don't seem to have the same document you have.

**MR. LEARMONTH:** Okay, tab 17 –

**THE COMMISSIONER:** Two, five –

**MR. LEARMONTH:** – page 11, 0253 – 23.

**THE COMMISSIONER:** 02523.

**UNIDENTIFIED MALE SPEAKER:** 02523, okay.

**THE COMMISSIONER:** Yes, please.

Thank you.

**CLERK:** Page 11?

**MR. LEARMONTH:** Page 11.

**MR. STURGE:** No, there's no reference here.

**MR. LEARMONTH:** And that's your notes?

**MR. STURGE:** That's my notes, yeah.

**MR. LEARMONTH:** And going back to what I said before: This would've been on your mind, the fact that the slides had been removed, right? Because you thought it wasn't –

**MR. STURGE:** Normally, yes.

**MR. LEARMONTH:** – (inaudible) –

**MR. STURGE:** Yes.

**MR. LEARMONTH:** So wouldn't you have jumped at the opportunity with joy to be able to say that at least he mentioned it and record it, if he had?

**MR. STURGE:** Very likely, yes.

**MR. LEARMONTH:** Yes, yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Okay. And you've already indicated in exhibit – at tab 25, 02529, that the new board members would need a fairly

extensive explanation to understand the growth of costs and the reasons for it and what the sanction numbers were, correct?

**MR. STURGE:** That's correct and that was one of the reasons I had suggested that Gilbert also do a project update at that meeting.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Which he did.

**MR. LEARMONTH:** Were there any other meetings of the board of directors between November 15 and November 29?

**MR. STURGE:** I don't believe so.

**MR. LEARMONTH:** No.

**MR. STURGE:** No, I don't believe so. I think that was it. I think the next one was in – that I could find – was December, I believe.

**MR. LEARMONTH:** All right.

**MR. STURGE:** There was one in December – I know there was one on December 3, because we approved the hedging arrangements, but I don't know if there was anything else with that one.

**MR. LEARMONTH:** That was dealing with the interest rates, you wanted to –

**MR. STURGE:** The hedges.

**MR. LEARMONTH:** – the hedges on the interest rates?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Between December 3 and December – November 29 and December 10 –

**MR. STURGE:** Yeah, that's correct.

**MR. LEARMONTH:** – when the bonds were priced?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And that one was the 3rd.

**MR. LEARMONTH:** Next, tab 32, P-02214.

This is on page 3, November 14 email from – well, it starts at the bottom of page 1 – James Meaney to Gilbert Bennett, Paul Harrington, Derrick Sturge, Auburn Warren, Rob Hull, Jason Kean. Now, this is dealing with – there’s an \$82-million figure involved here and a \$330 million. And in this email, Mr. Sturge says, in paragraph –

**THE COMMISSIONER:** Mr. Meaney.

**MR. LEARMONTH:** – two – excuse me, Mr. Meaney says in paragraph two, on page 3: “The question will likely come up what’s driving the decrease in LIL compared to the DG3 estimate of 2,609. Hoping you can provide a few key points on this that Auburn can convey to Canada/BF.” That’s Blair Franklin, right?

**MR. STURGE:** That’s correct, yes.

**MR. LEARMONTH:** So, in substance, or in essence, isn’t Mr. Meaney asking that why – despite the increase of – increase by – \$330 million between DG3 and financial close, the LIL estimate was reduced by \$82 million.

**MR. STURGE:** That’s what he was asking, yes.

**MR. LEARMONTH:** Yeah. Does that make any sense?

**MR. STURGE:** Well, I guess he was – it seems to me he was flagging it because it was a decrease and he was probably not used to decreases. So he was probably –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – just trying to get some explanation for that.

**MR. LEARMONTH:** But why would the estimate go down for the component that you had the least information on when all the other components the (inaudible) –

**MR. STURGE:** I –

**MR. LEARMONTH:** – costs went up?

**MR. STURGE:** I can’t answer that.

**MR. LEARMONTH:** Is that not a legitimate point though, the one I just said?

**MR. STURGE:** It is a legitimate question to ask, ’cause I guess, I think he was asking it in case – just trying to highlight that it’s a question Canada might ask.

**MR. LEARMONTH:** Yeah. But it obviously – or I suggest it jumped out at him, that this is an obvious question that could arise. And I’m suggesting to you that that’s a legitimate point, that that does jump out at one when you read it, correct?

**MR. STURGE:** Yeah, I would agree. Yeah. It would be one of probably several questions there they would have.

**MR. LEARMONTH:** But what – on that point, did you ever get an answer that you consider reasonable –

**MR. STURGE:** I –

**MR. LEARMONTH:** – or any answer at all?

**MR. STURGE:** I can’t recall because this would’ve been – this would’ve – what date – the 14th of November. So this would’ve been likely for – I suspect it would’ve been discussed in meetings that they would’ve had with Canada and the independent engineer.

**MR. LEARMONTH:** Okay. But to your knowledge –

**MR. STURGE:** But I wouldn’t have been in those but I can’t say they wouldn’t have got an answer to it, you know.

**MR. LEARMONTH:** Yeah. But, well, you don’t know whether they got an answer and, obviously, then you don’t know what the answer was, right?

**MR. STURGE:** I don’t know.

**MR. LEARMONTH:** Okay.

Now, to your knowledge, was the board of directors ever advised that the LIL estimate had been reduced from DG3?

**MR. STURGE:** I can't say for certain.

**MR. LEARMONTH:** But you can't say period. Isn't that right?

**MR. STURGE:** Yeah, I can't say.

**MR. LEARMONTH:** You can't say.

**MR. STURGE:** I can't say. I can't say.

**MR. LEARMONTH:** Okay.

Now, I want to look at the same time period, generally, that – to focus on the information that was given by Nalcor to GNL.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** A few minutes ago we looked at the update that you and Auburn Warren provided to the minister on November 1 and that was in Exhibit P-02527, tab 23.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay. Please turn to this email, that's tab 23, 02527.

I would like you to explain the contents of this email. There's a letter or an email, which begins on page 2 of Exhibit 02537 [sp. P-02527], from Paul Morris. He's the assistant deputy minister of Natural Resources, correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** To you, Auburn Warren, Robert Hull, James Meaney, copied to Charles Bown, Tracey English, "RE: Cost Overruns." This email is dated November 8.

Okay, Mr. Morris says: "As you know, the ESA/ESG and IGA papers are going to EPC on Tuesday and Cabinet on Thursday.

"The issue on cost overruns which CBB raised" – and that's the law firm of Cassels Black [sp. Cassels, Brock & Blackwell], right?

**MR. STURGE:** Yes, it is.

**MR. LEARMONTH:** That's Alison Manzer's firm.

**MR. STURGE:** That's correct.

**MR. LEARMONTH:** Well, she's a partner of the firm, anyway.

"... which CBB raised on Tuesday needs to be incorporated into the ESA" documents "and we need to advise Cabinet Secretariat accordingly.

"Can you advise ... When we can expect a response from Nalcor on the impact of this requirement? ... If the equity projection of \$1.886 B is going to increase – how much is it estimated to be? ... How will such increase change the information that was provided to the Minister of Finance last weekend?"

Can you provide us some information about the – your understanding of this –?

**MR. STURGE:** Yeah, so what was happening here is the whole concept of the cost overrun account that had been discussed in the term sheet. As we proceeded through the balance of negotiating the project finance agreements in 2013, it hadn't yet come back on the table.

**MR. LEARMONTH:** Mm-hmm.

**MR. STURGE:** So our – you know, we were sort of fingers crossed; maybe Canada actually won't come back with this concept.

Around October 30, it did come back on the table. So that was a fresh discussion that was taking place at that point. And I think what – the question Paul was asking here is – and ESA and ESG were equity support agreements and equity support guarantees. And I think one of the things he was asking here is: Does this cost overrun concept now have any interplay with those two agreements? And then he did go on also to say: Does it have any impact on equity?

So I think at this point we're still unsure what the wording was going to be and how it would ultimately play out, and I think he was asking is: Does this concept affect the overall equity of the project?



**MR. LEARMONTH:** All right.

**MR. STURGE:** So I don't think this in itself was necessarily the cost overrun. I think it was the cost overrun provision I think is what we were talking about.

**MR. LEARMONTH:** Yes, 'cause those are two separate things.

**MR. STURGE:** Yeah. Yeah.

**MR. LEARMONTH:** One thing is a drafting of contractual language to deal with a situation where there is or there may be a cost overrun. That's just a general thing. And the second thing is, the second consideration would be to deal with a cost overrun that has already been identified. Do you see the difference I'm –?

**MR. STURGE:** Yes, I do. And this was the former, yeah.

**MR. LEARMONTH:** This was the former.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Yeah. Okay.

**MR. STURGE:** At this point. Yeah.

**MR. LEARMONTH:** At this point. Yeah.

So how would – do you know how this would – you know, the third point on page 3 of this exhibit, "How will such increase change the information that was provided to the Minister of Finance last weekend?" Do you know what information was presented to the minister of Finance last week?

**MR. STURGE:** I'm assuming this was the November 1 document we looked at earlier, the one-page spreadsheet that was based on DG3 capital costs?

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I'm assuming that's what it is.

**MR. LEARMONTH:** But – so at this point you know about the \$500,000 – \$300 million figure, right, but – correct?

**MR. STURGE:** At this point, yes. Yes.

**MR. LEARMONTH:** But – and once again, you have an opportunity to respond to the – provide information to the government to the effect that we have a figure of \$300 million we're still trying to get better details on. You could've done that, couldn't you?

**MR. STURGE:** (Inaudible.) And this was the same day that we're having the original discussion with Mr. Martin on the information going to the board.

**MR. LEARMONTH:** Yeah, but just to make the point, once again at this time, because Mr. Martin hadn't given you permission or authorization to release any cost information, your hands were tied. Is that correct?

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And for any more than that, I would've been at a heightened sense of awareness here of the issue because of – we just had the discussion about it going to the board, so I would've been even probably more (inaudible).

**MR. LEARMONTH:** Yeah, because at this point you know that, hold on, Mr. Martin doesn't even want to give this information to the board, right?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** And then obviously giving it to government would be a real can of worms for you, wouldn't it?

**MR. STURGE:** Yeah, at this point, I would've been very leery giving it to anyone.

**MR. LEARMONTH:** And Auburn Warren, he responds in that it's best to have a call. Was it – did a call take place?

**MR. STURGE:** We did. We had a call later that same day, and –

**MR. LEARMONTH:** Who were the participants?

**MR. STURGE:** I don't know exactly. I do believe it's – what was that exhibit with my notes from November?

**MR. LEARMONTH:** 02523?

**MR. STURGE:** Yeah, and what tab was that in?

**UNIDENTIFIED MALE SPEAKER:** One, two, three.

**MR. LEARMONTH:** Tab 17.

**MR. STURGE:** 'Cause I think –

**MR. LEARMONTH:** Page 7.

**MR. STURGE:** – I think that meeting is in there actually. There's not much from that meeting, but there is – yeah, on page 7.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Very bottom. It was myself, Auburn Warren, Craig Hippert from Nalcor, Paul Morris, Paul Myrden and Todd Stanley from Newfoundland, and Xeno Martis from Fasken. And my comment was: "Would 'Cost Overrun' changes need to be incorporated ...." So the discussion, obviously, in the meeting was really around: Would it need to be reflected in the equity agreements?

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** That's – that was my note, anyway.

**MR. LEARMONTH:** Well, once again, then can you tell us whether you discussed the new capital cost estimate at this meeting?

**MR. STURGE:** I – I can't be certain, but I have a feeling I would not have because of –

**MR. LEARMONTH:** You would not have.

**MR. STURGE:** – what had transpired that day.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** That would be my – if I had to guess what I – what it would've been, I think probably there.

**MR. LEARMONTH:** You'd say no.

**MR. STURGE:** Probably, yes.

**MR. LEARMONTH:** 'Cause that's – and that – that's consistent what you said in your interview transcript at –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – page 25.

Now, on November 12, you met with the Economic Policy Committee. Is that correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** And then so if we go to tab 26, so you were personally present, were you?

**MR. STURGE:** I was in the room. Charles Bown led the presentation, I was in the room, and I'm pretty certain Donna Brewer or the deputy of Finance was in the room.

**MR. LEARMONTH:** Okay. And who else, anyone else?

**MR. STURGE:** I think some of these other people on the email on page 2 might've been there but not many of them. I know there were a lot of people waited outside, and some of them – some of these people might've been Cabinet Secretariat people that would've been in there anyway.

**MR. LEARMONTH:** Would they be all –

**UNIDENTIFIED MALE SPEAKER:** Excuse me –

**MR. LEARMONTH:** – bureaucrat –

**MR. BUFFETT:** Excuse me, we still don't have that –

**MR. LEARMONTH:** It's 02530.

So, would there be only bureaucrats or –?

**MR. STURGE:** No, this would've been a – this is a committee of Cabinet, so it would've included, I think, five – five or six ministers.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** And I know Minister Dalley was present, but I can't recall ...

**MR. LEARMONTH:** And, can you look at Exhibit P-02530 and tell me whether there's any mention of the capital cost increase of \$300 million?

**MR. STURGE:** No there's not. In fact, there's no mention of capital costs, either 6.2 or 6.5, in there.

**MR. LEARMONTH:** So, once again, you have an opportunity to advise appropriate officials and you didn't take advantage of it, correct?

**MR. STURGE:** Well, certainly, me advising Cabinet is something I would never do without – absolutely without Ed's clearance.

**MR. LEARMONTH:** Well, before you went to this meeting, did you ask Mr. Martin if you were authorized to – whether you were authorized to –

**MR. STURGE:** No, I wasn't –

**MR. LEARMONTH:** – to release –

**MR. STURGE:** – speaking –

**MR. LEARMONTH:** – the information?

**MR. STURGE:** – I wasn't speaking at this meeting.

**MR. LEARMONTH:** You what?

**MR. STURGE:** I wasn't speaking at this meeting, I was –

**MR. LEARMONTH:** You were there.

**MR. STURGE:** – I was there if somebody needed a question, but I ...

**MR. LEARMONTH:** Yeah.

Did that make you feel uncomfortable? You had information in your head, but you weren't allowed to release –

**MR. STURGE:** I –

**MR. LEARMONTH:** – it to the government.

**MR. STURGE:** I don't know if in that meeting I felt uncomfortable or not, I really – I really can't say, 'cause at this point I wasn't certain if Minister Dalley knew or not.

**MR. LEARMONTH:** Well, why didn't you ask him?

**MR. STURGE:** Well, because I didn't know, so I couldn't raise the issue of does anyone here know about the 6.5 –

**MR. LEARMONTH:** No but you can't –

**MR. STURGE:** – you know?

**MR. LEARMONTH:** – like, the way you find things out is by asking him. You know, you could have said are you aware of any increase in costs or potential increase in costs or something is coming.

**MR. STURGE:** I – that – you know, in the context of what we were in and the directions that we would have had around capital cost, for me to do that at a Cabinet meeting would have been a pretty serious issue, I think.

**MR. LEARMONTH:** Why?

**MR. STURGE:** Because I, you know, I just – it wouldn't have been my place to present that information to Cabinet.

**MR. LEARMONTH:** You're the CFO of Nalcor.

**MR. STURGE:** Yeah, I would have never done that though. Anytime that there was ever a cost change. I – and even before that or after, it always would have been Ed at that level. At the ministerial level or premier level talking about the capital cost update. I never would have talked about it.

**MR. LEARMONTH:** Would you –

**MR. STURGE:** And in fact, at that time, I knew very little about the capital cost increase.

**MR. LEARMONTH:** You what?

**MR. STURGE:** At that point, I knew very little about the capital cost increase.

**MR. LEARMONTH:** Well you knew on November 6 –

**MR. STURGE:** We knew it was 6.5 –

**MR. LEARMONTH:** – there was a 300 –

**MR. STURGE:** – but that was really all we knew. I had no reason why it was driving it –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – at that point and we were still –

**MR. LEARMONTH:** But anyway regardless of, well, of –

**MR. STURGE:** Yeah and if I didn't –

**MR. LEARMONTH:** – the level of information – regardless of the level of information, you knew there was going to be an increase, yet you chose to remain silent when you had an opportunity to disclose this to the Government of Newfoundland, is that correct on this opportunity?

**MR. STURGE:** I don't think I chose, I think it would have been inappropriate for me to have attended the Cabinet meeting as support for Charles if he needed it, to raise an issue that I wasn't aware if Ed had yet or not discussed with the province.

**MR. LEARMONTH:** Well that's your answer is it?

**MR. STURGE:** Yes it is.

**MR. LEARMONTH:** Okay.

So if you look at your notes, that's P – tab 17, 02523, pages 8 and 9.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Please turn to that.

**MR. STURGE:** It's on the screen there, yeah.

**MR. LEARMONTH:** I'm not seeing any 6.5 billion –?

**MR. STURGE:** No.

So I was looking at this and I think what I had done here is, it looked like on the previous page, page 8, it looked like before the meeting I had jotted down a bunch of data that we had available for the 6.2 to have in my mind. And I didn't have, actually, that level of detail for the 6.5 at that point.

So that's – and I think I probably would have actually taken this maybe from that Minister Marshall document is where I probably pulled that from.

**MR. LEARMONTH:** But you're not saying that the 6.5 was discussed, right?

**MR. STURGE:** No, I'm not.

**MR. LEARMONTH:** No.

**MR. STURGE:** No.

**MR. LEARMONTH:** And you think it probably wasn't?

**MR. STURGE:** I don't think any number was discussed there –

**MR. LEARMONTH:** Okay.

**MR. STURGE:** – 'cause if you look at the slides, it was around the – more around the principles of that –

**MR. LEARMONTH:** Yup.

**MR. STURGE:** – than any number, really.

**MR. LEARMONTH:** Yeah.

And am I correct that the financing agreements were going to Cabinet the next day? That was the plan?

**MR. STURGE:** No, I think the next day – so this was the 12th, I think the Cabinet meeting was Thursday, on the 14th.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And the equity agreements and the IGA were going to Cabinet.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** But I think there was a proviso in the presentation – I’m just looking at the presentation there, somewhere I thought there was a proviso that they weren’t finalized yet and they were still – I can’t find that now guys, I saw that somewhere. Somewhere in there I thought I saw the proviso that the – what they would be approving – oh, and maybe it was the Cabinet meeting or something – but the proviso that they (inaudible) as substantially as filed with the Clerk or something like that.

**MR. LEARMONTH:** Okay, just show me where it says that.

**MR. STURGE:** And I can’t find it right now; I don’t know if it’s this day.

**MR. LEARMONTH:** Okay. Well, maybe you can have a look at it overnight and give it to me tomorrow morning.

**MR. STURGE:** I thought I saw it somewhere and I think I – ‘cause when I saw it I said it looked like it was providing for the option that the agreements weren’t finalized and there still could be changes and it was acknowledging that.

**MR. LEARMONTH:** So once again, to repeat something that I guess applies once again, even if you had known the exact number, you weren’t authorized to provide the information because you’re waiting for clearance from Ed Martin, right?

**MR. STURGE:** Yes, that’s correct: yes.

**MR. LEARMONTH:** Okay.

Did you read the independent engineers report? I think I asked you that before but I’m not sure of your answer; the one – the draft independent engineer report?

**MR. STURGE:** I didn’t focus – during that period I didn’t focus much on the IE report, Jim Meaney was and –

**MR. LEARMONTH:** Yup.

But I didn’t ask you if you focused on it, I asked you whether you read it?

**MR. STURGE:** Yeah, I’m not sure if I read it in full or not, I –

**MR. LEARMONTH:** Would you have read it in part?

**MR. STURGE:** I – it’s possible I was just getting updates from Jim.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** Because there was, you know –

**MR. LEARMONTH:** But you may not – may have never ....

**MR. STURGE:** I may not have read it – the drafts.

**MR. LEARMONTH:** Okay. Well, were you aware, before financial close, that in at least one of the draft reports of the independent engineer there was a statement that all the contingency, the \$368 million in the DG3 numbers, was gone?

**MR. STURGE:** I’m not – I can’t say for certain I was aware of it but I could have been.

**MR. LEARMONTH:** All right.

**MR. STURGE:** This ....

**MR. LEARMONTH:** You don’t know?

**MR. STURGE:** I just – I can’t recall at the time whether –

**MR. LEARMONTH:** All right.

**MR. STURGE:** I knew there was discussions about contingency in there, I just can’t remember.

**MR. LEARMONTH:** Now, I want to refer to some notes, where you made reference to Charles Bown who I’ve said earlier was the deputy minister of Natural Resources, you know, in 2012 and ’13.

So, if you go P-02503 – that’s tab 17 – page 10.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** 2503.

**THE COMMISSIONER:** 2503 or 2523?

**MR. LEARMONTH:** 2503. 2523. Sorry. On page 10. Do you have that Mr. Sturge?

**THE COMMISSIONER:** It’s tab 17.

**MR. STURGE:** Yes. I have it.

**MR. LEARMONTH:** Tab 17.

**MR. STURGE:** I have it here.

**MR. LEARMONTH:** Okay. So, this – there’s a meeting here with, you know, you refer to the people present at the meeting. Now the reference as being present – do you agree that that’s Charles Taylor of – Alison Manzer’s partner and not Charles Bown?

**MR. STURGE:** I believe on the top part of the page you’d be correct. That would be Charles –

**MR. LEARMONTH:** Because you’ve got here – you’ve got it noted with Alison, right? Yeah.

**MR. STURGE:** I think what happened there is I had the attendees of the meeting but the notes below – Scott Balfour and Charles Bown were unrelated to the meeting, I think, is what it is.

**MR. LEARMONTH:** That’s what I was going to ask you.

**MR. STURGE:** Yes. Yes.

**MR. LEARMONTH:** Because – and what is – just read out what comments you attribute at some point to Charles Bown – even though he wasn’t at the meeting. So it’s unrelated to –

**MR. STURGE:** Yes. So it would have been, probably, somewhere after that –

**MR. LEARMONTH:** Okay.

**MR. STURGE:** – and –

**MR. LEARMONTH:** Just read out.

**MR. STURGE:** My comments – my notes say – “need to roll new capex out to Donna Brewer. He will speak to Ed. Sanction 4.10 language could result in NL putting in more equity at financial close.” And then it says – “We’ll need details” – and then – “I told Charles Bown we did not have all the details yet – we were still working through it.” And then my last note is – “CB spoke to Ed and got the green light.”

**MR. LEARMONTH:** Okay. What does that mean?

**MR. STURGE:** To provide the updated cost of finance, I guess.

**MR. LEARMONTH:** So you’re saying, that means Charles Bown spoke to Ed – how do you know that?

**MR. STURGE:** Well he would have, obviously, told me and I don’t know if this was on the phone or not. It sounds like he would have had some discussion early on. This was how I was interpreting it, anyway, that he seemed to know there was a new capital cost number and he was saying – we need to get this to Donna because of the COREA calculation and then he must have gone off to Ed and said he got the green light from Ed.

**MR. LEARMONTH:** Why would Charles Bown have to get a green light from Ed? I can understand – well, based on your evidence – that you had to get a green light from Ed but why would Charles Bown have to get a green light –

**MR. STURGE:** (Inaudible.)

**MR. LEARMONTH:** – from Ed to pass on information to the Department of Finance?

**MR. STURGE:** I believe probably what happened here is I probably said to Charles that I just – I can’t give that out without Ed’s sign-off, and he just probably said I’ll get it for you or something to that tune.

**MR. LEARMONTH:** You’re surmising, are you?

**MR. STURGE:** I am, yes, yeah.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** But I guess that's all I can sort of make sense there.

**MR. LEARMONTH:** But, you know, Charles Bown wouldn't have to get a green light from Ed. I mean, he – if he had information he certainly could use it as he saw fit, correct?

**MR. STURGE:** You would think so, yes. Yes, but –

**MR. LEARMONTH:** Well, you seemed to hesitate there.

**MR. STURGE:** No, but I'm only saying because of – I mean, as just as I was aware of the sensitivity of that date, I'm sure Charles probably had the same awareness of the sensitivity of it, I –

**MR. LEARMONTH:** But why –

**MR. STURGE:** – guess.

**MR. LEARMONTH:** – would Charles Bown have an awareness of sensitivity?

**MR. STURGE:** I'm guessing now, so, you –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – know, I shouldn't speak for Charles.

**MR. LEARMONTH:** Yeah, but I know –

**MR. STURGE:** I was only trying to find a plausible sort of logic, you know?

**MR. LEARMONTH:** But – can you – well, I appreciate what you just said, but perhaps some people would have a problem understanding why Charles Bown would have any hesitation if he had information. I don't understand that.

**MR. STURGE:** Yeah, I don't know.

**MR. LEARMONTH:** You don't know.

Okay, tab 17, page 15.

Now, can you tell me what this – these notes are about?

**MR. STURGE:** The one starting with Call with Canada?

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

So this was November 19, and this was a meeting we were having with a wide group, and through this period, this was sort of typical of the meetings that we were having on a daily basis. And the topic was to discuss the outstanding business issues.

So these would've been the outstanding business issues in the project finance agreements primarily. And it – the group there was pretty typical. It would've been the Nalcor – said the "same five," so it must've been somewhere else. It was five Nalcor people, likely myself, Jim Meaney, Auburn, maybe Rob Hull and Craig Hippert, I'm thinking. From Newfoundland it was Randy Pelletier and Paul Myrden –

**MR. LEARMONTH:** Randy –

**MR. STURGE:** – and then there were people from Canada, Cassels, Blair Franklin, Faskens. So the – you know, the typical group that we were meeting with during that period.

**MR. LEARMONTH:** Okay.

Now, was there a discussion at that meeting of the capital cost increase?

**MR. STURGE:** Just gonna – just let me review for one second.

So at – on November 19 was – I'm trying to put it in – on a sort of a timeline here. Canada was still waiting on data, so Canada would've known about it. My comment under cost overruns is – we were talking about the definition of the cost overrun at that point.

**MR. LEARMONTH:** Okay.

That was the first scenario we talked about before that –

**MR. STURGE:** Yes.

**MR. LEARMONTH:** – you’re talking about in a –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – general sense that you’re talking about language that would be appropriate to put in the financing agreements to deal with a situation were there to be a cost overrun –

**MR. STURGE:** That’s correct, yes.

**MR. LEARMONTH:** – as opposed to a specific cost overrun that had been identified. So that’s what you think you’re talking about there?

**MR. STURGE:** That first bullet was. The second one is saying we don’t seem to be aligned on the starting point. Blair Franklin saying that it’s calculated from DG3, i.e., the \$6.2 billion. So clearly we’re still having that discussion, conceptually, of were we calculating it from one number to the other. And then I say, you know, it was a real dust-up on the issue and it got testy. But then, again, my last comment I think is the important one here. I said: “Again the discussion came back to the need to get the capital data to Canada.”

**MR. LEARMONTH:** To Canada?

**MR. STURGE:** To get the detail to Canada.

**MR. LEARMONTH:** To Canada, yeah.

**MR. STURGE:** Because it was Canada in this particular discussion that we were trying to satisfy on this cost overrun issue.

**MR. LEARMONTH:** Yeah.

But I go back to something I said before, surely while we understand that you were dealing with Canada on it, that this information would be equally or even more important to the Government of –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – Newfoundland because they’re picking up the tab, correct?

**MR. STURGE:** Yes.

And I can’t say – and I’d be surprised if the 6.5 wasn’t discussed here because the discussion – at that point, we were clearly talking about this issue. So I’d very surprised if it wasn’t in that meeting.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** But I don’t see the reference there so –

**MR. LEARMONTH:** What date is this meeting?

**MR. STURGE:** This is November 19.

**MR. LEARMONTH:** Yeah, but you – how could it be discussed there if you didn’t have permission to release the figure because, you know, you hadn’t got that from Ed Martin yet, correct?

**MR. STURGE:** That’s true. That came later that day you’re –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – correct. You’re correct.

**MR. LEARMONTH:** So do you retract what you said earlier?

**MR. STURGE:** Yeah, I do, yes. That came later that day.

**MR. LEARMONTH:** Yeah. It came after supper.

**MR. STURGE:** Yes. You’re right.

**MR. LEARMONTH:** Okay. So you correct your evidence –

**MR. STURGE:** Yes, I do.

**MR. LEARMONTH:** – on that, correct?

**MR. STURGE:** You’re correct.



**MR. LEARMONTH:** Okay.

Now tab 34, that's P-02535.

**THE COMMISSIONER:** Thirty-four.

**MR. LEARMONTH:** (Inaudible). Yeah, so that's 02535. This is from – this is November 20.

**MR. STURGE:** Yes. The next day.

**MR. LEARMONTH:** Yeah.

From you to Auburn Warren, Rob Hull and James Meaney: "Hi folks, the other thing we need to do based on direction from Ed and Charles from last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data."

So would that confirm that up until that point they hadn't been made aware of –?

**MR. STURGE:** It would seem to imply that, unless this was more detail, but I'd just take the assumption that probably they didn't know 'til that – around there, yeah.

**MR. LEARMONTH:** Yeah.

But why would – what is – tell me what this means, that "based on direction from Ed and Charles ... last week." What is that –

**MR. STURGE:** Well, that was –

**MR. LEARMONTH:** – about?

**MR. STURGE:** – the note from November 13 that I've referred to that Charles said we should be updating Finance. He – so he flagged it, and then Ed signed off that we should do it. I think the timing of this was – I think there was a sign-off that Ed gave the previous evening on the capital cost details, and that, I think, was probably the trigger. 'Cause this was first thing the next morning, so I was – I'd obviously just jumped out of the shower or something and it was going through my head of what I needed to get done that day type thing.

**MR. LEARMONTH:** Seems – just as a point – that it seems like we're spending a lot of time

going through information to see who knew what when, when a simple email communication would clarify all this information. Do you agree?

**MR. STURGE:** Yeah, it – but it was the reality of the moment we were in, I suppose.

**MR. LEARMONTH:** Now, tab 17, once again, 02523, page 21.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Can you turn to page 21, please –

**MR. STURGE:** Yes, I have it, yes.

**MR. LEARMONTH:** – and give me some indication of what this meeting record is about.

**MR. STURGE:** Do you want me to start from the top or ...?

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Take us through it.

**MR. STURGE:** So on – the first meeting is hedging. So it's a discussion there of – looks like I had some discussion – at this point we were trying to put a plan in place with some hedges in place, and there was some discussion going around in terms of the entity – the legal entity that the hedges needed to be in. And you can see here I had a phone discussion with Kent Legge, Carol Anne Lutz and Elizabeth Lewis, who would've been in our financial reporting team, so we were still trying to work a solution to that issue.

Then my next note is – seems to be unrelated – "Our proposal to resolve all business issues with Canada was discussed with Alison last evening ...." So coming out of it, we had a meeting on the 21st; that evening, we put together a final proposal to Canada to resolve all our business issues, and our legal counsel, Xeno Martis, had a discussion, one on one, with Alison on that.

**MR. LEARMONTH:** That's Government of Canada?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** The next issue: “Another issue with the legislative changes Newfoundland is making for Emera blew up today.” I don’t recall exactly what was happening there, but it ultimately obviously got resolved.

And then I had a number of items to follow up, so I was doing a – at some point here doing a follow-up list.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** And we’re now into the next week, right?

**MR. LEARMONTH:** Right.

**MR. STURGE:** Yeah, and –

**MR. LEARMONTH:** So once again no indication that a figure had been communicated to Newfoundland and Labrador. Is that correct?

**MR. STURGE:** Not on this – from this page –

**MR. LEARMONTH:** No.

**MR. STURGE:** – that I could see, no.

**MR. LEARMONTH:** Okay.

Then we go to tab 36, which is Exhibit 02125. This is an email, November 26, 2013, when, I understand – I believe this was when you knew that Canada would set COREA at the – from the 6.5. Is that correct?

**MR. STURGE:** This is correct. So this is after Canada had accepted our proposal, and I was writing back to a group here, largely from the province, updating on the outcome of that discussion.

**MR. LEARMONTH:** And it would be to the – even if a cost overrun had not been identified at that time, it would be helpful to the province to have a higher figure put in there as a cushion, right? Because then they wouldn’t have to fund it – if there was a cost increase, it wouldn’t have

to be funded under the COREA obligations. Is that correct?

**MR. STURGE:** I think if it – if there was no – if the capital cost estimate at financial close was the same as it had been at DG3, I don’t think this – we would’ve had any discussion. It wouldn’t have made – I don’t think it would’ve made any difference. You know, it wouldn’t –

**MR. LEARMONTH:** Well, why would –

**MR. STURGE:** – have been a big deal for us.

**MR. LEARMONTH:** But what it would mean is it – let’s say it was 6.2, yet the financing document said 6.5, so there’d be a \$300-million cushion there that wouldn’t have to be funded by a COREA payment. Is that correct?

**MR. STURGE:** That’s correct, so –

**MR. LEARMONTH:** Okay, yeah.

**MR. STURGE:** – we had every reason to want to get that number as high as we could.

**MR. LEARMONTH:** Yes.

**MR. STURGE:** Yes, absolutely.

**MR. LEARMONTH:** But even if there was not a cost – capital cost increase in existence, it would still be beneficial to have that cushion because the province wouldn’t have to fund the \$300 million through the COREA provisions, correct?

**MR. STURGE:** Yes, but if there hadn’t been a capital cost increase that we’re talking about at this point, we wouldn’t have been having this discussion about the starting point I think.

**MR. LEARMONTH:** Okay, I –

**MR. STURGE:** Right?

**MR. LEARMONTH:** – understand that.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Now, so this November 26 – there’s some, you know, important information here. It obviously indicates the –

and this email was November 26, 2013. I'm referring to Exhibit P-02125. It's from you to Ed Martin, Charles Bown, Donna Brewer, Paul Myrden, so people at government.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Is there any reference to a figure?

**MR. STURGE:** Not in this one. The figure was in a reference in the previous evening or the previous day on the 25th. We also updated where Canada accepted the proposal, and in that one, we did have the \$6.5 billion.

**MR. LEARMONTH:** But I'm talking about, not Canada, Government of Newfoundland and Labrador.

**MR. STURGE:** Yeah, but the email I was referencing the previous evening, or the previous day, also went to Newfoundland and Labrador.

**MR. LEARMONTH:** Okay, and which – is that email in these documents?

**MR. STURGE:** It – I'm pretty certain I saw it go through documents for exhibits. It was an email – and then the reason I remembered, it was one that originated with Xeno Martis. So I think it had to go through clearance for legal sign-off or –

**MR. LEARMONTH:** Well, there was one –

**MR. STURGE:** – privilege.

**MR. LEARMONTH:** – we know that the – there was a calculation sheet showing the 6.531 – and we'll get to this later. You know, the reconciliation? You know the chart I'm talking about –

**MR. STURGE:** Yes, yeah.

**MR. LEARMONTH:** – 6.531?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** We know that on November 19 that James Meaney gave access to that document to the Government of Canada but

denied access to the Government of Newfoundland and Labrador.

**MR. STURGE:** I remember that email, yes. Yeah.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** And do you know why – do you have any insight as to why the Government of Newfoundland and Labrador would be denied access to that information?

**MR. STURGE:** I'm not totally certain but I – you know, as Jim said, I have the same recollection that the intention was always to update Finance. So there was no intention not to do it –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – and I think we're going to do it, and it did happen shortly after that so ...

**MR. LEARMONTH:** Well, I'm not talking about intention; I'm talking about, you know, concrete evidence here –

**MR. STURGE:** (Inaudible.)

**MR. LEARMONTH:** – clear evidence that the Government of Newfoundland and Labrador was –

**MR. STURGE:** Because there are two emails –

**MR. LEARMONTH:** – notified.

**MR. STURGE:** – somewhere that reference the \$6.5 billion on the 22th and the 25th.

**MR. LEARMONTH:** But when was the 6.531? I mean, at that point, it wasn't \$300 million; it was 6.5 – it was 3.521. So why are you using, at that point, 6.5 when the real number is 6.531?

**MR. STURGE:** I think we – you know, just as we would round it to 6.2, we rounded all the numbers. I don't think there was any intent that they were different numbers. It was just the way they were being presented here.

**MR. LEARMONTH:** Well – so at what point was the 6.531 number clarified? November 19?

**MR. STURGE:** When you say clarified –

**MR. LEARMONTH:** Well, when was it established that it was 6.531?

**MR. STURGE:** I think the six – and I’m not totally certain on this, because when Auburn Warren asked for the detailed breakdown on November 8 for his modelling – or November 6 –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – I’m pretty certain that the combination of all the annual numbers would’ve come back to him –

**MR. LEARMONTH:** Right.

**MR. STURGE:** – would’ve also been 6.531, so –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – I don’t think that would’ve been the first time.

**MR. LEARMONTH:** And that was November 8?

**MR. STURGE:** Yeah, and he would’ve got that data on November 11, 12 –

**MR. LEARMONTH:** Okay.

**MR. STURGE:** – somewhere around there.

**MR. LEARMONTH:** Well, do you know why Mr. Warren didn’t update the government then? ‘Cause that’s only a week after Mr. Marshall was told it was 6.202.

**MR. STURGE:** He would’ve been in the same predicament the rest of us were in, is that he – if I couldn’t update government, then he certainly couldn’t have done that.

**MR. LEARMONTH:** And once again, that’s the lack of authorization from Mr. Martin, right?

**MR. STURGE:** Yeah, I mean, once the approval comes, like, a lot of things will happen, but it hadn’t at that point.

**MR. LEARMONTH:** But when this number was – okay, we – you know, I understand the point that you’re not allowed to communicate the information to the Government of Newfoundland and Labrador ‘til Mr. Martin gives his okay. But at any time before November 29, 2013, or we’ll say December 13; that was the day the funds were advanced under the federal loan guarantee.

**MR. STURGE:** Actually 10, probably, ‘cause once we had borrowed on the 10th –

**MR. LEARMONTH:** But the –

**MR. STURGE:** – there was no (inaudible) –

**MR. LEARMONTH:** – the bonds were priced on the 10th and released on the 13th, I think.

**MR. STURGE:** Yeah, I think –

**MR. LEARMONTH:** The funds –

**MR. STURGE:** I don’t think –

**MR. LEARMONTH:** – were released –

**MR. STURGE:** – you could turn back, really, after the 10th, though. I think they had been sold at – but in any case –

**MR. LEARMONTH:** Well, anyway –

**MR. STURGE:** It was only three days, I –

**MR. LEARMONTH:** Yeah, okay.

But did you – did – to your knowledge, was the board informed of this 6.531 number?

**MR. STURGE:** I can’t be certain, I really can’t, ‘cause I don’t know if Ed had any other discussions with the board that could’ve happened off-line. This was possible as well. He could’ve emailed the board. You know, I don’t know. I really –

**MR. LEARMONTH:** Well, we haven’t seen any such email or –

**MR. STURGE:** Well, I can't confirm they didn't, but I can't find anything in my review that shows they have.

**MR. LEARMONTH:** Okay. So in answer to the question, would it be fair for me to accept this – to – you to give me this answer, based on what you've said – and listen – that you don't know whether the board was informed, and you've searched and you have been unable to find any records that the board was informed?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** That's correct.

Now, how can that be? How can that be? Once again, the same thing I've said before: This is a big decision for the board, you've got members who are inexperienced, some of them, not all of them. This is a huge undertaking. And it appears, based on your evidence, that the board was not informed before financial close that there had been an increase from the \$6.202. I just say: How is that possible?

**MR. STURGE:** Yeah, and I can't confirm they weren't, but I couldn't find any evidence and –

**MR. LEARMONTH:** Yeah, but how is it possible?

**MR. STURGE:** I think, you know, and again, I don't want to try to speak for Ed because I'm – Ed will do that, I'm sure, but the only thing I can think if you want me to try to say maybe what was going through his head, if you think I could –

**MR. LEARMONTH:** Well –

**MR. STURGE:** – but I'm speculating. That's the only basis I could...

**MR. LEARMONTH:** Well, if you're just speculating, then Mr. Martin will testify.

**MR. STURGE:** You know, I'm trying to think what he could be thinking. Yeah.

**MR. LEARMONTH:** Do you know whether at any time before December 13 the board was informed that the contingency of \$368 million was gone, there was no contingency?

**MR. STURGE:** I can't say that. What I will say is that the official \$6.5 billion did have a \$182-million contingency.

**MR. LEARMONTH:** Well, I know –

**MR. STURGE:** And whether you agree with it, and I don't – but that's what it was showing.

**MR. LEARMONTH:** Yeah, but – okay, that's fine.

But as a separate item, do you know whether the board was ever informed that the \$368-million contingency, and this is taken from the Grant Thornton report and the Independent Engineer's report, have been exhausted?

**MR. STURGE:** I couldn't – I couldn't say for certain, no.

**MR. LEARMONTH:** Don't you think they should have been aware of that?

**MR. STURGE:** It's probably a relevant piece of information but in the context of the overall cost estimate, and I don't know if, in itself, it's a – onto itself it's a relevant piece unless you see the context of where the estimate is probably, you know.

**MR. LEARMONTH:** Say that again.

**MR. STURGE:** I don't think that piece of information itself is relevant unless you see it in the context of the overall cost estimate.

**MR. LEARMONTH:** It wouldn't be relevant if you went to a board of directors and said: Look, by the way, we had \$368 billion built-in for contingency in our DG3 allowance and now that we've got some information (inaudible) contract, that's out the window, it's zero.

**MR. STURGE:** Maybe I should take that back and say – not relevant – it would be more meaningful if they saw it in the context of the overall estimate.

**MR. LEARMONTH:** More meaningful.

**MR. STURGE:** More meaningful.

**MR. LEARMONTH:** But even as an isolated item, it would still be meaningful.

**MR. STURGE:** It would still be useful, yes.

**MR. LEARMONTH:** Yeah, okay.

So if you – I’m still struggling to find concrete evidence that before financial close, we’ll say December 13, that the Government of Newfoundland had been made aware by Nalcor that the capital cost increase was 6.531. Do you have any clear, unequivocal evidence?

**MR. STURGE:** I can’t find 6.531 but I can point to 6.5, which was a rounded number. I can point to that.

**MR. LEARMONTH:** Okay. Well, why wasn’t the 6.531 cited?

**MR. STURGE:** And I’m not saying it wasn’t, but I can’t find that in the emails but it’s just – when we were talking about this number, we were talking 6.2, 6.5, so it was a rounded number. So I – it was meant to be the same number, I don’t think it changed the intent of it.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** But there are emails with the 6.5 in them.

**MR. LEARMONTH:** But they’re not really – it’s not a clear statement that the cost increase has increased to 6.5. Do you agree with that?

**MR. STURGE:** Well, I – no, I think they do say it at –

**MR. LEARMONTH:** Which emails are you referring to?

**MR. STURGE:** I got to believe they’re here in the record ’cause I thought I saw them come through over the last 24 hours. I can – somewhere –

**MR. SIMMONS:** Commissioner, I think I might know the email that’s being referred to here. I’m trying to find it in the exhibits myself and having trouble. I actually just emailed staff and I’m told it’s in as an exhibit, but I’ve asked them –

**MR. LEARMONTH:** Yeah.

**MR. SIMMONS:** – if they can give us the number.

**THE COMMISSIONER:** (Inaudible) –

**MR. LEARMONTH:** Well, why don’t we just carry on and then when it’s located –

**THE COMMISSIONER:** (Inaudible) and on the break, maybe we could find that.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Now –

**THE COMMISSIONER:** We can probably carry on for another 10 minutes and then take a break.

**MR. STURGE:** I think I found it. If you don’t mind – P-02673.

**MR. LEARMONTH:** Okay. Do you know what tab that’s at?

**MR. STURGE:** Tab 81.

**MR. LEARMONTH:** 81?

**MR. STURGE:** That’s one of them, anyway.

**MR. LEARMONTH:** Okay. So that’s P-02 –

**MR. STURGE:** 02673.

**MR. LEARMONTH:** Okay. And this is an email from Xeno Martis to Auburn Warren and – is anyone...

**MR. STURGE:** So what was happening here is that –

**MR. LEARMONTH:** This is – so this email was sent to Paul Myrden and Paul Morris.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Correct?

**MR. STURGE:** That’s correct, yes.

**MR. LEARMONTH:** On November 22?

**MR. STURGE:** Yes, that's correct.

**MR. LEARMONTH:** Okay. And on page 2 –

**MR. STURGE:** I think on the bottom of page 1, in number 1 –

**MR. LEARMONTH:** Mm-hmm.

**MR. STURGE:** – I think there's a relevant section there. And what was happening here is we were – we had given Canada a proposal for business issues, November 21. Alison and Xeno had talked some language, I think Canada came back with some potential revisions on the 22nd, and in this email, Auburn was taking those potential revisions and he was sending them to Paul and Paul – and saying: We needed to – you know, could we get on the conference call and talk these through.

But in number 1 below, it said: "On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial" close "(\$6.5B ... and not the DG2 \$6.2B ... estimate)."

**MR. LEARMONTH:** Though "Nalcor would agree to have funded cost overruns." So this is the email you're referring to, is it?

**MR. STURGE:** That's one of them, yes. Yeah.

**MR. LEARMONTH:** Okay.

But if you find another one, let me know. And also, there's no mention of the 6.531 again, is there?

**MR. STURGE:** No, simply because we were rounding the numbers for simplicity, I suppose.

**MR. LEARMONTH:** Okay.

Now, the AFE was revised. Revision 1 was in June 2014 for \$6.99 billion. Is that correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** When did you know that the cost of the project had reached that amount?

**MR. STURGE:** We first had – I'm thinking it was around February of 2014.

**MR. LEARMONTH:** Okay.

So if it's February 2014, why does it take that long, until June –

**MR. STURGE:** It –

**MR. LEARMONTH:** – to get that – a revision done?

**MR. STURGE:** Well, I guess the short answer is that any changes to the estimate required Mr. Martin's ultimate approval and I think – and I recall in 2014, the change in the estimate went through a series of steps that I could describe if you want, but I'll wait for you to direct me.

**MR. LEARMONTH:** Well, I wanna know why it takes – it took so long.

**MR. STURGE:** I can't totally say, but I know we started – there was an estimate that had been given to Jim Meaney on – I'm recalling somewhere around the 6th of February in 2014, and it came out of a discussion that he had with Jason Kean who had been party to, I think, a meeting with Ed and probably some other members of the project team.

And coming out of that, there was – the direction Jim had was that \$418 million was being added to the estimate. So the 6.531 plus \$418 million. So Jim started the process to get his folks working the AFE, and for some reason that did not go ahead and I guess Ed would've had to make the decision that he wasn't gonna do that. So maybe it was – maybe what Jason had told Jim hadn't been totally agreed by Ed at that point. That's probably what happened.

**MR. LEARMONTH:** But that – from February 'til June, that seems to be a long time, doesn't it?

**MR. STURGE:** Yeah, and what Jim was doing is – Jim Meaney was getting the AFEs ready for our board meetings that were taking place in early March in 20 – or early to mid-March 2014. So when the – when this concept of adding \$418 million of contingency seemed to go away, Jim then reverted to at least he had to get the 6.531 AFEs updated. And in addition to that, he was

now creating a new series of AFEs that had financing costs that had come out of financial close in December.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** So he prepared those for, I think, March for the board meetings, and they didn't go for it either.

**MR. LEARMONTH:** Why not?

**MR. STURGE:** I'm not totally certain but I think at that point Ed had landed on that he was gonna do an update in June.

**MR. LEARMONTH:** Okay, so –

**MR. STURGE:** But it would've been Mr. Martin's decision. It wouldn't have been anyone else's.

**MR. LEARMONTH:** Well, he timed everything. He was in control of timing the release of all this information, correct?

**MR. STURGE:** He would've ultimately had the final sign-off on the timing of the cost update and the amount, yes.

**MR. LEARMONTH:** Yeah.

And if we just look at tab 78, Exhibit P-02650.

**MR. STURGE:** I'm sorry, which tab?

**MR. LEARMONTH:** Excuse me, tab 78.

**MR. STURGE:** Seventy-eight.

**MR. LEARMONTH:** It's in book 2.

This is an email at the bottom of page 1. February – is that February 6 or June 6, 2014?

**MR. STURGE:** February 6.

**MR. LEARMONTH:** February 6.

Okay, so turn to page 2. You can see: "... overall AFE revised would be \$6,949,754,577." Correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** Well, that would've been an indication of what to – you would've been aware of that at that point also, right?

**MR. STURGE:** Absolutely, yeah.

**MR. LEARMONTH:** Because Mr. Meaney –

**MR. STURGE:** I was copied on the email that Jim sent to his team.

**MR. LEARMONTH:** At any time did you ever discuss with Mr. Martin the – what appears to be a very slow process in getting AFE's approved? Or was that an item of concern for you?

**MR. STURGE:** No, it was. But I think what was happening through this period is that – I know Ed had a number of meetings with the project team and I can't actually remember why – and there could be a good logical reason. I'm not saying there's not. But I can't for the life of me understand, recall why he decided not to proceed on this basis. And, I'm sure there was a reason, but I can't recall it.

**MR. LEARMONTH:** Okay.

Well, you say you're sure there was a reason because –

**MR. STURGE:** You know, I mean, knowing Ed as I've known him is that, you know, everything he does is well reasoned. I mean, you may not agree with his reasons, but it's reasoned in his mind, you know. So there had to be some logic to it. And it could've been bids that were coming in. It had to have been something why he would've said: I'm not going to do it now but rather do it in June.

**MR. LEARMONTH:** Or it could've been that he just wanted to delay giving the information to the government or others.

**MR. STURGE:** It's possible, but I couldn't say it was but I suppose.

**MR. LEARMONTH:** No. But you can't say it wasn't.

**MR. STURGE:** I can't say it wasn't but the fact that it happened three months later I – you know, I don't know.



**MR. LEARMONTH:** You don't know. Okay.

Tab 37, 02536, Exhibit 02536. Can you tell me about – something about this email, please? This is from James Meaney to Gilbert Bennett, Jason, you, Scott Pelley and Paul Harrington. This is dated February 6, 2014.

**MR. STURGE:** Yeah.

Yeah, so this seems to be referring to – in that second paragraph he said: "I ... spoke with Paul this morning" – so I'm assuming that's Paul Harrington – "and got some background on the discussion ...." So there was – there had been a meeting the previous day that I think it was the one I referred to earlier that Ed had with Jason and some of the project team. And then Jim Meaney goes on to say: "Jason, I need the FFC scenario for each ... that you guys landed on."

So it sounded – it sounds from this that the project team met with Ed and they landed on a scenario.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And I'm not certain why, ultimately, that didn't go forward at that point.

**MR. LEARMONTH:** That's what it sounds like and that –

**MR. STURGE:** Yeah, yeah.

**MR. LEARMONTH:** – well, that's what it pretty well says.

**MR. STURGE:** At least from this Jim seemed to think that there was something that was landed on. And maybe it hadn't been, but that was his thinking at this point.

**MR. LEARMONTH:** Yeah. And once again, it took 'til June to process the AFE, correct?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay.

Okay, now then, there was another increase in September of 2015 from the 6.99 to 7.65.

**THE COMMISSIONER:** 2014?

**MR. LEARMONTH:** 2015.

**THE COMMISSIONER:** September?

**MR. LEARMONTH:** Yes.

**THE COMMISSIONER:** Yes, all right.

**MR. LEARMONTH:** Yeah. That was the second revision to 7.65.

Okay. When were you first aware that the \$6.99 B was not holding and that the forecast final cost was now 7.5 or 7.65?

**MR. STURGE:** First recollection I got is in early March –

**MR. LEARMONTH:** Yes.

**MR. STURGE:** – of 2015.

**MR. LEARMONTH:** And what recollection are you referring –

**MR. STURGE:** And I –

**MR. LEARMONTH:** – to –?

**MR. STURGE:** – think the first time I saw it is – well, the first time I got physical evidence of it, anyway, is in my notes on – there was two board meetings on March 5 and March 6, 2015, and these were subsidiary board meetings of, I think, Muskrat Falls Corporation and Lower Churchill –

**MR. LEARMONTH:** Go ahead.

**MR. STURGE:** – Lower Churchill Management Corporation. And in both those board meeting, even though the – I – 'cause I think I checked – I don't think either the minutes of those meetings mentioned it, but in both my notes for those meetings it talked about something along the lines that Ed had given to the board that there was some cost pressures, outcome not certain yet, and that type of thinking, right, in both those meetings. And that was the 5th and 6th.

And then the next recollection I had was on the 9th of March, about three days, four – three or four days later. Ed and I met with a group at the

province. And this would've been Minister Dalley, Charles Bown, Julia Mullaley, maybe Craig Martin and maybe others. But the purpose of the meeting was we were looking – we were briefing the province on – at that point they were – they had asked us to look at the sale of distribution assets of Newfoundland Power for Newfoundland Hydro. So Ed and I were going over to brief them on that issue, and at the beginning of the meeting Ed said something along the lines of: Before we get into the meeting I'm just gonna give you a quick update where we sit on Muskrat Falls. And my notes from that meeting are a little bit cryptic, but they say – they talk about some of the factors, and I had written down 7.5. So that would lead me to believe that he would've said 7.5 in that meeting as where he saw it at that point.

**MR. LEARMONTH:** And you didn't get a very good reception, did you?

**MR. STURGE:** I don't recall at that meeting whether it was a good or bad reception. I – and then –

**MR. LEARMONTH:** Well –

**MR. STURGE:** – the very next day, on the 10th of March, we met with Premier Davis, and it would've been his chief of staff, Joe Browne, and probably some of the same people that were in the meeting with the minister. And again, before – and again, the purpose was to talk about the sale of the distribution assets. But in that meeting, Ed did the same thing at the beginning, an update on Muskrat Falls and it's in my notes. In that meeting I didn't have the 7.5 written down, so I can't certainly – with certainty say he mentioned it, but the factors driving it I did have listed there.

**MR. LEARMONTH:** So Mr. Martin brought this up as – not as an agenda item, just as an aside because –

**MR. STURGE:** It was, sort of, before we got into the main agenda. He said before, you know, before you get into the agenda I just want to give a quick update on where I see Muskrat or something, you know?

**MR. LEARMONTH:** Well, it's pretty important information, isn't it?

**MR. STURGE:** It was and, I guess, you know, my recollection of going over with the province with Ed, he would often do that as a – we'd be there for another topic but he'd say: before we get into it and while I'm here I'll give an update on, you know, such and such.

**MR. LEARMONTH:** So the meeting would be called for one purpose and then Mr. Martin would provide some –

**MR. STURGE:** In this case, yes. I –

**MR. LEARMONTH:** Would that be a habit of Mr. Martin?

**MR. STURGE:** I wouldn't say it's a habit, but I know that if we've – I know that often if we've gone over on the specific topic, if there were a couple of other things that were brewing that were probably more recent or fresh, he might update while he's there.

**MR. LEARMONTH:** Yeah. But –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – that's critical information for the province, isn't it?

**MR. STURGE:** Yes; and at this point he had no deck with no material, I don't recall; it was just – I think it was just a verbal update at this point.

**MR. LEARMONTH:** Yeah.

But he had material from the project management team.

**MR. STURGE:** Yes, he would have at that point.

**MR. LEARMONTH:** Did he provide that to the province?

**MR. STURGE:** I – not at that meeting, no.

**MR. LEARMONTH:** No.

**MR. STURGE:** I recall it just being a verbal update.

**MR. LEARMONTH:** Yeah.

And he – do you know why he wouldn't have provided the deck?

**MR. STURGE:** I'm not certain. I really, really don't know.

**MR. LEARMONTH:** Did that strike you –

**MR. STURGE:** Yeah, I –

**MR. LEARMONTH:** – as being unusual?

**MR. STURGE:** Well, you know, I mean, I guess the purpose of the meeting – I guess he had booked an amount of time to do this issue and I guess he was saying: while I'm here I've got some information that might be useful to you, I suspect is what was going through his mind, you know, so –

**MR. LEARMONTH:** Rather than call up the province and say we've got a problem here with costs. I want to have a meeting.

**MR. STURGE:** And whether he had another meeting, I don't know. I really don't know.

**MR. LEARMONTH:** Okay.

**MR. STURGE:** But I think he was – my sense at that meeting he was giving a, sort of, a – early warning type of thing.

**MR. LEARMONTH:** Okay.

And what was the response?

**MR. STURGE:** I can't recall. I really –

**MR. LEARMONTH:** Okay well I think Mr. Meaney has that in his notes that I showed you.

**MR. STURGE:** Does he? Okay.

**MR. LEARMONTH:** But we'll get into that.

Okay tab 50, volume 2, P-02549.

If you go to page 1 you'll see this is a cost and schedule update, February 12 –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – 2015.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** If you just go to page 7, 8 and 9. I just draw your attention to the fact that at this, on page 9, it says: AFE Rev 3, 7.8. Correct?

**MR. STURGE:** That's correct, yes.

**MR. LEARMONTH:** Is that – were you aware of that information?

**MR. STURGE:** The number sticks in my mind it was 7.5 but –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – that doesn't mean –

**MR. LEARMONTH:** There is a reference to 7.5 too, but there also is a reference here to 7.7. Does that figure jump out at you as something you'd recall?

**MR. STURGE:** Yeah, 'cause I looked at this in my interview and I think what was going on here – it looks like – it looks like what they were saying is that they had enough certainty, or a level of certainty for 7.5 and there were other things happening that could drive it up to 7.8 and it seemed to be something like that going on.

**MR. LEARMONTH:** Yeah. Now the AFEs are – when properly done – show the projected cost of the project to the time of completion. Correct?

**MR. STURGE:** That would be my understanding. Yes. Yes.

**MR. LEARMONTH:** Yeah. Okay, if we look at –

**MR. STURGE:** That's how I always understood them. Yes.

**MR. LEARMONTH:** Look at page 8 of Exhibit P-02549

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Excuse me. Page – yeah. It says – “Project Cost at Completion June 2104 to Feb” – two, I guess that's just a reversion but

– “2104 to Feb 2015” – 7.5 to 7.7. It’s supposed to be to the end of the contract, isn’t it?

**MR. STURGE:** Yeah. And this concept of having – splitting it, never did happen. So, I – it would have been the first time and it never did occur. So –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** But I’m with you. I would have always thought that we were doing AFEs to reflect, sort of, our best view at that point. Yes.

**MR. LEARMONTH:** Well if you go to tab 60 – 02577 – there’s something from project controls at page 17. Can you look at that?

**MR. STURGE:** Tab 60?

**MR. LEARMONTH:** Tab 60. 02577.

**THE COMMISSIONER:** What page, again, Mr. Learmonth?

**MR. LEARMONTH:** Page 17, I believe.

**MR. STURGE:** 2557 or 2 –?

**MR. LEARMONTH:** Yes.

**UNIDENTIFIED FEMALE SPEAKER:**  
(Inaudible.)

**THE COMMISSIONER:** I think it’s 02557, Mr. –

**MR. LEARMONTH:** – 02557. Correct. It’s a November 2015 document entitled “Governance and Financial Reporting & Controls”

If you go to page 17.

Doesn’t that suggest that it’s supposed to be ‘til the end of the project?

**MR. STURGE:** Yeah, I would read it that way, and that would have been my –

**MR. LEARMONTH:** You would read it that way?

**MR. STURGE:** I would, yes.

**MR. LEARMONTH:** Yeah, yeah.

**MR. STURGE:** But I could be proved wrong that that wasn’t the intention.

**MR. LEARMONTH:** ‘Cause that was your –

**MR. STURGE:** It was my understanding.

**MR. LEARMONTH:** You’re the CFO, you know, and that’s your understanding, right? It was supposed to be to the end of the – to the completion of the project –

**MR. STURGE:** Yes.

**MR. LEARMONTH:** – not to a given point in time in the future?

**MR. STURGE:** I always viewed it as it was our cost to completion, yes.

**MR. LEARMONTH:** Yeah. But was the – to your knowledge was the board of directors ever told that an AFE revision was for an amount less than what was anticipated to the completion of the project?

**MR. STURGE:** That I’m not certain about.

Oh, to the end? No, I don’t recall ever a discussion that wasn’t to the end. I don’t recall that.

**MR. LEARMONTH:** Well, to completion.

**MR. STURGE:** Yeah, I mean that was my understanding and maybe – I don’t recall them ever being told that it wasn’t that, but, you know, it’s very possible somebody could point me to something that said maybe I didn’t quite understand it myself. That’s possible as well, but –

**MR. LEARMONTH:** But wouldn’t –

**MR. STURGE:** – it was my understanding.

**MR. LEARMONTH:** – wouldn’t you be the person who would be in the best position to (inaudible) –

**MR. STURGE:** I would have – I thought my understanding of that was clear that it was –

**MR. LEARMONTH:** Yes.

**MR. STURGE:** – to the end of the project, but ...

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Tab 51 –

**THE COMMISSIONER:** I just wonder –

**MR. LEARMONTH:** – exhibit –

**THE COMMISSIONER:** – should we take our break here, Mr. Learmonth.

**MR. LEARMONTH:** Yeah –

**THE COMMISSIONER:** Is this a good spot?

**MR. LEARMONTH:** – could I just finish this exhibit?

**THE COMMISSIONER:** Sure, go ahead. Yeah.

**MR. LEARMONTH:** Is that possible?

02417.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Now, this is an email from James Meaney to Derrick Sturge, copied to Auburn Warren.

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**MR. LEARMONTH:** It's P-02417. It says: "Auburn and I chatted about the considerations of Ed doing a 'two step' update where \$ impact of any schedule change comes at later point. In particular, we were thinking about it in the context of Canada/IE and the December 2015 COREA. Wondering while you are with him at MF site next week if you might get a chance to quietly query on whether step 1 cost update in June absolutely necessary (as opposed to one ... in ... Sept, that covers both), and if so, is he thinking there would be a second one later in the year? Our sense was that if he does one in June,

that will probably buy a few months before Canada/IE will be looking for impact of any schedule delay, particularly after site visit in July...and they won't buy the June update as the basis for the COREA calculation and related certificates in December."

**MR. STURGE:** Yeah –

**MR. LEARMONTH:** Now –

**MR. STURGE:** – I think what was going –

**MR. LEARMONTH:** – can you provide me – this seems to be some rejigging and – it doesn't seem to be a transparent proposal. Do you agree?

**MR. STURGE:** Yes.

And I think what Jim was saying here is that, listen, let's – we got to get back to doing one update. I believe Ed's logic at the time – which he never did it this way, but I believe the logic was – I think the reason that he was doing – or thinking about doing schedule second is – was that I think it might've had something to do with understanding Astaldi's performance through the summer –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – and how that could impact the schedule. I think that's what was driving his thinking on it.

**MR. LEARMONTH:** Yeah, but if you don't put schedule – like, schedule delay, if you don't take that into account in an AFE, and if you know about it, that would create a misleading figure, wouldn't it?

**MR. STURGE:** Yeah, and this was Jim's point, is our view is let's try to do this once, rather than splitting it.

**MR. LEARMONTH:** Yeah, straightforward.

**MR. STURGE:** But I was just sort of trying to give a little bit of thinking as to why I thought Ed might've been thinking that.

**MR. LEARMONTH:** Yeah, but that's not a straightforward way to go, is it?

**MR. STURGE:** Yeah, no, it's messy. It's messy.

**MR. LEARMONTH:** Yeah. It could be misleading, couldn't it?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Because when you do an AFE, you're supposed to put all – use all the information you have available at the time you do the AFE, not leave part of it out. Is that correct?

**MR. STURGE:** Yes, and I – but I think what this was probably thinking is that didn't have all that information on the Astaldi –

**MR. LEARMONTH:** (Inaudible.)

**MR. STURGE:** – during the summer, I think, is probably the logic there.

**MR. LEARMONTH:** But you don't have to have all the information –

**MR. STURGE:** No, (inaudible).

**MR. LEARMONTH:** – you can have some information, correct?

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** You don't have to have all the information to do a cost estimate.

**MR. STURGE:** No, you – and I'm sure he still could've made a schedule thing. Maybe his thinking was you could've – you would've had better information in September –

**MR. LEARMONTH:** (Inaudible.)

**MR. STURGE:** – than you would've had earlier.

**MR. LEARMONTH:** Okay, we can take the break now.

**THE COMMISSIONER:** All right, we'll take our 10 minutes here now then.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Okay, Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Thank you.

Mr. Sturge, I just want to take you back to an exhibit that we looked at earlier and that's at tab 81. It's 02673 and you pointed this exhibit out as what you consider to be indication that the Province of Newfoundland knew of the cost overrun.

**MR. STURGE:** One of them, yes. Yeah.

**MR. LEARMONTH:** Yeah, okay. Well, we'll go (inaudible.)

Now, in paragraph one at the bottom: "On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial closing (\$6.5B capital cost estimate and not the \$6.2B ..." et cetera.

Now, you've given your interpretation that that provided notice of the cost overrun. I suggest to you that what that is is something quite different. What that is is the – an indication that the province, for the purpose of the COREA account, the 6.5 number will be used – not that there was a cost overrun, but that was an adjustment to the figure when the COREA would come in. And I think that you'll find some people from government – one or more people from government – will come in and testify that that's how they interpret it.

So, it wasn't – in other words, it wasn't an indication that there was a cost overrun in existence, but it was an indication that if they – if we use the 6.5, that would be good for the province because they wouldn't have to fund the added \$300 million by COREA.

Now I'm putting that to you because I think we'll have at least one member – person from government say that that was the case.

**MR. STURGE:** Yeah (inaudible) –

**MR. LEARMONTH:** Do you see that that is open to that – that this email is open to that interpretation?

**MR. STURGE:** I guess – a couple of things on that.

One is that, you know, I don't think I'd view it as necessarily as the notification. I think this was just a – one piece of record where you can see the number mentioned, but it wouldn't have been the first time they're hearing the number. We would've, I think, between –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – over that two- or three-day period, they would've understood the number.

**MR. LEARMONTH:** But I'm talking about things in writing now.

**MR. STURGE:** Yeah, but as I read it, it says, you know, based on the project budget – as at financial close in brackets – 6.5 capital. I mean, it seems pretty clear –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – but, you know, it may – I can't say somebody didn't misunderstood it –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – misunderstand it. But it seemed clear to me, but –

**MR. LEARMONTH:** Well yeah.

**MR. STURGE:** – I –

**MR. LEARMONTH:** Well (inaudible) I just wanted to put that other point –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – of view to you, because I believe we'll be hearing that as –

**MR. STURGE:** Fair enough.

**MR. LEARMONTH:** – an explanation from government.

So you can see at – the point but you don't agree with it, is that correct?

**MR. STURGE:** No, I don't even see the point from that, you know. I mean, it seemed pretty clear to me. I'm not disagreeing that somebody didn't understand it that way –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – but I didn't see it that way.

**MR. LEARMONTH:** All right.

**MR. STURGE:** (Inaudible.)

**MR. LEARMONTH:** And then if we go – I think the other email that you may have been referring to is at tab 86, the next Exhibit P-02678?

**MR. STURGE:** That's it, yeah.

**MR. LEARMONTH:** And, if we go to page 2, it's the same language under Omnibus Business Issues. Once again, I don't think there's any reference to the 6.531. And then paragraph one: "On the cost overruns issue, Nalcor would agree ..." – the same language.

**MR. STURGE:** It's the same language.

**MR. LEARMONTH:** Yes.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** So is that the second email you were –

**MR. STURGE:** That was the –

**MR. LEARMONTH:** – referring –

**MR. STURGE:** – second one –

**MR. LEARMONTH:** – to?

**MR. STURGE:** – I was referring to, yeah.

And I notice this one also gives a – an update on the IE report, just to go back to that discussion was happening last week.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** It was an IE report discussion –

**MR. LEARMONTH:** But there's no reference to the 6.531 in –

**MR. STURGE:** Not the 6.531, but 6.5 –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** – there, yes.

**MR. LEARMONTH:** Now, I wanna turn to some – what I will generously describe as creative accounting proposals that seem to have been put forward. I understand that – well, based on your interview, that starting in the second half of 2015, there were suggestions from Mr. Martin and possibly others being circulated as to ways that Nalcor wanted to bring the capital cost down. Is that correct?

**MR. STURGE:** There were examples of – yes, discussions of things that would've ultimately reduced capital cost.

**MR. LEARMONTH:** And this was to get a lower capital cost figure, correct?

**MR. STURGE:** That was my interpretation of it, yes.

**MR. LEARMONTH:** Why was there a wish or desire to get a lower capital cost figure? Whose wish was it?

**MR. STURGE:** Well, I mean, these came from, you know, a couple of these examples that we had came as we were having the discussion of Astaldi – you know, the status of Astaldi.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I can't say they were all related to the cost pressure that Astaldi was placing on the estimate, but they did seem to come in those discussions. And there were a couple of others that I don't know if they're related – and I don't know if any of them were totally related, but that seemed to be a bit of a common denominator in some of them.

**MR. LEARMONTH:** Yeah.

And was there a request – and this is in a document at tab 50, 02549, page 9, that there was a request – to consider putting foreign exchange outside the project cost?

**MR. STURGE:** Yeah, what page is this one?

**MR. LEARMONTH:** I think it's page 9.

**MR. STURGE:** Oh, I'm sorry; it's here, yeah.

Yeah, there seemed to be some assumption here that – and this one I couldn't recall 'til I saw this – or I probably don't know if I ever saw it because I don't know if I saw that deck. But there seemed to be some suggestion that foreign exchange exposure for the project is not project cost, which I couldn't – it didn't compute with me because where else would it be sort of thing, you know.

**MR. LEARMONTH:** Yeah, but there was a suggestion that it could be removed –

**MR. STURGE:** Seemed to be, yeah.

**MR. LEARMONTH:** – (inaudible), yeah.

And I think at your interview you said –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – page 63, that – to suggest it was something other than a project cost was, quote, too silly to talk about.

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** Do you stand by that?

**MR. STURGE:** Yeah, absolutely.

**MR. LEARMONTH:** Okay.

And then on the LTA cost to Gull Island – that's exhibit – tab 65, Exhibit P-02562.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Now, on page 8, is this a suggestion to put 75 per cent of the Labrador Transmission Assets cost to Gull Island?

**MR. STURGE:** Yes.



**MR. LEARMONTH:** Now, what was your – so that would be to take the 75% of the costs of the Labrador Transmission Assets, which were built with part of the Muskrat Falls Project, and take them out of the project budget and put them into a Gull Island budget?

**MR. STURGE:** Yeah, I mean at the time this came up, to me it was, again, too silly to talk about, it was in that category. I mean, the logic laid out here is that if you did build Gull Island and you did build Muskrat, the logic of allocating this line between the two probably had some merit.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** But if you only had one project, you know, to put this in a bucket of Gull Island costs that – you know, just didn't make any sense to me.

**MR. LEARMONTH:** It's preposterous, isn't it?

**MR. STURGE:** (Inaudible) it, yeah.

**MR. LEARMONTH:** Yes?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Yeah. From an accounting perspective?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** And a transparency perspective?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** So that would drive down the cost of Muskrat Falls, and that was the thought behind the suggestion as far as you knew?

**MR. STURGE:** Yeah. I mean there were – the advantages given on page 9 here lists, you know, some other things that it shows commitment to Gull Island and all those types of things but I – my belief when I saw it was that it was an effort to get Muskrat reduced.

**MR. LEARMONTH:** Yeah. And also transition to operations, you discuss this in page 63 of your

transcript too, that you said: in the fall of 2015 they were looking for \$50 million initial budget for TTO and we were thinking that should be a project cost, and the project guys were saying that it's not in our AFE. I don't think Ed wanted to put it in the AFE and it never got in the AFE until Stan came, and Stan put it in his first cost update.

Do you confirm that that's your – you?

**MR. STURGE:** That's correct, that's correct, yes.

**MR. LEARMONTH:** So why – how – once again, was this another misguided or preposterous attempt to drive the capital cost estimates down?

**MR. STURGE:** Well I – you know I think we viewed – some of us viewed that as a cost of the project; you wouldn't be incurring that cost unless you built the project.

**MR. LEARMONTH:** But –

**MR. STURGE:** The transition to operations cost –

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** I think Ed's view was that it was a – probably more of a cost of Hydro as the customer, versus a cost of the project, which –

**MR. LEARMONTH:** You didn't go for that, did you?

**MR. STURGE:** We didn't go for that and Mr. Marshall ultimately put it in the AFE in June of 2016.

**MR. LEARMONTH:** Yeah. And there was another suggestion that – in your transcript, you discussed at page 64, there's also a reference at tab 69, P-02630 to use export revenues to offset capital costs?

**MR. STURGE:** Yeah I – you know, I mean these were a few items that were thrown out to consider, but they all had the theme of reducing Muskrat – you know, and if it was a legitimate thing to do, then sure.

**MR. LEARMONTH:** Yeah.

But it wasn't –

**MR. STURGE:** But it wasn't, no.

**MR. LEARMONTH:** No.

**MR. STURGE:** No.

**MR. LEARMONTH:** And then with Astaldi – and this is in your transcript page 64 and 65, that would be P-02630 and 00269 – so what – was there a suggestion that some creative accounting been done with Astaldi?

**MR. STURGE:** There was some discussion around a concept and it was, I think along the lines of: if the resolution with Astaldi could be that we would pay Astaldi a period – a series of payments in the operation stage based on the performance of the plant, type thing. So if the plant performed really well they'd get paid and if that could be the resolution of the Astaldi issue, then would that cost be capitalized or would be it be operating cost? There was that discussion going on.

**MR. LEARMONTH:** But that's – I suggest to you that's ridiculous. Do you agree?

**MR. STURGE:** It seemed to me to be ridiculous but – you know, because it was obviously just a – the timing of payments; but that discussion did go on, yeah.

**MR. LEARMONTH:** So Mr. Martin was driving this was he? This discussion?

**MR. STURGE:** He would have been asking them the questions, you know, and I think, as I said in my interview nobody put a gun to our head and said do these things.

**MR. LEARMONTH:** No, I know that.

**MR. STURGE:** And –

**MR. LEARMONTH:** But they were proposed.

**MR. STURGE:** But it was – you know, it was that series of discussion that was like, constant, and as I described it the theme of all of those was reducing the Muskrat cost.

**MR. LEARMONTH:** Okay.

Now the atmosphere- how would you describe the atmosphere at Nalcor in the latter part of 2015 and early '16. In your transcript of your evidence at the interview page 55 and 56, you said it was tense and a lot of pressure.

**MR. STURGE:** I would have categorized it that way through the last part of '15 and first few months of '16, yes.

**MR. LEARMONTH:** Yeah. And you also said that the – your words were, the air was cleared when Stan Marshall came in.

**MR. STURGE:** Absolutely, yeah and that's not a personal reflection on Ed. It's more of a reflection that I think we restored – we went some ways towards restoring the trust of the shareholder, and I think we sort of had – we sort of re-baselined where we were starting from and then it was – I felt – that's the way I felt in the organization.

**MR. LEARMONTH:** And since Mr. Marshall has come on board – came on board – is it correct that you have been kept informed about project capital costs?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** You have and that's a complete reversal of the situation when Mr. Martin was there, is that correct?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Okay.

I want to turn to a document that we discussed briefly before your appearance, Mr. Sturge. It's CM – Exhibit P-02412, this was a – it's not in your –

**MR. STURGE:** Oh okay.

**MR. LEARMONTH:** It'll come up on the screen. This is a LCP 2015 Cost Update Chronology which was prepared by Mr. Meaney.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Have you reviewed this document?

**MR. STURGE:** I – I’ve seen that document, yes. Yeah.

**MR. LEARMONTH:** Do you take exception to any of the contents of it?

**MR. STURGE:** Not really, no. No.

**MR. LEARMONTH:** It seems to be a fair –

**MR. STURGE:** I think it’s a fair –

**MR. LEARMONTH:** – representation of events?

**MR. STURGE:** – fair reflection, yeah.

**MR. LEARMONTH:** Yeah.

Now, the next document I wanna – you to look at, and once again it’s not in the book of documents – but this is the Exhibit P-02290. And this is a letter – it’ll come up as a 3-page letter from Cassels Brock under the signature of Alison Manzer.

**MR. STURGE:** Yes.

**MR. LEARMONTH:** October 16, 2015. You’re familiar with the letter generally?

**MR. STURGE:** Generally, yes.

**MR. LEARMONTH:** Yeah.

And what happened, I think, in a nutshell –

**MR. STURGE:** Yeah, so it was obviously, you know, it was a serious issue and we took it seriously.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And I think we mobilized the team – or it was – there was an immediate discussion took place and subsequent to that, we mobilized the team to Ottawa. It would have included Jim, would have included Gilbert, likely some other project folks.

**MR. LEARMONTH:** Yes.

**MR. STURGE:** I think Xeno Martis, our legal counsel, would have been there as well.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** And they worked through the issues and, you know, got resolution, I think, as you heard over the last few weeks, you know, the independent engineer and things. People are happy with the way the process is working now.

**MR. LEARMONTH:** Yeah, but I suggest to you it wasn’t a resolution by –it – what it was, was Nalcor, after receiving this letter, began to report the information that it was always required to report under the financing agreements. Do you agree with that?

**MR. STURGE:** Yes.

**MR. LEARMONTH:** Yes.

So it wasn’t like a new deal worked out, it was just that after getting this –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – letter there was a meeting –

**MR. STURGE:** I can’t say there weren’t new pieces or there were, but I would agree with you, yes, the – I don’t know if I – ’cause I don’t know if there weren’t some other changes made to the protocol –

**MR. LEARMONTH:** There was one – another little one, but Mr. Meaney, I think –

**MR. STURGE:** Yeah.

**MR. LEARMONTH:** – said that that didn’t really change things too much.

Now, did you have anything to do with providing, you know, the Ottawa – the independent engineer with updates on the – of the project cost?

**MR. STURGE:** No I didn’t.

**MR. LEARMONTH:** You weren’t involved in that?

**MR. STURGE:** No.

**MR. LEARMONTH:** Were you aware that the issue, broadly stated, was that the –

**MR. STURGE:** I was aware of the issue after they raised it, yes.

**MR. LEARMONTH:** And what was the issue?

**MR. STURGE:** Well, I think the issue was that they wanted to be – you know, and it's interesting because we went through 2014 and we had a cost update in June and I remember participating in that and Canada were quite appreciative of the update, we had good feedback.

So, you know, the process that we'd use, which was really the same process we used in '15, seemed to be working in '14. In '15 it seemed to go off the rails and I don't – I suspect one of the big drivers in '15 was that time frame was so stretched out. I think – I'm sort of feeling that if we had have sort of put the cost update out in June as we had the prior year, I think we may have averted some of this. I'm not certain on that.

**MR. LEARMONTH:** Yeah.

**MR. STURGE:** But I think the timeline sort of pushed this thing over the edge, I think.

**MR. LEARMONTH:** Yeah, but the problem was that – I asked if you agree with this – the problem was that Nalcor was not providing accurate information to Ottawa, to the independent engineer, on – in the monthly cost reports.

**MR. STURGE:** Absolutely. They wanted more timely information, and that was (inaudible) –

**MR. LEARMONTH:** And they were entitled to it –

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** – under the terms of the –

**MR. STURGE:** Absolutely.

**MR. LEARMONTH:** – contracts, correct?

**MR. STURGE:** Absolutely, yes.

**MR. LEARMONTH:** Yeah.

And Mr. Argirov said he was very upset when he found out what had happened, when he got news of the 7.65 third revision.

**MR. STURGE:** Yes, I heard that, yes.

**MR. LEARMONTH:** And he said that it made him look like he wasn't doing his job properly because he could only report the information he received.

**MR. STURGE:** I agree.

**MR. LEARMONTH:** You agree. Okay.

That concludes my questions. Mr. Collins has a few questions for you. Thank you very much.

**MR. STURGE:** Okay, thank you.

**MR. LEARMONTH:** (Inaudible.)

**MR. SIMMONS:** (Inaudible.)

**THE COMMISSIONER:** Mr. Collins.

**MR. COLLINS:** Thank you.

Mr. Sturge, I have a few questions, as you know, about the Astaldi creditworthiness –

**MR. STURGE:** Yes.

**MR. COLLINS:** – analysis.

So could we start with P-02512, which I believe is tab 6 in your book?

**MR. STURGE:** Tab 6?

**MR. COLLINS:** Yes.

**MR. STURGE:** Okay, yes.

**MR. COLLINS:** Yes.

So could you – can you describe what this document is and the purpose of it?

**MR. STURGE:** Yeah, so what was happening here was this was an email to me from Rob Hull, who reported to me at the time. He was the general manager of – it probably says here – Commercial, Treasury and Risk. Included in Rob’s group was the Treasury group, and the Treasury group were responsible for undertaking creditworthiness assessments of all the bidders in contracts. So what he was reporting on here was results of the creditworthiness work they had done on the Astaldi contract.

And I will note that this was September 12 and the process ultimately completed 13 days later, and there’s a memo here that you also have as an exhibit. So what he was here – doing here was highlighting the results of their work. He said – and his conclusion, if I can read it, is that: “The proponent is credit worthy based on our established criteria and has posted an acceptable performance security package, and we will be recommending acceptance from a creditworthiness perspective.”

And then he went on to say, you know, there are risks and probably as there would have been with any other bidder had he had it there. And then he had some key findings. One of those key findings – well, number 1 there was he talked about the overall credit score, 63 per cent, and that would have been one of the factors that drove Astaldi to being an acceptable credit risk.

And then he talked about the performance security in paragraph 2.

**MR. COLLINS:** And the performance security consisted primarily of – there’s a \$100-million credit and a \$150-million performance bond. Is that –?

**MR. STURGE:** Yes, and then there was another \$100-million letter of credit that guaranteed the advance that was advanced at the beginning of the contract, yeah.

**MR. COLLINS:** So – but stepping back from some of these details, what’s the purpose of the creditworthiness analysis of Astaldi? Why were you doing that?

**MR. STURGE:** Yeah. So we do it on all bidders, and the logic is that you want to ensure

that anyone who’s coming in to take a significant role in the project –

**MR. COLLINS:** Yup.

**MR. STURGE:** – has the financial wherewithal to deliver on it, really. So that’s why you do the creditworthiness assessment. And as we saw here, not all the bidders, you know, were strong on their creditworthiness piece.

**MR. COLLINS:** Yup.

**MR. STURGE:** So it was a factor, so I view it as a pass-fail. I mean, you – regardless of how you do on all the other pieces of the contract, if you can’t pass the creditworthiness test, it doesn’t really matter, you know, so ...

**MR. COLLINS:** But – so there’s a pass-fail, but also you can have a strong pass or –

**MR. STURGE:** Absolutely, and we saw some of that here, that there were different, you know, strengths and weaknesses of the different bids, absolutely.

**MR. COLLINS:** So – and there are, as you mentioned, there are two big factors here. One of which is the creditworthiness of Astaldi itself as a company.

**MR. STURGE:** Yeah.

**MR. COLLINS:** And another important factor is how strong the performance security package is.

**MR. STURGE:** There’s two pieces, yes. Yes.

**MR. COLLINS:** And to some extent the strong performance security package can compensate –

**MR. STURGE:** Correct.

**MR. COLLINS:** – for a weaker –

**MR. STURGE:** Yes.

**MR. COLLINS:** – a weaker company –

**MR. STURGE:** You’re correct.

**MR. COLLINS:** – and vice versa.

Thank you.

So before we get too far into the details, could we also look at P-02513, which is tab 7 in these documents?

**MR. STURGE:** Sure.

**MR. COLLINS:** And this is a – could you describe this document?

**MR. STURGE:** So this was – there were two things going on at this point on the Astaldi contract – with all the contracts. So what we saw earlier was the creditworthiness assessment.

**MR. COLLINS:** Yup.

**MR. STURGE:** And then there's also – and there's a sign-off process for that. This was part of the due diligence of the contract itself. So large contracts we have a due diligence process that people from different functional areas, they look at the contract – and they're largely looking at it from their own discipline: from a Treasury perspective, from an insurance perspective and so on. And they're largely trying to find if there's anything in that contract that they should be aware of that needs to be addressed, you know, from their perspective.

**MR. COLLINS:** And so Mr. Hull is reviewing this contract from his perspective –

**MR. STURGE:** And this is his sign-off, yes.

**MR. COLLINS:** Yeah.

And on the second page of – he's attached. We scroll down we see: "Please see..." –

**MR. STURGE:** Yeah.

**MR. COLLINS:** – at the bottom of his page, so if you start at – go back to page 1 at the bottom –

**MR. STURGE:** Yes.

**MR. COLLINS:** – he writes: "Please see attached analysis regarding credit." And on the second page we see his email to you.

**MR. STURGE:** Yes.

**MR. COLLINS:** So he obviously thinks that these points are significant enough to –

**MR. STURGE:** The other points you're talking about?

**MR. COLLINS:** The points he makes in this –

**MR. STURGE:** Yeah.

**MR. COLLINS:** – email he thinks are significant enough to attach to his review.

**MR. STURGE:** Yeah, so there's three things there. I think these are the ones you're talking about, on page 3? Or on page 2?

**MR. COLLINS:** Oh, I'm sorry. I mean the analysis in this email: it was significant enough to Mr. Hull that he attached it to his review of – and sign-off on –

**MR. STURGE:** Oh yes. Yes. Yes.

**MR. COLLINS:** – (inaudible).

**MR. STURGE:** Yeah because his sign-off would have largely been from that Treasury perspective, so that's why this was – ended up in this form as well, right?

**MR. COLLINS:** And so in point 2 he discusses – he writes that he has produced a spreadsheet –

**MR. STURGE:** Yes.

**MR. COLLINS:** – analyzing the risk of credit failure, and that spreadsheet is at page 4, I believe.

**MR. STURGE:** That's correct, yeah. Yes.

**MR. COLLINS:** And so the (inaudible) – and I believe in order to help us understand this spreadsheet, you've created a slightly larger spreadsheet, which is P-02511.

**MR. STURGE:** Yes.

**MR. COLLINS:** And that's tab 5.

**MR. STURGE:** Tab 5.

**MR. COLLINS:** So can we move to that?

**MR. STURGE:** Yes. Yes.

**MR. COLLINS:** Now, could you explain your enhanced version of the spreadsheet to us?

**MR. STURGE:** Yeah.

So what was happening here – so the creditworthiness work had been done, had passed. They negotiated the security package, and now Rob was doing what I would more or less call a scenario analysis. He was saying here's a scenario how that could play out. And what he was really looking at here is he was trying to create a scenario where, at partway through this contract, we end up changing the contractors, bringing a new contractor in. And he was trying to demonstrate how that security would work and then so on.

So what I've done here is I've taken the table; I haven't changed any of the numbers, but I put two rows in: one that shows row numbers and the second one that basically shows the math of how each is calculated. So would you like me to do an example on it?

**MR. COLLINS:** Yes, please.

**MR. STURGE:** See how good my –

**MR. COLLINS:** Explain a row.

**MR. STURGE:** – math is now.

**MR. COLLINS:** Yes.

**MR. STURGE:** I'm going to use 50 per cent because the math is always easier.

So if you start on the 50 per cent row, so the first row is the percentage completion. So at any given point in time that is the percentage of completion of the original Astaldi contract: 10 per cent, 20 per cent, 30 per cent.

**MR. COLLINS:** Which column?

**MR. STURGE:** Column one.

Column two is the billings remaining under that contract. Now, the assumption here – it's probably a simplified assumption – is that if the contract is 10 per cent complete that means that

10 per cent of the billings have taken place. And at 60 per cent complete, 60 per cent of the billings have taken place. So it's linear. That's the assumption made.

The third column here is called new contracts, and this was based on a replacement contract that was at \$1.7 billion, that was the number I think that we got from the project team. So again, the same assumption was made here that for that \$1.7-billion replacement contract, at 10 per cent complete there would be \$1.5 billion left and so on.

Column four shows the Astaldi security. So it's \$100-million letter of credit and the \$150-million performance bond. And he wouldn't have had the other letter of credit in here because it was really securing the advance, right. And then, column five is the net.

So it's now – I hope my math works here – it's column three, so it's the new scale contract minus column four. So what we're saying, at any point in time here, is if we change contractors – so let's go to the 50 per cent, the 50 per cent row. If you go across, if you change contractors and you brought in this new contractor – again, assuming everything else is linear – there would be \$850 million left on that contract. You take the \$250-million performance security that you would've taken back from the Astaldi contract, you end up with a net cost of \$600 million.

And then you keep going across that 50 per cent row. Column six is now what you had already paid to Astaldi under the existing contract. That would've been \$550 million. And then the total to complete is \$1.15 billion. The original contract was \$1.1 billion. And you add in remobilization costs, the assumption here is \$100 million, and it shows that you would be \$150 million in excess of what the original contract was. That's what it's showing, right?

**MR. COLLINS:** So one of the things I find most interesting about this chart is that even at the 10 per cent point, if Astaldi – assuming all the logic here and the assumptions are valid –

**MR. STURGE:** Yeah.

**MR. COLLINS:** – if Astaldi defaulted only 10 per cent of the way into the contract, the total costs of completing – if my math is right – is 1.49.

**MR. STURGE:** That would be correct, yes.

**MR. COLLINS:** Which is less than the replacement contract would've been if you had taken it to start with.

**MR. STURGE:** Yes, because you had the benefit of a period of a lower value contract and your security, yes.

**MR. COLLINS:** So from a creditworthiness perspective, assuming, as we said, there are a few significant assumptions here –

**MR. STURGE:** Yeah.

**MR. COLLINS:** – but if you assume those assumptions are all valid, you're better off taking the cheap Astaldi contract now than a more solvent bidder at \$1.7 billion even if Astaldi fails right out of gate.

**MR. STURGE:** And this is what Rob, I think, was trying to demonstrate there, yes.

**MR. COLLINS:** Yeah.

**MR. STURGE:** Yeah.

**MR. COLLINS:** And now, let's talk about a few of the simplifying assumptions that make this analysis possible. So the first one, which you've mention, is that payment is linear with progress.

**MR. STURGE:** Yeah.

**MR. COLLINS:** If Astaldi has completed 50 per cent of the work, they've got 50 per cent of the money.

**MR. STURGE:** Yes.

**MR. COLLINS:** And 10 per cent of the work, 10 per cent of the money. And so that assumption – that's a commercial assumption, it depends on the commercial terms of the contract –

**MR. STURGE:** That could differ by contract, I – yes.

**MR. COLLINS:** (Inaudible.) And because Rob was – Mr. Hull was looking at this –

**MR. STURGE:** Yeah.

**MR. COLLINS:** – evaluation, primarily from a (inaudible) creditworthiness perspective, he wasn't necessarily an expert on the commercial terms of the Astaldi contract.

**MR. STURGE:** That's fair, yes. Yeah.

**MR. COLLINS:** So a second – but as it happens, this simplifying assumption was not true and Astaldi ended up being paid quite a bit of its money long before they got any work done.

**MR. STURGE:** In this case yes, yes.

**MR. COLLINS:** So a second significant simplifying assumption, which I think we've discussed, is that there are no costs that could become apparent due to delay of limits –

**MR. STURGE:** Yes. So this would assume that the existing contractor exits with no claims or any residual things coming back and that a new contractor comes in and it's a clean transition. So that is a – that's a pretty significant assumption.

**MR. COLLINS:** Yes.

**MR. STURGE:** I – yeah.

**MR. COLLINS:** And it's another assumption that hasn't been fulfilled. And I think there are two sides to that assumption, if I could suggest. One is that the transition between contractors could create knock-on effects as additional costs on other contracts.

**MR. STURGE:** Yes.

**MR. COLLINS:** The other side, as you mentioned, is there could be a claim. And I think both – it's possible, both of those are in the (inaudible) to debt.

**MR. STURGE:** (Inaudible.)



**MR. COLLINS:** So –

**MR. STURGE:** And there's a third one there, as well, I think, that Rob highlighted. Is that it assumes – I mean, there's some remobilization cost but it doesn't assume any cost for any lengthy delay in changeover contractor or anything like that, right?

**MR. COLLINS:** So –

**MR. STURGE:** So there's three big assumptions there, I – absolutely.

**MR. COLLINS:** So the – if we go back to Mr. Hull's analysis on page – sorry, if we go back to 02512, P-02512, which is tab 6, and if we scroll up a little bit, we'll see Mr. Hull's conclusion, which you had earlier. He says: "The proponent is credit worthy based on our established criteria and has posted an acceptable performance security package ... we will be recommending acceptance from a creditworthiness perspective. **However, in reaching this decision, decision makers should be 'eyes open' to any of the risks noted below in the key findings.**"

So what I take from this conclusion that – I'd like you to confirm this – is that from a creditworthiness perspective alone, Astaldi definitely was – they were a pass. Even if they defaulted right out of the gate, if creditworthiness was the only concern, this was a good contract. But, if creditworthiness combined with other commercial or construction realities, together they could create a costly combination. And so Mr. Hull was highlighting that although it was a pass, it wasn't necessarily a strong pass.

**MR. STURGE:** Yeah, no. The same scenario that he lays out here, I suppose you could lay out the same scenario for one of the other bidders as well.

**MR. COLLINS:** Yes.

**MR. STURGE:** And you'd have the same limitations, I think, in the analysis, you know, and risk, right?

**MR. COLLINS:** Some of the other bidders that I could suggest, in particular IKC-ONE, they

had a much more expensive contract but perhaps better – perhaps a better credit score.

**MR. STURGE:** Yeah. I think the credit scores are actually – P-02514. On page 10, he – maybe I shouldn't be calling up exhibits, I don't know.

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**MR. COLLINS:** I'm okay with this,  
(inaudible).

**THE COMMISSIONER:** Okay. That's tab 8?

**MR. STURGE:** Yeah. It's probably useful to see how the four bidders did play out.

**MR. COLLINS:** I believe it's page 10?

**MR. STURGE:** Page 10, yes. And you'll see in this table that four of the bidders are listed. And it starts here on the left-hand side with Turnover Score and some other information. And then we get to a preliminary rating. But then there's some additional work done and you get sort of a ratio score and then you sort of move over to the final score.

And at the end, you know, somewhere here we saw Astaldi's credit score was 63 per cent. This would show that Salini were sort of the outlier here and, really, wouldn't have passed our test.

Next on the list would have been Aecon at 66 per cent. And the top one would have been IKC at 85 per cent from a ratio score.

And then you move that over to where it fits in our final rating, all of those scores would rank a sort of medium to high, except for Salini which is in the medium, the lower category.

But you are right, within that there are different scores, yes.

**MR. COLLINS:** And those are my questions, Mr. Sturge. Thank you.

**MR. STURGE:** Oh, thank you. Yeah.

**THE COMMISSIONER:** Great, it's 25 after 4, I'm not sure there's an appetite to start cross-

examination of Mr. Sturge today, but I'll go through a few names anyway.

So, Government of Newfoundland and Labrador (inaudible).

**MR. RALPH:** No questions.

**THE COMMISSIONER:** Okay.

Concerned Citizens Coalition.

What's your preference? Do you wanna start now or do wanna wait 'til tomorrow, we've only got five minutes.

**MR. HISCOCK:** Five minutes it's not gonna do me very much. I've got about 70 questions, so ...

**THE COMMISSIONER:** Hmm, okay.

All right, so let me just talk a little bit about the plan for tomorrow. So we understand that Mr. Lemay is going to be on, hopefully tomorrow afternoon? Am I right on that?

**MR. COLLINS:** I believe so, Commissioner.

**THE COMMISSIONER:** Okay, so 70 questions, so I think we better start at 9 o'clock tomorrow morning.

So we'll start at 9 o'clock tomorrow morning with you, Mr. Sturge, if you're good –

**MR. STURGE:** (Inaudible.)

**THE COMMISSIONER:** – about that time.

**MR. STURGE:** Absolutely.

**THE COMMISSIONER:** Okay, so we're adjourned 'til tomorrow morning at 9 o'clock.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.