COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2 — Volume 20

Commissioner: Honourable Justice Richard LeBlanc

Thursday — 28 March 2019

CLERK (Mulrooney): Please be seated.

THE COMMISSIONER: All right.

Good morning. All right.

Concerned Citizens Coalition? Aren't here yet.

Okay, let's move on.

Edmund Martin?

MR. SMITH: Good morning.

MR. STURGE: Good morning.

MR. SMITH: Harold Smith –

MR. STURGE: Yes.

MR. SMITH: – for Edmund Martin. Thank you.

I don't have very many questions for you, Mr. Sturge, just a few.

You mentioned organizational norms.

MR. STURGE: Yes.

MR. SMITH: What examples of organizational norms are you referring to? Or could you give us an example?

MR. STURGE: Well, you know, I mean personally, I've worked in three large organizations, and I would say that – and they've all been in different industries, mind you, but I think the norms in terms of how information flows, decisions are made would probably be, you know, very different in each of those. And if you were to take somebody from any of those organizations and brought them into the other organization, they may say this is strange or this is unusual, just because organizations do operate differently.

And – but mostly around those things, decision-making or how the information flows, how decisions are organized, how people are organized, those types of things, how the board interacts and those types of things.

MR. SMITH: In the context of your testimony, you mentioned organizational norm in terms of, you know, being – even though a, you know, the CFO and a senior executive of the company, there would be norms that would apply to you with respect to the cost information on the project?

MR. STURGE: I would think – are you asking if my role –?

MR. SMITH: Well, I'm just saying is that – my understanding is that your – you have certain organizational norms that apply to you when it comes to the dissemination of information.

MR. STURGE: Yeah, absolutely. So within Nalcor – I guess is what you're saying –

MR. SMITH: Yes.

MR. STURGE: – there would be ways the organization operated that impacted me. And that could be different in another organization. But – and I think, to a certain extent, you adapt to that organizational norm, yes.

MR. SMITH: And how are these organizational norms, you know, disseminated to people in the organization? How is that done?

MR. STURGE: Sometimes it's by formal policies, but quite often it's by practice. You know, it's not the written, it's the unwritten that probably dictates. You know, if you look at most of the three organizations I've talked about, the differentiation between those is probably less than written policies and more in unwritten norms and practices, I would say – culture, you know, those types.

MR. SMITH: How many people would be necessarily involved in your department or your area of management?

MR. STURGE: My group you mean?

MR. SMITH: Yeah, your group as a whole. How many?

MR. STURGE: I would have had probably – it varies but probably a hundred people, but of those hundred people probably half would have been IT, so probably another 50 people in the core finance functions in the various lines of business.

MR. SMITH: And you indicated, too, is that there are essentially four managers that actually had direct report to you.

MR. STURGE: At this point in time, yes. That's varied a little bit over time but it's probably been four to six.

MR. SMITH: Okay.

So within your group, okay, would you expect someone, you know, reporting to them coming to you with issues?

MR. STURGE: Occasionally because, you know, even though you got sort of a chain of command – like, I'll give an example. When Jim Meaney – prior to him becoming GM Finance, he would have been reporting to the GM of Treasury in his role, so he didn't report directly to me but I still would have had, you know, a good bit of one-on-one contact with him. So the lines of – you know, I wouldn't have just had contact with my four direct reports, for example.

MR. SMITH: Okay.

Now, in the context of the reporting of cost numbers –

MR. STURGE: Yes.

MR. SMITH: – I understand from what you were saying yesterday that there was an unofficial, if you will, or organizational norm as to how numbers got reported outside the organization.

MR. STURGE: That's correct, yes.

MR. SMITH: Okay.

And could you just run by your understanding of what that norm was?

MR. STURGE: So the norm would have been – is it would have started with – internally it would have started with the project team briefing the CEO. And at some point, I guess when they got to a steady state on what they thought the estimate would be, it would be rolled to a broader group.

And at some point in that process, the ministers, the Cabinet, the premier would be updated and there'd be a formal communication package that would go outside the organization that the CEO and others would have – the communications largely would have had a role in.

But once that all happened, then it gets rolled out to the public, to Canada. And that was the norm at – you know, for parts of that time.

MR. SMITH: Okay.

And do you understand why that norm was created?

MR. STURGE: Absolutely because, you know, one of the dangers, I suppose, is that information just willy-nilly flows out at various points, that it's not final and that creates chaos, you know. So, I mean, I understand that.

MR. SMITH: Could we have P-01677, please, Madam Clerk?

THE COMMISSIONER: 01677?

MR. SMITH: Yes.

THE COMMISSIONER: 01677.

MR. SMITH: That's the Grant Thornton report.

THE COMMISSIONER: Right. It's not in your materials.

MR. STURGE: Yeah, it's on the screen.

MR. SMITH: Could we go down to page 18, 19, in that area, please? Keep going. Keep going. Okay – no, keep going. Yeah, stop.

Okay so in this particular presentation that you referred to yesterday, I note that the – what it's called – final forecast cost, the FFC for short, was in July of '13, $7 billion; however, in terms of the presentation that was given to the executive, there was – if mitigation was successful, it could be $6.8 billion.

Can you scroll down, please? That was in July. In August, it – the executive was told it was $6.9 billion and it could go down to 6.8 if – with mitigation.

And scroll again. At '13 September, this is – so within the period – a very short period of time, July, August, September, it's – went down to 6.7 to 6.95 and, again, with mitigation that's suggesting somewhere around 6.8. And, ultimately, it was given the number a few months later of 6.5. It turns out to be 6.531 –

MR. STURGE: Yes.

MR. SMITH: – but who's quibbling over little details, but – okay?

So each of these forecasts, okay, if you chose to talk about $7 billion and somebody on the project team talked about $6.7 billion and some other people talked about one of the other numbers – 6.95, for example – what kind of concern would you have with all that information going out over a three-month period of time?

MR. STURGE: It would create confusion and chaos, there's no doubt. I mean, I fully understand that, you know, the profile of this project in particular that, you know, once a cost change happens it's highly visible and it needs to be a properly vetted number, absolutely. It can't be, you know, a preliminary number. It has to be a number that's properly vetted and signed off.

MR. SMITH: And who spoke for the corporation in that regard?

MR. STURGE: Mr. Martin.

MR. SMITH: So he would have a reason – a valid reason, I would (inaudible) –

MR. STURGE: I would imagine, yes. Yeah.

MR. SMITH: – to ensure that the number that was released was the number for the corporation. In other words, he spoke for the corporation.

MR. STURGE: Yeah, my assumption is he would've always been – you know, as frustrating as some of the timeline was here, you could only believe that that was happening to enable the company to produce the highest quality number it could produce. I mean, that's all I can (inaudible).

MR. SMITH: What do you understand – and I – you know, appreciate if you don't, but – 'cause I understand the FFCs are created by the project management team.

MR. STURGE: Yes, that's my understanding as well.

MR. SMITH: Right. And the project management team also work with those FFCs or the – in components of the FFC in order to test and make sure that the costing is accurate.

MR. STURGE: I'm assuming that would be part of what they're doing, yes.

MR. SMITH: Yeah, yeah. It's not your role.

MR. STURGE: No, no.

MR. SMITH: Okay.

MR. STURGE: But I'm assuming that they do that, yes.

MR. SMITH: Okay. So this would be a check and balance. Mr. Martin's control over that would be a check and balance over ensuring that the people that are responsible are justifying the numbers to him.

MR. STURGE: I'm – yes. And, as I indicated yesterday, in our normal budgeting process, I mean, you know, where we start with our consolidated corporate income budget, maybe not where we end –

MR. SMITH: Yes.

MR. STURGE: – because there's lots of varying moving pieces that are discussed. So yes, that does happen.

MR. SMITH: And as the – if you're the senior official in charge of that group, would you test people to make sure that what they're asking for or what they're budgeting for is accurate?

MR. STURGE: Absolutely, yes.

MR. SMITH: Okay. That would be part of your –

MR. STURGE: That would be part of my role in the budget process, yes.

MR. SMITH: And when the budget process is finished, who's the person who signs off on it?

MR. STURGE: I, ultimately, own the budget but, you know, the individual business unit –

MR. SMITH: Yeah.

MR. STURGE: – leaders still own their little pieces of it.

MR. SMITH: But the budget that goes to the board would be signed off by you.

MR. STURGE: I've got to be happy with it –

MR. SMITH: Yes.

MR. STURGE: – at the end of the day, yes.

MR. SMITH: Okay.

Do you know why FFC costing is not always reliable?

MR. STURGE: I would – I'm surmising, but I'm, you know, I think I indicated yesterday that there's – in any estimate there would be varying degrees of certainty and known items. And I suspect that on each – any of these estimates, there's a piece of it that has a higher degree of uncertainty than on other pieces. And I suspect that, you know, varying people could have different views on how that uncertainty is dealt with and their views on it. So I suspect it's part of that.

MR. SMITH: During your tenure working with Mr. Martin, how would you – I guess not rate is the right word, but how would you assess the rigour with which he enforced that he will decide what the number on the project was?

MR. STURGE: My experience is that he was very rigorous, and, you know, I may have actually quoted somewhere in my Grant Thornton interview quite some time back that, you know, his style was that he would, you know, check something, and you'd decide on it and you might revisit it again the next week and the following week. And it was a – you know, I think I described it as it was a frustrating style 'cause he had – sort of rechecking and rechecking, but it was a thorough – generally that was the way he operated, yes.

MR. SMITH: Thank you, Sir.

That's all the questions I have.

THE COMMISSIONER: Thank you.

Concerned Citizens Coalition?

MR. HISCOCK: Good morning.

MR. STURGE: Good morning.

MR. HISCOCK: I have a number of questions I'd like to ask you but I thought, perhaps, I could start with a question of cash advances and cash advances to Astaldi.

MR. STURGE: Sure.

MR. HISCOCK: Would there have been cash advances made to Astaldi in, say, 2013-2014 period?

MR. STURGE: So Astaldi was awarded the contract in the end of '13 so I believe there was an initial advance of – it was $100 million. It might have been a bit more but in that range that it was – and that would've went in probably early '14, I'm thinking. And that was secured by a letter of credit.

MR. HISCOCK: Okay.

Can I ask why there would've been cash advances made to Astaldi given their creditworthiness was one of the factors that was tested, why those cash advances were seen as necessary?

MR. STURGE: Stepping a little bit outside of my area, but I think generally it was to facilitate them to setting up and establishing or mobilizing to get ready for the contract.

MR. HISCOCK: And were the cash advances paid back?

MR. STURGE: Yeah, so the way it was originally set up was that they were advanced $100 million and there was a repayment scheme, so off each invoice that they would – monthly invoice – there would be deduction for a repayment of a portion of that advance. And I'm thinking it was around the summer of 2015 – August, September, I'm thinking – that, as part of the whole discussion that was taking place with Astaldi, that advance scheme changed, and it was – their repayment of advances was deferred, I think, initially, 'til sometime early in 2016. It was sort of a hold put on it.

And then, I believe it restarted again in 2016, but it – again it got wrapped up in the entire negotiation that took place in – throughout 2016 and the bridge agreement and the final agreement. And effectively, I think, some of that money was re-advanced back to Astaldi.

MR. HISCOCK: Okay.

MR. STURGE: But we still had the letter of credit, and I think there was one difference – one change that was made is that the letter of credit was originally – I believe, originally tied to the end of the repayment of that advance, and I think it now got extended to the end of a longer period. I believe there was a change made there.

MR. HISCOCK: When was – there was an issue then in collecting the advances when they became due during the Astaldi process, is that what I'm taking from that, in part?

MR. STURGE: I believe what happened was as issues started to arise on the Astaldi contract through 2015 and Astaldi had, I think, some emerging financial issues, this was one way, I believe, that was negotiated. I wasn't party to the negotiation but I believe this was part of the interim arrangement to leave some cash in Astaldi – with Astaldi, I do believe, yes.

MR. HISCOCK: And would Nalcor have had the ability, do you know, to impose penalties when the advances weren't repaid in the normal course?

Sorry, would Nalcor have had that ability (inaudible) –

MR. STURGE: Yeah, I think in the normal course – I think this was an agreement reached so Nalcor would've –

MR. HISCOCK: Okay.

MR. STURGE: – said to them, yes, we agree to make that change so …

It wasn't an Astaldi decision. I think it was a joint agreement.

MR. HISCOCK: Another – and this is a subject I'd like to just touch on, but we've talked a fair bit about the delays in reporting cost increases, you know, and those issues in 2013, 2014 – a bigger issue, we'd say, in probably 2015. And there's also a fairly long period between September 2015 and April 2016, I believe, and there's another – a very large increase –

MR. STURGE: Yes.

MR. HISCOCK: – in the estimate.

MR. STURGE: Yes.

MR. HISCOCK: And we have some evidence from Mr. Meaney on this point, but I'm wondering what role you understood the election – the provincial election – to have played in delays around cost – letting the public know about a cost increase.

MR. STURGE: I can't say for certain it played any role. I know that, you know, we were perfectly expecting an increase in June and there was a number of interactions with, you know, the province through the summer into September, so I – whether that was linked to an election, I have no idea. I know some of us, internally, were feeling a little bit of angst as we were – the further we went that, you know, we were now into the end of September.

MR. HISCOCK: Now, it's gonna be a problem to drop the information.

MR. STURGE: And at some point – the longer it went, we were sort of surmising, ourself, that, you know, was there a risk here that it didn't get out before the election. But that was just people surmising. I mean, I don't think there's any evidence of that but I think that risk was possibly there.

MR. HISCOCK: And then we have that relatively short period of time between September 2015 and April 2016 and a very big increase in that period.

MR. STURGE: Yeah.

MR. HISCOCK: What's the essence of that?

MR. STURGE: So I think the essence of that one was – and that just didn't happen in '16. There was a big buildup to that one. I mean, through the fall of 2015, the big issue was Astaldi, and I know the team was working through options of, you know, how do we deal with Astaldi through 2015. And I think in some point – and I think it may be in one of my binders here because I'd referenced it – but when the government changed, there was a transition meeting on December 4. And this was a – this was in between when the old government had relinquished power and the new government took over.

And I went to that briefing with Mr. Martin and Mr. Bennett, and at that meeting, my recollection was that Mr. Martin briefed on the status of Astaldi. And I think at that point, he said there was a $500- or $600-million problem, and I think his view at that point in time was that, you know, we entered into a negotiation, we probably have – Nalcor made $200 million and Astaldi made $300 to $400 million. I think I've detailed that in my interview –

MR. HISCOCK: Mm-hmm.

MR. STURGE: – note that testimony. So that was the end – you know, sort of December of 2015, and as we went into 2016, I think then the – you know, the government had obviously changed and I think the government was now trying to get their arms around all of the bits and pieces of Muskrat Falls. And a big piece of that was Astaldi.

MR. HISCOCK: Mmm.

MR. STURGE: And EY came in, there was a review. There was quite a bit of engagement around Astaldi.

And I think through that period, I know Mr. Martin was trying to get a mandate to negotiate and there was a lot of discussion around, you know, the government have to get their mind around that was the right course of action, and EY were in the middle of that. And, so that was all playing through and that was obviously a big, big part of what the next cost update was going to be.

But I think concurrent with that, I think the project team had started a new cost update and I think they were working with Westney. And I think that was happening through the winter. And then Mr. Martin departed in April, and at that point we had – still had no resolution of the Astaldi issue.

And Mr. Marshall came in and very quickly – you know, one of his first focus areas was to understand where the status of Muskrat Falls and – and the project team would've updated him very early in his mandate of the status and the Astaldi issue. And then – and shortly thereafter, you know, we would've landed on the new – a new cost update. So the Astaldi would've been a big piece of that.

But I think one of the other differences – I think Mr. Marshall had made the decision to move the estimate to a P75 estimate at that point. And I think that was another part of it –

MR. HISCOCK: Okay.

MR. STURGE: – but there were other things in there as well. But that wouldn't have been the first time government understood there was pressure because as – again, I detailed it somewhere in my interview that in – on March 23, 2016, I recall Mr. Martin and I met with Minister Bennett and some staff in Finance. And they were, at that point, doing their budget for 2016-17 and they were doing a three-year outlook and they were trying to get a sense for what the equity requirements could be.

And I recall, at that meeting, that Mr. Martin indicated that, you know, the cost update still wasn't finished but, you know, if they were looking for a number at that point, they should assume probably a billion-dollar increase. And it ended up being more than that, but that was – you know, I think he messaged at that point that there was a significant increase coming.

MR. HISCOCK: Yeah.

And how much of that issue would've been – how much of that issue would you have been alert to when the cost update went out in September of 2015?

MR. STURGE: I don't – I think the only piece of that that was really known was that there was an issue with Astaldi.

MR. HISCOCK: Mm-hmm.

MR. STURGE: And at that point I think, you know, there was still this ongoing discussion as to what was going to happen with Astaldi, so it was very much an unknown at that point. And, as I said in – my recollection was: by December, which is three months later, Mr. Martin was advising the province that there was a $500- to $600-million issue with Astaldi. But I think his belief at that point is that the hit to Nalcor could be a couple hundred million dollars of that.

Now there could have been schedule – there was a schedule piece too which had to be factored in, which I don't think was understood at that point.

But I think the risks – it was known at that point, there were risks. And I think, as Mr. Meaney described in the – you know, as we got into the COREA certificate in – by December of 2015 –

MR. HISCOCK: Mm-hmm.

MR. STURGE: – those things were documented.

MR. HISCOCK: And so the September update, the issues with Astaldi were known at that point though they may not have been able to be quantified fully. I mean – 'cause the issues didn't really change between the September update in 2015 and the April update in 2016. It was simply an evolution of that same problem, wasn't it?

MR. STURGE: I can't say – it was an evolution, yeah. I can't say that they worsened or didn't worsen. But the issue did evolve through that period.

MR. HISCOCK: Would you agree that the contingencies in 2015 after the Astaldi issue had come up and were giving this update in 2015, that the contingencies of the risk estimate around the Astaldi wasn't appropriate in hindsight in that it became a much larger problem than was allotted for in that?

MR. STURGE: I don't know if I could comment on that really –

MR. HISCOCK: Okay.

MR. STURGE: – because, you know, I know what I would – for the project team talking about in terms of where they thought there was a potential solution through the fall of 2015, and I don't think they thought it was sort of where we ended up in terms of what Nalcor's exposure would be.

MR. HISCOCK: As far as you're aware, was there any political pressure put on Nalcor or anybody within Nalcor to keep that number low for the September update ahead of the election?

MR. STURGE: I don't recall that.

MR. HISCOCK: Okay.

MR. STURGE: But I wasn't in the Cabinet or meetings with the premier in August, September 2015, but I – I don't recall it.

MR. HISCOCK: I want to ask you about the 2011 Cabinet submissions which led the government to give the completion guarantee for Muskrat Falls through a letter of commitment.

MR. STURGE: Yes.

MR. HISCOCK: And this is submission 00043, Exhibit 00043.

Was the government informed through this submission as to how much equity it would require? It should be up on your screen there, I think, in a second, but …

You are familiar with that document?

MR. STURGE: Absolutely.

MR. HISCOCK: Yes.

So was the government informed then in this submission as to how much equity would be required of it?

MR. STURGE: Absolutely. On the base equity, we would have been talking about various ranges at that point. And it did vary because, at this point, we still hadn't locked in what our debt equity ratios would be. That –

MR. HISCOCK: Mm-hmm.

MR. STURGE: – ultimately didn't happen 'til we got into the federal loan guarantee. But we would have had a range of assumptions so, yes, we would have been talking about what the potential ranges of equity could be.

MR. HISCOCK: Did Nalcor use the Westney risk assessment to estimate the financial risk to the province?

MR. STURGE: When you say financial risk, what do you mean by that?

MR. HISCOCK: Well, what the risks for the province would be in terms of its chances of losing its equity or not making a return on it, et cetera – the risk of the project.

MR. STURGE: I can't really comment on that 'cause I really wasn't, at that point, familiar with the Westney report so, from my perspective, it wasn't –

MR. HISCOCK: You don't see any evidence that the Westney risk assessment was utilized in this, do you?

MR. STURGE: I don't see any –

MR. HISCOCK: No.

MR. STURGE: – no.

MR. HISCOCK: Okay.

Was the province informed as to whether they – there would be a return on equity or was it understood that the contribution – their equity contribution could effectively be a grant?

MR. STURGE: At this point in time, I mean, it was clear that, you know, if the province puts equity in there is a return on that equity, absolutely, yes. So that would have been what would have been discussed.

MR. HISCOCK: It wasn't being discussed as a grant to the project; it was being discussed as an equity investment with a return on equity?

MR. STURGE: It was – yes, absolutely.

MR. HISCOCK: How would the rate of return be calculated on this equity?

MR. STURGE: So, I think there was a lot of that discussed in Phase 1 but, generally – I mean, there's two pieces. When it came to the Labrador-Island Link, which was structured like a regulated asset, the return on equity would have been, you know, a benchmark of what our view – best view would have been at that point for a regulated utility.

On the Muskrat Falls piece, which was structured very differently as you're aware –

MR. HISCOCK: Mm-hmm.

MR. STURGE: – it would have been a similar set of inputs went into that. But it – there – 'cause there was two levels. It was the 8.4 per cent IRR. But I think, when you look at the entire project and you lay – overlay on top of that the export sales –

MR. HISCOCK: Mm-hmm.

MR. STURGE: – I think it was pushing the IRR up into the 9 – low-9 range. So it was sort of aligning with what a regulated utility return would be at that point.

MR. HISCOCK: Was government informed that the project would be financed through this hybrid combination of a cost-of-service approach for part of it and escalating supply prices for the other?

MR. STURGE: There would have been people in government who were more familiar with that than others, but yes. Yeah. I can't say that, for example, the premier would have been intimately, but there would have been people somewhere in that chain, yes.

MR. HISCOCK: Would it – so you're not sure if the politicians – who would have been the people that would have known that, do you think? People within –

MR. STURGE: It would have been more at the – I'm certain that, you know, the deputy ADM-type levels would've had an understanding of what we're doing, and lower. You know, to what extent it was higher, I don't really know.

MR. HISCOCK: Okay.

Was government informed that the target rate of return on equity would not be received in the early years because of the escalating supply price or Power Purchase Agreement?

MR. STURGE: Yeah, I think they would've been very familiar with that because we'd been going through – you know, as we went through our credit ratings in 2011, 2012, we would've had a lot of charts that showed the cash profile and how that played out. So I think that would've been pretty visible through that period.

MR. HISCOCK: So they understood the return on equity was back-end loaded for them, for their portion of the investment, we'll say?

MR. STURGE: I would – I think they did, yes.

MR. HISCOCK: Did the government agree as a result of deliberations on the Cabinet submission, that the equity would be turned into a contribution in aid of construction, a CIAC, an outright grant? That wasn't – their understanding was that –

MR. STURGE: No.

MR. HISCOCK: – it was an investment of – with a solid rate of return on equity?

MR. STURGE: At this point in time, yes, that was the understanding, is that it was an investment that would pay a dividend, yes.

MR. HISCOCK: Let's speak briefly on the Class E shares in COREA. In your interview, you noted that – I'm just going to quote a little bit of the interview here and I've got a question that follows on it. This is page 4 and 5 of your interview. You say: So the first time, I think, that we started to see capital – see the capital was early November, and I think there's a – there was a meeting and it wasn't just – it wasn't us just looking for this at this point. Canada were now starting to be – you know, become an important piece. And a couple of things happened – and I'll go back to the capital. I just want to – this whole concept of COREA and the cost overruns and how they get funded, that had been in the term sheet in 2012. And as we went through 2013, we were sharing drafts back and forth, and it wasn't showing up in our drafts. So we were sort of, you know, talking amongst ourselves, is it possible that Canada's had a change of heart on this and maybe this thing will go away?

You then go on to discuss how the $6.2 billion went to $6.5 billion and, ultimately, $6.99 billion but without keeping everybody informed. Eventually the overruns had to be reported, and when they did, they led to cost overrun escrow accounts and the issue of certificates with – which obligated the province to flow the money.

Were additional shared issued to the province for those certificates?

MR. STURGE: No, there would be no additional shares, but the equity would have been – equity investment they had in – you know, it still would have been the same as any other equity investment they in the company, you know.

I think we were accounting for them as contributions, equity contributions versus share capital on our balance sheet. I think that was the distinction we'd made.

MR. HISCOCK: Okay.

MR. STURGE: Shareholder contributions.

MR. HISCOCK: I'd like to turn to Exhibit 02631. And this is correspondence between Auburn Warren and Donna Brewer, deputy minister of Finance, dated March 17, 2015.

And I'm just going to – under number 3 in this email is in relation to "… Class C – debt or equity." And it notes there – and these are the replies obviously: "Class C is equity contributed by Nalcor/NL that has been attributed as not earning a return – this is the class shares that are provided under the CIAC scenario (as presented) – this is when Province is funding the cost overruns and ratepayer isn't – thus Province is not earning a return of or on equity for Class C."

MR. STURGE: Yes.

MR. HISCOCK: Okay. I thought we were earning the return on – does that change your answer in relation to –

MR. STURGE: Yeah – no.

MR. HISCOCK: – what we were talking about previously or?

MR. STURGE: So what was going on here was part of rate mitigation that we'd been working on for quite some time, I think this concept probably first started in 2014. There was a concept being discussed of – and it was 2014 it started – and the concept was: Did Emera have the – were they required to participate in the cost overruns or was their participation limited to just their base equity?

And there was this discussion, at this point, was taking place of – I think the thing being explored was whether we could – and I think there was a legal view of the only way that Emera wouldn't participate in the cost overruns and put additional equity into LIL was if somehow the province could step in and say that they were gonna put more of a contribution in aid of construction in – and they would direct the regulator that that not be recovered in rates. And then it wouldn't.

So by doing that, Emera then wouldn't have an – a right to participate in funding those equity increases. And the province would do it, but they wouldn't get a return on that. And that was being described as sort of this Class C concept.

MR. HISCOCK: So let me – I just want – I wanna get a little bit better understanding on this. We've got an equity investment in this now and it's – a portion of it is Emera and a portion of it is Newfoundland or Nalcor –

MR. STURGE: That's correct.

MR. HISCOCK: – effectively.

MR. HISCOCK: And then – but it' not enough equity, we don't have enough equity there. And we're not gonna borrow debt, we're not going to place additional debt on the project. We're going to fund additional equity into it, but we're not going to demand shares or return on that equity. It's effectively a grant or a gift to the project. Would that not effectively be a grant then of which Emera is receiving half of the benefit and Nalcor's receiving the other half?

MR. STURGE: Yes. So what was going on here is that as – and you're right – as we had cost increases and those cost increases were to be funded by equity and as – under the normal circumstances, Emera would also participate in funding some of that equity and they would get the regulated return on it.

So as part of – one of the things being considered for rate mitigation at that point was: Is there a way to have this funded such that Emera doesn't participate? 'Cause as soon as Emera participates, they get the return, and it's the guaranteed return. So then the province loses any flexibility to be able to use that.

So the concept being explored here was that: Is there a way that the province could fund Emera's portion of the equity? And the only way, I think, legally, we found that that could possibly work was if the province stepped in and directed the regulator not to allow this portion of cost to be recovered in rates and they would fund it as more of a contribution in aid of construction.

So – and the benefit of doing that, obviously, is that the province would have the ability – the flexibility on the return on that piece of equity for rate mitigation. So it was a complex thing but it was all around giving the province more flexibility to not have a fixed return or – versus having another return that they had flexibility on what they do with it.

MR. HISCOCK: Okay. And so the idea would be that this would be a grant or an equity investment with no attached rate of return.

How would it then be – would they not have to, at that point, determine whether or not it was a Class C with no right to recovery or whether it was an equity investment? Or could they then decide down – years afterwards, we're going to look for a return on that or we're not going to look for a return on that? Wouldn't that decision have to be made at this point? So it's just a grant?

MR. STURGE: I think it would have to be made at that point, but it's getting a little bit legal there now. So I'm not certain –

MR. HISCOCK: Sure.

MR. STURGE: – but it – there was a discussion of having it happen at that point, yes.

MR. HISCOCK: Okay.

So this – when we're talking about the additional investment of equity in Class C shares, we're talking about a gift from the Government of Newfoundland to Nalcor and Emera, with the goal that then they won't have to recover that capital so they won't have to increase their –

MR. STURGE: I don't think it would have –

MR. HISCOCK: – electricity rates?

MR. STURGE: – any benefit to Emera. It would have a benefit to customers in that – or it would have a benefit to, I guess, Nalcor, the customers and the province in that it – we retained flexibility to utilize that equity on a – or utilize the return on a greater portion of equity. It would actually be detrimental to Emera because Emera would now be investing less equity. So they wouldn't be participating in the additional funding of overruns and they would be actually negatively impacted by this.

MR. HISCOCK: So it would be negative for Emera in the sense that this is a great deal in that they're getting a guaranteed rate of return so they'd like to put as much money into the project as they could.

MR. STURGE: Yes.

MR. HISCOCK: Right.

Because it's such a good deal for them. But it's – it is a gift to Emera in as much as they have a set amount that they had planned to invest and we're saying: You don't need to bring any more equity in; Nalcor's not going to bring anymore equity in either; the government is going to do this through a grant, effectively.

MR. STURGE: I don't think Emera would have saw any upside in it, because, I think, they would be more than happy to fund – continue to fund equity and get their return.

MR. HISCOCK: Yes.

Because they're getting a very good deal on this in that they get a guaranteed rate of return from day one –

MR. STURGE: In a regulated return.

MR. HISCOCK: – 8.5 per cent, really no risks – effectively, right?

MR. STURGE: I mean, it'll set up to resembled what a regulated return would be to them, you know, so.

MR. HISCOCK: Okay.

Was this pursued afterwards? Does the province own these Class C shares at this point?

MR. STURGE: Well, there would be no Class C shares.

MR. HISCOCK: Okay.

MR. STURGE: They would only be created if we ever went down this road of creating this – having this piece of equity that wasn't to be recovered in rates.

MR. HISCOCK: And this was discussed but never gone ahead with. Correct?

MR. STURGE: This was discussed for 2014, 2015. You know, and as time passes, the opportunity to do this disappears. So it, sort of, you know, probably timed out a little bit. But it was very prevalent in both the 2014 and 2015 rate mitigation discussions we would have been having with the province, yes.

MR. HISCOCK: Right.

And do you know what – was that something that was raised by the province or raised by Nalcor?

MR. STURGE: I think it may have been something that we may have suggested as – you know, because we – at that point, if you see any of our materials for '14 and '15, we had a range of options of things we could potentially do and I suspect we probably would have identified this as something we'd explored if there's any option there.

MR. HISCOCK: Would it be fair to say that by 2014, it was becoming evident the wheels were coming off this a little bit in as much as when – in 2011, when the government was approached initially, the idea was a 8.4 per cent return on equity, a – you know, this was an investment, not a gift, not a grant kind of project that we were starting.

And by 2014, you know, we're looking at making sizeable – we're in discussions about making fairly sizeable gifts in order to keep electricity rates down of provincial equity.

MR. STURGE: Yeah, I don't know if I'd use the word gift, because I think all we were trying to do is – you know, I mean, it was the province's decision if they wanted to keep the rates at a level – then we were saying: Here's a range of options you could pick from.

MR. HISCOCK: Mm-hmm.

MR. STURGE: And this would have been one of them.

And all it was trying to do was retain a bit more flexibility, 'cause the minute you – the minute Emera participates in those cost overruns, then it's locked in and you've lost the flexibility forever.

MR. HISCOCK: Yes.

MR. STURGE: So all this was doing was raising an option of – if you want to protect that future option of not having Emera in, this was sort of a discussion that was taking place at time.

MR. HISCOCK: But it wouldn't really be protecting – they wouldn't really be providing flexibility into the future. It's making a decision – once the Class C shares are purchased, it's not like you're gonna turn around two years later and decide to – now we're going to collect the return on equity on these.

MR. STURGE: No, but it was the only way under the legal construct that was there of how the PUB was directed and how the contracts all played together. This would have been the only way to have the province effectively replace Emera's equity and that's what it was all trying to do. So – so it was a roundabout way of doing it, but I think we concluded that was the only way it potentially could happen.

MR. HISCOCK: Okay.

So were Class C shares issued when COREA certificates were authorized?

MR. STURGE: No, so this is now different. This is disconnected from the COREA certificates –

MR. HISCOCK: Okay.

MR. STURGE: – because we never went down this road.

MR. HISCOCK: Yep.

MR. STURGE: So, the A- and B-shares classes still exist. There was no Class C created and Emera continued to participate in funding cost overruns on the LIL side.

MR. HISCOCK: If we could please turn back to Exhibit 00043, and I'd like to go to page 12 of that. And there's a chart in Annex B there.

Can you explain what is meant by "free cash" in this exhibit, which is described in the submissions as reaching $100 million in the first full year of operation, full power, and reaching 900 million in year 50?

MR. STURGE: So this would be for all three components – yes, so this would have been our view at the time. Free cash flow dividends is effectively – you know, once you've met your – you've paid all your costs of – your cash costs of the project, you've met all your debt-service coverage ratio requirements in your financing agreements, you've invested in your sustaining capital and those types of things, this would be the cash flow – and you've serviced your debt and those types of things, this would be the available cash flow available for payment of dividends to the province.

MR. HISCOCK: Okay. So this is – this is cash to pay dividends out to the province.

Is it net – so it's net of the interest costs or the opportunity costs of borrowing money when the province invests equity in Muskrat Falls or not?

MR. STURGE: This wouldn't pick up on the province's financing costs on its equity investment, no. This would just be the project view of the world. Off to the side, the province would also have interest and this dividend stream would have to, in part, cover that – their investment and the financing of that investment.

MR. HISCOCK: Okay. So this, if we see $100 million, for example, that's $100 million minus the money that the province is owed?

MR. STURGE: It – well, it – one way of putting it, I guess, but it's the cash flow that would go to the province and then they would have to do what they do with that – service their debt, repay, you know, their investment –

MR. HISCOCK: Sure.

MR. STURGE: – and those types of things.

MR. HISCOCK: By – I just wanted to be clear that this – that this isn't the profit after we've paid off of our – paid our interest on equity and so on. This is the money that would be used to pay that interest on –

MR. STURGE: Absolutely.

MR. HISCOCK: – and pay down the debt itself.

MR. STURGE: Yeah.

MR. HISCOCK: Okay.

MR. STURGE: This would've paid down Nalcor's debt –

MR. HISCOCK: Yes.

MR. STURGE: – the project company's debt, and the debt servicing costs and all of the cash costs related to the project, but it wouldn't have paid down the province's debt, 'cause –

MR. HISCOCK: It's not paying back the province.

MR. STURGE: – that was not the purpose of this.

MR. HISCOCK: Yeah, okay. Exactly, okay.

So, yeah, free cash would be the money that the province would expect to begin to recuperate and be able to pay off its debts that it'd incurred in order to –

MR. STURGE: That's correct.

MR. HISCOCK: – get the project built. Okay.

I'd like to move on to the Cabinet submissions recommending sanction. And if we could turn to Exhibit 00067, which is the Cabinet submission which in 2012 sought approval to sanction the project and which led to the sanction announcement in December 17, 2012.

At this time it was known that the province would have to inject a large amount of equity and to give a completion guarantee to inject as much equity as was needed to complete the project. The term sheet for the federal loan guarantee had been signed on November 30. The term sheet specified at least 35 per cent of the money in Muskrat Falls and the LTA would have to be equity.

Can you confirm that this 35 per cent requirement applied to the largest component of the project or 58 per cent of the $6.2-billion projected cost at DG3?

MR. STURGE: Are – is your question was the debt-equity ratio 35 per cent on Muskrat?

MR. HISCOCK: For the biggest part, yes, Muskrat (inaudible) –

MR. STURGE: For Muskrat, the debt equity ratio is 65 per cent debt, 35 per cent equity, yes.

MR. HISCOCK: Yup.

Why was this minimum equity requirement 40 per cent higher than the minimum equity requirement for the Labrador Link, which was 25 per cent? I guess –

MR. STURGE: Yeah.

MR. HISCOCK: – 10 per cent in gross, 40 per cent –

MR. STURGE: Yeah. Yeah.

MR. HISCOCK: – comparatively between them.

MR. STURGE: And through the negotiation, I mean, our incentive – we were incentivized to get the debt portion as high as we could because it was guaranteed. So that was our mindset going in. And where this originated from is, in 2011, 2012, we went to the rating agencies to get non-guaranteed credit ratings. And that was based, obviously, without Canada guarantee. So the – so we – what we were testing there was what was the maximum debt we could have in that structure, still maintain our debt-service coverage ratios and get the investment-grade credit ratings we required. And where we landed on that was the 65/75. So then Canada said, based on that, that would be the maximum debt levels you could have under a guarantee scenario.

MR. HISCOCK: That's reasonable enough, but I'm wondering why the big difference and why the Labrador-Island Link is so much lower? Like, is that indicative of a much lower risk on that project and, therefore, a lower equity requirement, whereas Muskrat Falls and the LTA is a higher risk project and, therefore, a higher equity requirement?

MR. STURGE: Well, I think it probably in part reflects the different profile of the cash flows on those projects, too, right? Because you've got – I mean, all of this is based on maintaining your debt-service coverage ratios. And, you know, if you've got one cash-flow stream that's looking this way and another one going this way, that does impact into debt-service coverage ratios and all those things. That's probably one of the factors.

MR. HISCOCK: Is there any other factors you can think of that would have created – because that's a sizeable difference in the equity requirements. And for a layman, you know, without financial background, it seems to me that if, you know, that they're going to ask for more equity – basically same as if you go into a bank –

MR. STURGE: Yup.

MR. HISCOCK: – any normal person – that they'll want more equity –

MR. STURGE: Yeah.

MR. HISCOCK: – if it's a bigger risk –

MR. STURGE: The other thing –

MR. HISCOCK: – you know?

MR. STURGE: – that played into it was that when we went to the rating agencies, we had the projects rated assuming no export sales. So the assumption here was that this – what we were getting rated was effectively the regulated piece, the cost recovery from Hydro. So we excluded the export sales. So that would have been a – that would have effectively penalized Muskrat Falls side of it as well.

MR. HISCOCK: Okay.

MR. STURGE: There might be other factors as well.

MR. HISCOCK: Was Cabinet informed through the Cabinet paper that it was taking on this large equity burden?

MR. STURGE: Newfoundland, you mean?

MR. HISCOCK: Yeah.

MR. STURGE: Yes. Yes, they would've been well aware of the ranges of potential equity.

MR. HISCOCK: And –

MR. STURGE: Now, what wasn't quantified is what the contingent equity could be.

MR. HISCOCK: Okay. Did they know it would be at least $1.9 billion in equity they'd need to put in –

MR. STURGE: I –

MR. HISCOCK: – or that it would be $1.9 billion dollars?

MR. STURGE: I don't – I mean, because you see different ranges, and it varied, you know, within a couple hundred million dollars depending on if Emera was in, if Emera was not in, what the capital structure was. But they would generally, yes, be aware it was in that range.

MR. HISCOCK: So on page 12 of the Cabinet – of 00067, which we have up here now. On page 12 of that we learn that the Muskrat Falls-LTA debt will extend for 30 years, while the LIL will be for 50 years.

MR. STURGE: Yes.

MR. HISCOCK: Why is it that the LIL only requires 25 per cent in equity and can get paid off over 50 years, whereas Muskrat Falls you need 35 per cent equity and it needs to be paid off in 30 years?

MR. STURGE: Well, I guess, there's a couple of – the key driver here is that the LIL asset was set up as a – what a regulated asset would look like and it would sort of – it would follow that sort of 50-year profile that we would have on that asset. On the Muskrat Falls asset, because of the different cash flow, we were able to do that over a shorter period.

And this was a big discussion as we went through the federal loan guarantee because Canada – you know, initially Canada had a view that they were gonna give us a guarantee, I think, for 20 years. And we were able to stretch that out to a much longer period, but there was a period of the LIL debt that the whole case was based on that wasn't guaranteed. So there is a refinancing that takes place on LIL that would be refinanced on a non-guaranteed basis.

MR. HISCOCK: Right.

MR. STURGE: That's out in 2053, 2057, somewhere out there.

MR. HISCOCK: Did the Government of Newfoundland know at the time of sanction that Emera would be injecting $500 million in equity in addition to the equity from the Government of Newfoundland and Labrador?

MR. STURGE: Absolutely.

MR. HISCOCK: Okay.

Did the Government of Newfoundland and Labrador know at the time of sanction that the LIL would be front-end loaded and Muskrat Falls and the LTA would be back-end loaded? As in, on the LIL, Emera and that portion of it, the return comes right away –

MR. STURGE: Absolutely.

MR. HISCOCK: – whereas on Muskrat Falls, you know, it's a substantial period of time before the money really starts to come back.

MR. STURGE: Yeah, absolutely, they would have known that.

MR. HISCOCK: Okay.

MR. STURGE: Yes.

MR. HISCOCK: Did the Cabinet submission tell the Government of Newfoundland and Labrador that the return on the province's equity in Muskrat Falls plus the LTA would come – sorry, we just asked that one in a different phrase.

Does – sorry, does the Cabinet submission itself actually speak to that? And does the Cabinet submission explain that the methodology used for the LIL and the MF, Muskrat Falls, are fundamentally different?

MR. STURGE: I'm not certain if the Cabinet does that or not. I –

MR. HISCOCK: Okay.

MR. STURGE: Do I have that in my paper documents here? Cabinet's –

MR. HISCOCK: I'm not –

MR. STURGE: – this –

MR. HISCOCK: – positive –

MR. STURGE: No?

MR. HISCOCK: – that you do actually.

MR. STURGE: This is P –

MR. HISCOCK: P-00067.

MR. STURGE: – 00067.

MR. HISCOCK: It's the sanction decision there.

MR. STURGE: I just wanted to flip through it, that's all, because –

MR. HISCOCK: And –

MR. STURGE: I'm believing that if you're asking me that question that it probably doesn't, but I'd like to check it.

MR. HISCOCK: Mmm.

THE COMMISSIONER: I don't think you have any more materials there.

MR. STURGE: No.

MR. HISCOCK: We can move on for right now and –

MR. STURGE: Okay.

MR. HISCOCK: – we may come back to that near the end.

I'd like to ask you some questions about hybrid revenue requirements, okay? If we can turn to Exhibit P-01559 and this is the 2012 PUB reference hearing and Exhibit 36 from that hearing. If we could go to the last full paragraph on page 1, could you read that paragraph into the record there for me?

MR. STURGE: So this – the last paragraph says: "In order to derive an appropriate price for Hydro's power purchase requirements for the Island, Nalcor has undertaken a supply pricing analysis for MF assuming that Hydro is the only viable customer. The objective of this analysis is to determine the 'escalating supply price' (that is, the price per MWh of power actually used by ratepayers, expressed in real dollars subject to escalation at CPI), which recovers all costs – operating costs over time, debt service costs for the debt portion (as applicable) of the capital investment, and an equity return on the equity portion of the capital investment at a defined Internal rate of Return ('IRR') over the life of the project. This escalating supply price is lower than would be indicated initially by the COS framework. It escalates evenly over time, and is applied only to power actually used by ratepayers – the early-year burden placed on ratepayers at that time is minimized. This is accomplished essentially by requiring that the equity investor 'wait' for its return over the project life. It should be noted that the equity investor is not forgoing any return for waiting; it still earns its rate of return on the entire investment over the course of the term of the PPA."

MR. HISCOCK: Thank you.

I'm going to move to page 2 of the same document and look at the last two paragraphs there. I'll read them out: "The principal advantage to this pricing approach for energy is its level real-dollar supply price in dollars per MWh of power actually used by ratepayers. Hydroelectric assets are very long life assets and therefore a supply price for its output set in 2010$ constant real dollars helps to address intergenerational equity issues associated with large public expenditures on durable assets – particularly as the full output of MF is not required by ratepayers in the early years of the project.

"Notwithstanding the benefits of this pricing approach for the energy supply, a cost of service approach was used for transmission investments.

Since transmission service may be required by third parties, and for purposes other than serving domestic needs, the pricing model chosen for transmission is consistent with that used by other transmission providers."

Mr. Sturge, the last sentence includes the following phrase: "… the pricing model chosen for transmission is consistent with that used by other transmission providers." Would it not be true, though, to say that the cost-of-service approach is also consistent with that used for other generation providers?

MR. STURGE: There are examples, yes, that generation would use cost of service, absolutely, yeah.

MR. HISCOCK: And cost of service is how all the utilities in Newfoundland have worked, is it not? Is that not –

MR. STURGE: Well, there's –

MR. HISCOCK: – the basic standard?

MR. STURGE: There are only two but, yes, that would have been the standard that Newfoundland Power and Hydro and the regulated entities would have used, yes.

MR. HISCOCK: Yeah and that's the standard methodology for a utility –

MR. STURGE: Yeah.

MR. HISCOCK: – for utility practices –

MR. STURGE: Absolutely.

MR. HISCOCK: – is a cost of service, guaranteed rate of return.

MR. STURGE: Yeah, absolutely.

MR. HISCOCK: And in that sense, Muskrat Falls is an unusual situation?

MR. STURGE: It was unusual compared to those businesses in many reasons but, yeah, there were probably reasons why it was different, yes.

MR. HISCOCK: And the effective – the effect of it is that we don't see the real costs. If it was cost-supplied pricing we would need an extremely high cost of that electricity in the early years in order to meet the financial obligations, the return on equity for Muskrat Falls.

MR. STURGE: Absolutely.

MR. HISCOCK: The power rate would have to be very high.

MR. STURGE: Absolutely.

MR. HISCOCK: So if we had used the standard methodology, that power out in Muskrat Falls never would have been really viable to sell on the market?

MR. STURGE: Yeah.

I mean I don't think we've ever – I don't there's ever been any secret as to why we took the two different approaches.

MR. HISCOCK: No.

MR. STURGE: It was clearly to, you know, smooth the rate impact as good as we could –

MR. HISCOCK: Yeah.

MR. STURGE: – over a long period on a long-life asset. I think that was – essentially it was the driver.

MR. HISCOCK: And the effect of it is that ratepayers in the early part of the project will pay less than they would've otherwise, ratepayers in the late part of the project would pay more than they otherwise would've. And Newfoundland will see the same rate of return on equity that it would have anyways, but it'll be much further down the road before we see it.

MR. STURGE: That's effectively what happens. And the – as the rate escalates, it's escalating by inflation. So the theoretical logic behind it was that, you know, on a real term basis the rates would have been flat as you take the escalation piece out, yes.

MR. HISCOCK: And would you concede that there's probably almost no chance that Emera would have signed on to the LIL if that methodology had been used there? I mean, they wanted a cost of service, a regular rate of – guaranteed rate of return.

MR. STURGE: I'm just going to think that one through for a second.

Yeah, I mean they were looking for an investment structure like a regulated investment, yes.

MR. HISCOCK: Yeah because you said earlier it's a really good deal. I mean, they would like to put in more equity if they could.

MR. STURGE: Yeah.

MR. HISCOCK: Which I don't think is how the Government of Newfoundland feels about this it – you know, is that the more equity the better is not where people seem to be on this project. So I'm just saying that that's a very different structure and it allows for very different benefits for the equity investors.

MR. STURGE: Yeah it's structured – they both are structured different and I guess the drivers of Emera and the province may be slightly different.

MR. HISCOCK: And the escalating supply price approach used for Muskrat Falls plus the LTA, does that allow the Government of Newfoundland to earn AFUDC on generating assets?

MR. STURGE: No. The AFUDC is calculated on the assets that are structured in a regulated cost-of-service fashion.

MR. HISCOCK: Why wouldn't we receive AFUDC on our equity?

MR. STURGE: Well, I mean, the AFUDC concept is a return – I mean, the only real distinction here is the return through the construction period that gets capitalized as part of the asset. And that concept is core, I guess, to our – a LIL cost-of-service-type model. But in a concept of the generating asset, it's sort of all baked into that supply price calculation.

So, I mean, I think if you had switched it around and Muskrat was on a cost-of-service basis, then a whole bunch of things change, you know.

MR. HISCOCK: Sure.

MR. STURGE: But that would be one of them, yes.

MR. HISCOCK: So I want to make sure I understand this though. The AFUDC, that's effectively interest on – earned on the equity during the period where the project is being constructed, where there's no power coming from it.

MR. STURGE: That's correct, yes.

MR. HISCOCK: There's no revenue coming in what – this is to keep track of how much is owed on the equity during that construction period.

MR. STURGE: Effectively that's what it is, yes.

MR. HISCOCK: Okay.

And on the LIL, Emera is earning that and that shows up on the costs of the project. That's a – you know, when we talk about the $10 or $12 billion of –

MR. STURGE: Yeah.

MR. HISCOCK: – at various times –

MR. STURGE: Yeah.

MR. HISCOCK: – $12 billion –

MR. STURGE: Yeah.

MR. HISCOCK: – on this –

MR. STURGE: Yeah.

MR. HISCOCK: – this – that piece, the AFUDC –

MR. STURGE: Yeah. And Nalcor –

MR. HISCOCK: – is factored –

MR. STURGE: – factored in that as well.

MR. HISCOCK: Yes, and Nalcor as well for the LIL portion.

MR. STURGE: For the LIL portion, yeah.

MR. HISCOCK: Okay.

And – okay, I'm going to move on to the next question here. Can you tell us how the Isolated Island Option recovers its costs? Is it through – sorry, is it through the use of the cost-of-service methodology which is the basis of PUB estimated rates or what's the methodology?

MR. STURGE: The Isolated Island Option in – that was assessed at DG3, you mean?

MR. HISCOCK: Yes.

MR. STURGE: Yeah.

Yeah, so it would have been modelled as a pure cost-of-service structure, yes.

MR. HISCOCK: Okay.

If we could turn to Exhibit 01561, which is the September 2017 report of the Oversight Committee and on page 11 of that document deals with the financing and other costs amounting to $2.6 billion there.

MR. STURGE: Yes.

MR. HISCOCK: Could you please read those four bullets there, just have a quick glance at those?

MR. STURGE: First bullet: "Financing & Other Costs include interest on debt financing, and Allowance for Funds Used During Construction as well as other costs, which are amounts required for pre-funded financing reserve accounts, financial closing related costs and some pre-commissioning costs.

"These amounts are capitalized and/or funded during the construction period and form part of the 'all-in' cost of the project at in-service.

"The pre-funded financing reserves are set aside at in-service as part of the financing arrangements, but refunded over the debt repayment period.

"The June 2017 estimate of Financing & Other Costs is $2.6 billion."

MR. HISCOCK: I'm going to ask us to move down to the next page of this exhibit, page 12.

Would you agree that this explains the concept of interest during construction?

MR. STURGE: Yes, that's what it's doing. Yes.

MR. HISCOCK: Would you agree that the IDC shown as $1.4 billion is the largest single component of the $2.6 billion total?

MR. STURGE: It is, yes.

MR. HISCOCK: If we could please turn to page 13 of that exhibit and look at the first two bullets. Maybe you could read those out?

MR. STURGE: "AFUDC is the return that will accrue on equity invested to fund project construction.

"LITL uses a utility cost of service model for cost recovery and will accrue AFUDC. The cost recovery profile under this model goes from high in the early years to low in the later years."

MR. HISCOCK: Okay.

And would you agree that the $2.6 billion includes $440 million in AFUDC for the LITL? Or the LIL, I should say.

MR. STURGE: Yes, that's correct.

MR. HISCOCK: Why is there no – we've discussed, sorry, why there's no AFUDC for that. If we were to have applied an AFUDC on that, would you agree that it would be approximately a billion dollars?

MR. STURGE: Oh, I don't know if I could …

MR. HISCOCK: We're looking $440 million for the LIL and that was about a third of the investment, so you would expect it to be proportionate anyways to the $440 million for the LIL. Is that fair to say?

MR. STURGE: I – it's hard for me to do it because it also depends on the spend profile and I'm just – I'm hesitant to start throwing out a big number like that just trying to –

MR. HISCOCK: Okay.

MR. STURGE: Because I know what goes into those.

MR. HISCOCK: Fair enough. We may come back to that.

MR. STURGE: There would be a number, I'll give you that. I mean, it would be a significant number, yes.

MR. HISCOCK: Yeah.

And that – if a cost of service had been applied and if an AFUDC – so if the interest that – on the government's equity in Muskrat Falls was treated the same way, say, as Emera's equity in the LIL, we would need to account for the AFUDC in the budget and it would add many hundreds of millions of dollars, anyways – however many hundreds of millions – to that budget.

MR. STURGE: But it wouldn't have impacted the CPW calculation.

MR. HISCOCK: Okay.

Can you explain that to me? Because I –

MR. STURGE: And the logic there was that –

MR. HISCOCK: Yeah.

MR. STURGE: – the Muskrat Falls cash profile was structured such that the CPW of that profile, whether it had been a cost-of-service methodology with cash flow up front and declining overtime, versus one that started lower and went higher, the CPW of the cash flow would have been the same in both cases.

So it had no net change on the CPW decision. It probably would have changed what gets capitalized during construction and things, but it would have had no net impact on the CPW analysis. And I think that was actually discussed somewhere in the PUB hearing, I believe, in 2011.

MR. HISCOCK: Maybe we can go to Exhibit – and this might help address this $440 million –

MR. STURGE: Yeah.

MR. HISCOCK: – Exhibit 01557. This shows – on page 1 it shows a breakdown of the equity and debt amongst the different project components. And two-thirds approximately, obviously, of the project's equity is invested in Muskrat Falls plus the LTA and about one-third in the LIL.

Would that give you a sense that if there was a $440-million AFUDC on the LIL, what the AFUDC would've been, approximately anyways, on Muskrat Falls and the LTA?

MR. STURGE: I – the only reason I'm hesitating is that your logic – I see what you're doing there, I'm just trying to think if – as you changed that total profile, does anything else change here. I mean, you might be in that ballpark but I'm answering that without having really a chance to fully think through. And I may have people back in the office now screaming at the screen saying, you're wrong, but –

MR. HISCOCK: I think Mr. Meaney also said that that would be approximately right –

MR. STURGE: Yeah.

MR. HISCOCK: – without getting into specifics, if that gives you any comfort.

Would you agree that the failure to apply the cost-of-service methodology results in an understatement of the amount of AFUDC and therefore an understatement of the full capital costs of this project?

MR. STURGE: I don't think it's an understatement because it's stated properly for the methodology that's used. I think what you would say is that if you had used an alternate methodology, then you would've had a different number, yes.

MR. HISCOCK: An alternate methodology, like, the same project on the ground and whatnot, but the accounting would look as if the project was basically a billion dollars over where it is right now, in that range.

MR. STURGE: I think that's possible but I'm – but, again, as I say, the decision, the CPW, wouldn't have changed.

And one of the things we struggle with as you go through on this is that – and let me give you an example – is once we lock in the $5-billion debt – and we know the interest costs on that for the next 35 years and as a – and we've seen it a little bit here as the schedule has changed. You know, originally we were going to be in service in 2017, so we would've stopped capitalized interest in 2017. Now, we've got an extra three years of capitalizing interest.

So it would appear that the amount of capitalized interest has increased, which it has. But what's important to see there is that the overall interest that the customer is paying hasn't changed, because all we've done is taken interest that we normally would've expensed in years 2018, '19 and '20 and we've now capitalized it.

MR. HISCOCK: Mm-hmm.

MR. STURGE: So the overall impact to the customer remains unchanged. So that's why, you know, you get into some of these things and while it may change where it ends up, it doesn't impact the overall impact on the customer, is what I'm trying to say.

MR. HISCOCK: Yeah.

I'd like to discuss the federal loan guarantee with you a little bit. And if we could go back to Exhibit 00065, which is the term sheet for the federal loan guarantee. Reference is made throughout the federal loan guarantee – we'll say 5 – pages 5, 6, 7 and 8, and we don't need to go through them all there now – to good utility practice. We'll get into some specific sections in a moment.

Does the hybrid system for revenue requirements and rate setting meet the standard of a good utility practice?

MR. STURGE: I believe it does. And it was known at this point, you know, in terms of how this was being modelled. So I think everyone who would've signed on to this at that point would've been sort of eyes wide open to what the model was. So I don't –

MR. HISCOCK: Do you – and you would've considered it a good utility practice to have that – those two different systems in place?

MR. STURGE: Yeah, I think –

MR. HISCOCK: Because it would be unusual, you would agree, because cost of service is how utilities generally work, isn't it?

MR. STURGE: I don't know. I mean, it would be – it wouldn't be what a pure regulated utility would do, I – granted that, but it – you know, it was done for the right reason. And the logic, again, for Muskrat was that – you know, that the amount of power being used early was less than would be used in later years. So back-end loading the cost of that project seemed to make some logical sense in that your unit cost probably was smoother than had you front-end loaded.

MR. HISCOCK: But I – this phrase good utility practice bothers me a little bit because to say that it's a good utility practice, but also that it is not what a regulated utility would do, seems a little bit contradictory. Would you agree that this may be good financial practice or good business practice in whatever industry, but it's probably not actually a good utility practice?

MR. STURGE: I personally don't get hung up on what the word is there because, you know, this was obviously a term sheet that Canada was signing; they were well aware, at that point, of the structure. So, obviously, they didn't believe that there was anything there that wouldn't have been good utility practice or they wouldn't have –

MR. HISCOCK: If we could go back up to section 2.1 of this document, it refers to recourses against the borrower.

MR. STURGE: Yes.

MR. HISCOCK: I'm just going to ask that you have a look at that.

Could you please explain whether this protects the province from claims made by the lenders or the guarantors?

MR. STURGE: Yeah, so the whole concept around project financing is really just that, is that you limit your exposure to what's in the project companies. And the – so the security that the lenders get is really restricted to those things that are in the project companies, and it's the assets of the company, it's the contracts and all of those things.

So what you're trying to do is restrict your exposure to what is in those special purpose entities that it created and, you know, in this case limit that exposure that could go to other parts of Nalcor or up to the province ultimately.

MR. HISCOCK: Right.

So it protects the province is the goal of it and protects it from claims. Is it the claims of the lenders or the claims of the guarantors – the guarantor in this case?

MR. STURGE: Well, so let me just work through.

So if you go through our project finance agreements there's a whole host of things that could be default. And so if one of the project entities defaulted, there's a remedy period, there's 150-day consultation period. And if after all of those things have taken place there's still a default that we, for some reason, have chosen not to or couldn't remedy it, then the default provision kick in and there's a whole range of legal things that the lender or the guarantor could do. And – but, again, they are limited to what takes place in those project entities.

Now, separate from that, there is another set of arrangements that the province has with Canada called the intergovernmental agreement, which, you know, obviously has some interplay with this, but it is separate from this piece, it is another – it's an add-on to this. But this does protect the province from any liability.

I mean, it doesn't mean that if we default and Canada steps in, that it – that the province obligation to still fund equity and have the cost recovery mechanism go away.

MR. HISCOCK: No.

MR. STURGE: It doesn't mean that.

MR. HISCOCK: No, so it's some protection against the lenders, but if the guarantor steps in against this, then we need –

MR. STURGE: Yeah, well, in our scenario here –

MR. HISCOCK: – we need to pay.

MR. STURGE: – really, the lenders really can't step in, it really is the guarantor.

MR. HISCOCK: Yeah.

MR. STURGE: Because the lenders, they're isolated from this.

MR. HISCOCK: And so what protection do we have against the guarantor, against Canada, if Canada has to step in?

MR. STURGE: So if Canada steps in, I mean there's a clear set of things by which we would be in default. There's, like I said, that discussion period with Canada. If they stepped in there's – you know, there's a range of things, legal outcomes that they can take. And one thing – they could step in, I suppose, and could sell the assets – there's a whole range of things they ultimately could do –

MR. HISCOCK: Yeah.

MR. STURGE: – in default. But it's – they're only – the only loss, I guess, that we could have as a company is equity is in there, the assets are in there, they can't reach out anywhere else –

MR. HISCOCK: Okay.

MR. STURGE: – under the project finance agreements.

MR. HISCOCK: If we could move down to section 3.2. Section 3.2 refers to the term of the guarantees and provides that the term is 35 years for Muskrat Falls and the LTA, while the LIL is for 40 years after financial close. Are these references to the termination of the guarantee?

MR. STURGE: Yeah – yes, because this was a – probably one of the biggest discussion points as we went through. As I said, Canada had originally been looking at 20 years here and that was a non-starter with us. So we pushed hard on that one and we ended up getting to these numbers.

But as I explained earlier, so these are – I'm just looking at again – so these are at financial close, yeah. So in terms of, like, Muskrat Falls, 35 years, so effectively that would've been five years of construction and effectively 30 years after construction and so on. And LIL would've been basically five during construction and 35 after. So, in the case of LIL, there is a piece of debt that's still not amortized after the end of the guarantee period.

MR. HISCOCK: Okay.

Why is there a difference in terms with the shorter term for the generation assets?

MR. STURGE: I think that was, again, linked back to the credit ratings and the assumptions that we had made on the repayment of debt to achieve our required coverage ratios. I think Canada would've locked in to those.

MR. HISCOCK: And I also note here it seems odd that the Muskrat Falls and the LTA are clumped together in this. I'm wondering if you know why they're clumped together. Because I would've thought that the generation assets would have a substantially longer lifespan than the transmission assets.

MR. STURGE: Yeah, the reason that happened was that the LTA, which is the transmission line that connects Muskrat back to Churchill, its recovery of costs – and it goes back to the commercial framework – its costs get recovered via Muskrat Falls. So they get recovered in the rate, they're not part of the LIL cost recovery structure. So that's why they were grouped together from a financing perspective.

MR. HISCOCK: Despite that we don't see any reference in the term sheet to the cost-of-service risk relating to supply price models, do you know if the federal government was informed of the hybrid approach – the financing –?

MR. STURGE: Oh (inaudible) –

MR. HISCOCK: Yes.

MR. STURGE: – because at this point we would've already gone through our credit ratings, which I think we've seen those presentations somewhere here. It would've clearly laid out all of those assumptions and they would've seen the credit-rating reports come back, so they would've been, you know, well aware.

MR. HISCOCK: What risk is associated with the refinancing of Muskrat Falls debt at higher interest rates, bearing in mind 2.3(b) of the loan guarantee agreement which reads: "… the term thereof does not extend beyond the end of the FLG Term, it being expressly agreed that any loan or bond that matures on or after the earlier of … 2 years after COD; or … 7 years after Financial Close, may not be further refinanced"?

MR. STURGE: Yeah, so that clause was put in there in the case that we – the construction – because that – what – at this point in time we weren't still landed totally on the upfront bond. So what that was looking at was a scenario where we potentially were putting some form of construction financing in and then it was getting refinanced into longer term debt as we went through. So what it was trying to do was make sure that that financing had happened at, you know, a drop-dead date type thing.

MR. HISCOCK: So the cost of the project may actually rise in that case if we're not able to secure as favourable an interest rate on the refinancing after the loan guarantee is gone, is that correct?

MR. STURGE: Yeah, so all of our projections now would assume that – would make the assumption of an interest rate at a much higher interest rate, obviously –

MR. HISCOCK: Okay.

MR. STURGE: – than we would be seeing under the guaranteed basis in 2053 and 2057. And there's about – between the two debt issues there's about a billion dollars of debt that would be refinanced.

MR. HISCOCK: In the federal loan guarantee, it refers in subsection 3.5(v) to the following conditions: The "Execution of an inter-governmental agreement (the 'IGA') between Canada and the NL Crown in which NL Crown: (a) makes the commitments outlined in Schedule 'A' to Canada; (b) indemnifies Canada for any costs that it may incur" – during – "the FLG as a result of a regulatory decision or regulatory change (including through legislation or policy) that prevents a Borrower from recovering Project costs and fully servicing the Guaranteed Debt; and (c) guarantees completion of the MF, LTA and LIL Projects to COD such that, where non-completion is due to NL Crown's failure to comply with the commitment outlined in Schedule 'A,' NL Crown shall indemnify Canada for any costs Canada may incur as a result of those Projects not achieving COD."

Is there any limit to the indemnification required under that section?

MR. STURGE: That's a legal question. I mean it – if you think – just think through how this could work. And, again, my understanding of the IGA, what it effectively does is it – if you go back to the commitment letter in 2011 when the province gave a number of commitments, those commitments then made their way into the FLG term sheet.

And what the IGA does is then sort of wrap a set of agreements around ensuring the province lives up to its commitments. And the two primary ones there were: To fund the equity to ensure that the cost recovery mechanism existed and effectively ensure that the project gets completed and brought in service.

So if you play that through – and the two that sort of out in the operation period here are if we couldn't recover costs or if the province didn't fund equity. So let's just run down the scenario if –

MR. HISCOCK: Mm-hmm.

MR. STURGE: Let's assume the province decided that they weren't going to put any equity in. So Nalcor then – well, this would be during the construction period. So if the province decided it couldn't put any equity in, Nalcor would likely be in default.

MR. HISCOCK: Mm-hmm.

MR. STURGE: And then, a series of default triggers would happen within the project finance agreements. And Canada could step in, they could sell the assets, but they would realize somehow on their investment or their guarantees.

I think what this is saying is that if through all that, that Canada couldn't realize and there was still a shortfall, the province is effectively indemnifying Canada for any shortfall they might have. I think that's how the two interplay.

MR. HISCOCK: Mm-hmm.

And this makes the province potentially liable for both the equity, obviously, but also the debt. You know, they would have – they could be on the hook for the debt of this project.

MR. STURGE: In this case, potentially, yes. But, again, the logic of it was that the entire thing really hinged on NL putting equity in and supporting the cost structure.

So I think what you're saying here is if – you know, if as a sponsor of the project or the equity sponsor of the project, if you sort of renege on your two primary commitments, then, you know, bad things can happen I suppose. And that's sort of what plays out there, right?

MR. HISCOCK: Yeah. And, you know, if we renege on our commitments, or in the event that we had difficulty borrowing would be another scenario, if we couldn't raise the equity that was required –

MR. STURGE: That could be another scenario.

MR. HISCOCK: – then we'd be there too, right?

MR. STURGE: Yes, yes.

MR. HISCOCK: Yeah.

Please turn now to the Power Purchase Agreement and this is at P-00457. The Muskrat Falls Project depends upon a take-or-pay Power Purchase Agreement, PPA, between two related Crown corporations, Hydro and the Muskrat Falls Corporation. Correct?

MR. STURGE: That's correct, yes.

MR. HISCOCK: And the object of the Hydro Corporation Act are set out at section 5 – in section 5 of the act as follows: "5. (1) The objects of the corporation are to develop and purchase power on an economic and efficient basis, and, in particular, to engage in the province and elsewhere in the development, generation, production, transmission, distribution, delivery, supply, sale, purchase and use of power from water, steam, gas, coal, oil, wind, hydrogen or other products used or useful in the production of power, and to supply power, at rates consistent with sound financial administration, for domestic, commercial, industrial or other uses in the province, and, subject to the prior approval of the Lieutenant-Governor in Council, outside of the province."

Does this raise a conflict of interest in that the Muskrat Falls Corporation must recover the costs incurred in building Muskrat Falls?

MR. STURGE: Probably more of a legal issue. I'm assuming at this point in time nobody viewed that as a conflict of interest, you know, a set of agreements that were pretty well vetted. And so I don't recall that issue ever being raised.

MR. HISCOCK: Okay.

How do they comport with the regulatory best practice and with good public utility practice? Were the signatories of the PPA, who signed on behalf of NL Hydro, acting in the best interests of the corporation? And did they perform their fiduciary duty to – quote – purchase power on an economic and efficient basis – end quote – and to protect the interests of their customers? Can such a PPA bind ratepayers for 50 years?

MR. STURGE: You know, we had a lot of discussion about this in terms of how we structure ourselves. And in – I think in the NL agreements in particular, Newfoundland were, like, extremely involved in this one, so Natural Resources would've been at the table on this one. And I think they were in effect providing a level of independence I would say. So they would've been more involved in these negotiations than probably any of the entire set of agreements.

And from our own internal perspective, you know, we had discussions of how you somehow represent Hydro's interests in this. And that was done because some of the key folks at the table here were senior Hydro people, Rob Henderson – I'm trying to think who else was there, but there were a couple of Hydro people at the table who were really representing Hydro. I know the province really was heavily involved here in terms of looking out for the ratepayer and had their own legal counsel on this one. So all of those things were in our mind as we were doing these sets of agreements.

MR. HISCOCK: But, I mean, how could it possibly be in – within the mandate of Hydro, whose mandate is to ensure cheap power, basically, efficient purchasing of power, to lock in to an agreement that says, look, we're – we'll pay for this even if we don't use it?

MR. STURGE: Well, I mean, all I can say is that, you know, if the CPW analysis was done by folks who were Hydro employees, that was their job to look out for what was the cheapest cost power for Hydro. I mean, that's what they had done all their career.

So they weren't – you know, they weren't sort of rogue Nalcor employees who were coming up with a decision, these were people who – this is what they did. And, you know, and Hydro, some of those same folks were represented in the negotiation of the agreement. So I don't think there was any effort here or attempt to ever come off sort of best utility practices in terms of how this was evaluated.

MR. HISCOCK: But what interest would Hydro possibly have in signing an agreement that binds them to buying power, whether they use it or not, for 50 years?

MR. STURGE: Because in their assessment it was still – this was still the least-cost alternative, I think, is where it comes back.

MR. HISCOCK: It was also the only way that this project would get built, is if they knew that the ratepayers were locked in to it no matter what –

MR. STURGE: Though I think –

MR. HISCOCK: – hell or high water.

MR. STURGE: Yeah, I mean I – that's true. I mean, in that if the project is being built for the purpose of supplying power to Hydro, then it seems pretty clear that Hydro has – if Hydro is saying they're not committed to the project, then it would be hard for the project to move forward, yes.

MR. HISCOCK: Yes.

And this PPA, I mean, I think part of the idea that was in the public conception of it anyways at the time, was that this would be used to kind of lock in and guarantee the amount of money that would be coming in to the project and in turn would be able to guarantee that rate of 8.4 per cent over 50 years, the return for the province. Is that –?

MR. STURGE: Generally, yes. Yeah.

MR. HISCOCK: Can it be used to guarantee a rate of return of 8.4 per cent though?

MR. STURGE: Well, I think – I mean there's – there are – if you look out 50 years, as we all know, there are variables that are a risk to them and – but this effectively does guarantee that recovery.

Now, as – you know, as we're all going through right now, we know the whole issue of where the project costs are, we know the pressure on rates and we know that whole discussion around rate mitigation. But from this contract perspective, it still sits and will, I think, deliver as it was intended. Now, what happens around that in terms of the equity and mitigation is probably another scenario.

MR. HISCOCK: So just to get this right, is it your view that any act, really, of a government authority can make an enterprise profitable? I mean, doesn't that just defy the laws of economics? We can't just write into the law that this is going to be a profitable project that returns 8.4 per cent return on equity, can we? We got no actual ability to have that materialize in the real world.

MR. STURGE: No, I mean, there's probably risks, but this contract, I think, is probably as rock solid as it gets in terms of saying that all of the costs incurred get recovered in rates.

MR. HISCOCK: Get recovered in rates but –

MR. STURGE: So –

MR. HISCOCK: – the rates can go – the higher the rates go, the less power people use.

MR. STURGE: Absolutely, and that's why then – that's why it is all – so you got to sort of separate. The contract itself works, but I agree with you that there's a risk that you get into the cycle of rates increase, load decrease and you get into that spiral, absolutely.

MR. HISCOCK: Yeah, I mean, everybody on wood stoves doesn't seem like an efficient way to power –

MR. STURGE: No.

MR. HISCOCK: – to pay for an electrical generation.

MR. STURGE: So the ability of this to work effectively for a long period of time will likely be contingent on some form of rate mitigation that will (inaudible) –

MR. HISCOCK: Well, let's talk – the next section is impact on rates, so we're moving right along. If we could turn to P-00127 and slide 19 of the Project Update.

MR. STURGE: Is it in my book or – no.

MR. HISCOCK: I believe it's coming up.

MR. STURGE: Okay.

MR. HISCOCK: 00127, it should be up there –

THE COMMISSIONER: (Inaudible.)

MR. HISCOCK: – in one second now.

MR. STURGE: Yeah.

MR. HISCOCK: And slide 19, if we could.

Nalcor has calculated that 2021 average rates would be 22.89 cents per kilowatt hour, or that would be required under the hybrid system of accounting which applies to the cost of service and the escalating supply for Muskrat. How would this change if the cost of service were applied to the entire project and if all shareholders received their ROE, return on equity, without deferral based on the 8.4 per cent?

MR. STURGE: So you're saying first –

MR. HISCOCK: In general terms, yeah.

MR. STURGE: – if Muskrat was using cost-of-service methodology –

MR. HISCOCK: How would this graph look different then?

MR. STURGE: – the different rates in the – the rates in the early – or this is load and –

MR. HISCOCK: Oh, I'm sorry, we may be down –

MR. STURGE: Were you looking for the (inaudible) –

MR. HISCOCK: This is load. I thought it was at the project (inaudible) –

MR. STURGE: Yeah, you're probably looking for (inaudible) –

MR. HISCOCK: It's probably one up or one down.

UNIDENTIFIED MALE SPEAKER: Twenty-two.

MR. HISCOCK: Could we go down one page further? I think this was –

MR. STURGE: Yeah, that's rate.

MR. HISCOCK: Yes, here we are. So the current estimates under 2021, sorry, is 22.89 cents.

MR. STURGE: Yeah.

MR. HISCOCK: And we see that down – one, two, three, four – four rows down in the first column under 2021.

MR. STURGE: So, in general, the rate level you're seeing here in the early years would've been substantially higher if you had to use cost of service, yes.

MR. HISCOCK: Yeah, so – yeah, the rates would be much, much higher. Okay.

And what those real high rates we'd be paying for would be the interest on equity that's accruing basically now and as well as the regular repayment of the debt.

MR. STURGE: Yeah, I mean, you know, if you look at that change in profile, in all cases here we're recovering our cash costs.

MR. HISCOCK: Mm-hmm.

MR. STURGE: The real moving piece is the equity on the province's – or return on the province's equity, yes?

MR. HISCOCK: Yeah.

MR. STURGE: That's really the piece that is getting shifted around.

MR. HISCOCK: Would you please provide an undertaking to supply revised revenue requirements for each year from 2021 to 2070 based on a cost-of-service accounting, along with the revised rates? Would you be able to tell us what those rates would be if this had used the standard utility practice? Was that something that would be possible for you to do?

THE COMMISSIONER: Okay.

MR. SIMMONS: Commissioner, that's something, I think, we'd need your direction on.

Because I know Commission counsel can make requests to us to find information –

THE COMMISSIONER: Right.

MR. SIMMONS: – but I don't think there's any arrangement with the parties with standing.

THE COMMISSIONER: First of all, I'm not – let me just say this, Mr. Hiscock, and for your client: I'm not – I don't have any objection to – just as other parties are using this process as a bit of a discovery, sort of, process, I don't really have any problem with questions like this. But the thing is, is that I want you to understand that my Terms of Reference have certain limits.

And one thing that I'm not going to do here – and I've already decided this for Phase 3 – is that I'm not going to duplicate the work of the PUB with regards to the whole mitigation question because I think it's a waste of the government – waste of the public's money for it to be done twice. So had government not done what they're doing, I may well have looked at it, but I'm not doing it.

So I just – you know, I'm not stopping you from asking these questions. These are questions probably better asked in Phase 1. But, you know, at this stage I'm sort of looking at the time and I'm making sure we're going to get to our witness this afternoon. So, you know, I need to impress upon you and other counsel that, you know, I don't want to step in and I don't want to prevent these sort of questions because I'm sure they're of interest to people in the public. But, at the same time, there are limits on my mandate and I'm going to try to stick to those, especially where our schedule comes in jeopardy.

So, now, you're looking for material. It sounds to me that might be more appropriately material involved in the whole mitigation question, the whole question of rate mitigation. I don't know if it's a matter that's already before the PUB that the PUB is handling; I'm not following that whatsoever. Is it better asked for in that process than this process? These are things that I'm going to have ask you and your clients to think about because I have to depend on you, when you make these requests, that these are requests that are legitimately within my realm. So, you know, again, I'm not saying, no, I just need you to sort of relate this to what I'm doing.

MR. HISCOCK: I'd be happy to. This isn't really about rate mitigation, although I guess rate mitigation comes out of it because it's about the cost of the project and that's what seems to be driving the rate mitigation discussions.

What I would see is that this is directly related to the decision to have a very different accounting practice for Muskrat Falls than is normal for a utility, and that the result of that is that we have lower rates in the early years than would otherwise be the case in that the costs of this project have been pushed off on to another generation.

THE COMMISSIONER: Mm-hmm.

MR. HISCOCK: And I think if we saw what the actual rates would have to be, had a proper normal utility practice, a cost of service been, what would those rates have been in 2021? You know, right here the 22.89 cents per kilowatt hour, if those costs would have been 60 cents per kilowatt hour or 50 cents per kilowatt hour and we compared it to what everybody else in the world pays for electricity, I think that would give us a very good sense as to whether this project ever should have even been conceived of in the first place.

THE COMMISSIONER: Okay, Mr. –

MR. SIMMONS: Yeah, Commissioner –

THE COMMISSIONER: – Simmons.

MR. SIMMONS: – the first point is that's no simple task. That's going back and reworking an entire set of significant work and modelling that had to be done in order to come up with these rates in the first place. And so the utility of giving that information here would have to be balanced against the burden that would be put on Nalcor to go back and do a complex set of calculations like that.

Secondly, the question of what the impact of cost of – choice of cost-of-service rates would've been, I may be wrong but I seem to recall that that might have come up in the PUB reference question along the way as well. And, if not, I think we should investigate and determine whether it is being dealt with in the PUB current rate mitigation hearings before we embark on doing some large study or large piece of work in order to satisfy this inquiry that's not coming from Commission counsel, but is coming from a party with standing at the hearing.

MR. HISCOCK: I would be quite willing to put that request on hold to further look into whether it's being touched on by the PUB reference, and perhaps speak to Mr. Simmons in terms of how much effort this is going to take. I don't want to unduly burden Nalcor; however, if those models can be easily tweaked to give this Commission a sense as to what that difference would've been, I think that would be useful for the people of the province to know. I think it gives us a lot of insight, as well, into why these different models were chosen.

THE COMMISSIONER: Okay.

Anything from you, Mr. Learmonth, on this?

MR. LEARMONTH: Well, I – you know, I understand Mr. Hiscock's point in raising the question, but I do think we are straying into an area that the Public Utilities Board is – has been assigned the task of dealing with. And I agree with the comment that it's a waste of taxpayers' money for us to do the same work that the Public Utilities Board is doing.

On the question of preparation of the report, I – it would be interesting to get it, but I don't think that – unless it's clearly within our terms of the mandate – Terms of Reference that we can require Nalcor to do a study that is not in their possession. If it's in their possession, that's fine, and if it can be tweaked easily to conform to the request of Mr. Hiscock, that's fine. But I don't think – I think we're getting a little carried away if we're asking Nalcor to perform work that could take a long time that is not really within our Terms of Reference.

THE COMMISSIONER: So I think the way I'd like to handle this – there is a point to this question and – because we have had evidence related to this whole business of what is the best utility practice with regards to costing. And cost of service, I think, we've had evidence already related to the fact that that is the norm in utility practice.

This is something different and it was obviously – this method was chosen for a reason and the question that I'm going to have to deal with, ultimately, may well look at whether or not – well, one question I am dealing with is the whole business case of this particular project. So if it was – if I was to determine that it was the best utility practice that cost-of-service methodology been used, then in those circumstances I think it would be advantageous for me to actually see the cost and how it would have impacted the business case for this particular project.

What I don't want to do here is if this work is already in another realm; i.e. through this – through the PUB process. I'd like to get the exhibit, but I'm not going – I don't really want to in anyway involve myself in their work. I've got enough to do here. So I think the way I'll answer this for the moment is, is that your request is on record. I would like you to ascertain – maybe Mr. Simmons could assist us with this if possible – to ascertain if, in fact, this sort of documentation is available through the PUB process.

If it is not, which I would be surprised if it isn't, but if it is not, then I would like to know exactly how much work would it actually take to get this number. And it doesn't need to be perfect. We could get, you know, some sort of a ballpark number even if it meant lesser amount of work, you know, or – I want to go the – you know, use a reasonable methodology here in trying to look at this.

So with those two caveats, I'm going to leave that with you and with Mr. Simmons. I would like you to keep Mr. Learmonth involved here with regards to what's going to happen because at some point in time, I think I'm going to need to know what's coming at me and what isn't coming at me and I'll need to know that. So, yes, let's go on that basis. Let's see what's – what the PUB is doing. If they're handling that part of it, I'm not going to be dealing with it. But if there's an exhibit there that would be helpful to me in assessing the business case, on the basis of what is best utility practice costing and things of that nature, yes I'd like to see that. I think it might well be relevant.

All right?

MR. HISCOCK: Thank you.

THE COMMISSIONER: Good. Okay.

MR. STURGE: Could I just add one point?

THE COMMISSIONER: Um –

MR. HISCOCK: It's not a big one. It might – it just might be helpful to Mr. Hiscock. Is that I believe there was an RFI in the 2011-2012 PUB referral that, I believe, calculated what the rate would've been at that point, I believe.

THE COMMISSIONER: Well, and if it's available –

MR. HISCOCK: Oh, well –

THE COMMISSIONER: – through the PUB, you and Mr. Simmons –

MR. STURGE: Yeah.

THE COMMISSIONER: – and Mr. Hiscock and Mr. Learmonth can figure that out and we can get it before the board – before the Inquiry.

Okay, Mr. Hiscock.

MR. HISCOCK: Thank you, Commissioner. And thank you for that information.

There was some discussion yesterday in relation to creative accounting, we'll say. Would you agree that the guide for what can or cannot or should or should not be done is the International Financing Reporting Standards, the IFRS?

MR. STURGE: IFRS is our guideline – or not our guideline, it is our standard, yes.

MR. HISCOCK: On page 68 in your interview there was a discussion of foreign exchange losses not being a project cost in the context of downplaying the rising capital costs of the project. Did you consider this proposal to exclude these costs to be a closed discussion after you ruled it inadmissible? You told them that it couldn't be done, right?

MR. STURGE: Yeah, no, at that point I don't even know if I was part of that discussion.

MR. HISCOCK: Okay.

MR. STURGE: But when I looked at it now in retrospect, my reaction was where else could it have been, you know.

MR. HISCOCK: Okay.

MR. STURGE: But I don't recall even if I was in the discussion at that point in time.

MR. HISCOCK: After you made your views known that this would not be – did you ever make your views known?

MR. STURGE: I don't – as I'm thinking back I don't know if I recall that discussion. It could've been one that Jim was involved in. I don't recall it. But my looking at it now, like, I don't understand where else it could be.

MR. HISCOCK: And, I mean, these creative accounting exercises, we'll say, I mean these were all, I take – I'd ask you to agree that these were all designed basically to mitigate the bad optics of cost overruns in this project. Is that fair?

MR. STURGE: Well, I think there was a – yeah, I mean I think it was – I sense there was people looking at it, you know, trying to justify what really should be in the estimate or not. And some of those were, you know, there was export sales and could we put things against export sales. But I think in – you know, some of those in another setting there may be a merit, but I think it was probably the timing and the context in which they were happening probably more than anything else, probably.

MR. HISCOCK: And other examples of creative accounting could involve shifting operating costs to capital and vice versa. Correct?

MR. STURGE: That's a standard – you know, the standard thing you see in most companies, people trying to shift operating costs or costs from operating to capital, but yes.

MR. HISCOCK: There's reference in that interview as well to the September 2017 Oversight Committee report, and this is at P-01561, and to a transition to operations budget. Would you please explain the operation – the transition to operations account, the TTO?

MR. STURGE: Yeah.

So this is a set of activities that, sort of, got triggered after sanction, after the project construction got up and running and it was a thing that Mr. Martin had, you know, initiated to ensure there was a team of people in place looking at bringing the assets in service and then operating the assets post-in service. And that's – that was – so they weren't looking at construction, they were strictly looking at being able to bring the assets in service.

MR. HISCOCK: The TTO budget was placed in as other financial costs under capital, is that correct?

MR. STURGE: Yes.

MR. HISCOCK: If this account had not been created, is it correct that that would've become part of the powerhouse project undertaken by Astaldi?

MR. STURGE: No. This is always work that the owner would've done because it's our preparation for how do we bring assets in service and then looking at, you know, what's the operating model, hiring people, training people to operate it after in service. I don't think it ever really would've impacted the Astaldi contract.

MR. HISCOCK: But the portion that – so the TTO, it would not have been part of Astaldi's job –

MR. STURGE: No, no.

MR. HISCOCK: – that wouldn't have fallen –

MR. STURGE: No.

MR. HISCOCK: – on them?

MR. STURGE: No. Theirs was strictly a build contract and this is more looking at now the operating phase.

MR. HISCOCK: In your transcript, you also mention that the province proposed some creative accounting which would quote: Do some overlay themselves for Astaldi.

What kind of overlay or creative accounting would that have entailed?

MR. STURGE: Yeah. No, I think what that was, it was a reference to – and I think it was December 2015, the province was – I think that was the reference, they were doing a financial update just after they got in office. And I think their direction to us was that they were going to do some overlay in their own forecast to address, sort of, the Astaldi situation, so for us not to put in our numbers at that point. They were going to do it. So I don't know if I would categorize that as much as creative accounting as it was just rather than – they were saying rather than us put in our numbers they would deal with that, sort of, uncertainty in their numbers.

MR. HISCOCK: And you – I mean, you discussed some other issues around creative accounting with Commission counsel.

MR. STURGE: Yeah, there were some, yeah.

MR. HISCOCK: Yeah.

What are the penalties under the IFRS standards for such creative accounting?

MR. STURGE: Well, some of those, I mean are – you know, I mean there are – the only penalty under IFRS if you're materially offsides – your financial statement is offside with International Financial Reporting Standards, then you don't get an unqualified audit opinion. That's the penalty. And you say, well, what are the outcomes of that? If – depending on the nature of the business, if your statements are qualified, it could have pretty significant consequences.

MR. HISCOCK: Mm-hmm.

And when does creative accounting cross over the line and become fraud, in your mind?

MR. STURGE: No, I don't – I mean I don't – see, there's a couple of things going on here because there's things that are –

MR. SIMMONS: Commissioner, if I might here, I think the evidence that we've heard is that these topics that have been discussed, these ideas that are being described as creative accounting, they weren't coming from the Finance department, they were coming from other people who were asking whether they could be done. And all the evidence we've heard is it all stopped cold when it got to the Finance department. So there's no basis to start getting into any discussion about anything to do with any potential for fraud here.

THE COMMISSIONER: Mr. Buffett.

MR. BUFFETT: I side with Mr. Simmons's comments. I think it's unfair and an unnecessary exercise in getting to – having Mr. Sturge answer that question. I didn't have my – I think it's an unnecessary exercise to get into answering that question.

These creative accounting concepts that Mr. Hiscock is alluding to; the evidence is that they were not followed. That didn't happen. And I just don't see how it's at all – that the answer to that question is going to be at all probative in terms of what – where you have to get, Mr. Commissioner, at the end of the day. So, for that reason, I don't think – I would submit it's not an appropriate question to ask.

THE COMMISSIONER: Mr. Hiscock.

MR. HISCOCK: I think it is relevant. I can rephrase it slightly but I – there was a number of very untoward suggestions made in terms of ways of keeping this budget under control. And were quite right that – you know, Mr. Sturge has been quite clear that he didn't recommend any of them and that these particularly most egregious ones weren't followed. Nonetheless, I think it's interesting to people to know if senior people in Nalcor and others were discussing and mulling over effectively fraudulent accounting practices in order to keep the budget down.

Perhaps I could rephrase it this way –

THE COMMISSIONER: I don't like the way you phrased the question. You know, what you've just suggested is not the same as suggesting fraud. You know, I think what I have here is an understanding of what was being asked, what the response was by the Finance division and why. I could have a little bit more on the why, but I'm not sure I would go with the question that you asked.

So if you want to try to rephrase it, I'll tell you if I'm going to let you ask it or not.

MR. HISCOCK: Perhaps the Commission would be more comfortable if I phrased it – or thought it would be more appropriate if I phrased it as: In your view, do you think the recommendations that were made to you would've been considered fraudulent had they been followed?

THE COMMISSIONER: Why don't we ask him: In his view, if he had followed the requests that were being made, would it have fallen within the IFRS standards?

MR. HISCOCK: I think that's reasonable enough.

MR. STURGE: Fair enough, I'll answer that.

Some of those requests – I don't think any of those requests were fraudulent, okay? So maybe –

THE COMMISSIONER: He's going to answer anyway so –

MR. STURGE: After all that.

But – and I think in most of those requests they wouldn't have had any impact on our compliance with IFRS. They would've been – you know, some of those were internal ways we account for things; do we charge an asset to this business unit, to that business unit.

MR. HISCOCK: Mm-hmm.

MR. STURGE: So those were not things that were – I don't think would put us off compliance with IFRS. Now, there were a couple of items there that – where we looked at things like taking a revenue stream and offsetting it against a capital asset. That was clearly an IFRS issue, so there was a mixed bag of things there, but I don't think they were fraudulent issues.

MR. HISCOCK: No.

MR. STURGE: And I don't think generally they were things that would've put us offside, even though a couple could've.

MR. HISCOCK: And I take it that the – that the hybrid accounting system for Muskrat Falls would be fine by IFRS standards?

MR. STURGE: Yes.

MR. HISCOCK: Okay.

And on page 50 of your transcript you noted that Mr. Martin, Ed Martin, wanted to provide cost updates only once a year. Would that have complied with IFRS standards?

MR. STURGE: I don't think that would've – IFRS would've covered any of that because IFRS was largely looking at your historical costs to reporting.

MR. HISCOCK: And project termination is the last subject I'd like to cover.

When Nalcor learned in 2013 that Hydro-Québec had taken action under the power contract, did that cause any reassessment of the sanction decision?

MR. STURGE: In 2013 you say?

MR. HISCOCK: Yes. Yeah.

MR. STURGE: Yeah, so my recollection there was that happened just before – it did cause some angst on the Canada side. And I know Canada had a few meetings with us where they specifically wanted to talk about the declaratory judgment motion, water management and those occurred through July, August, probably a bit into September 2013. And I think ultimately Canada got happy on that issue and happy enough to continue with the guarantee.

So I don't know if it – I don't recall any cancelling the project discussion around that –

MR. HISCOCK: Okay.

MR. STURGE: – but it was more around ensuring Canada was happy.

MR. HISCOCK: Did the July 2013 rejection of the Maritime Link application by the UARB cause a reassessment of the sanction decision?

MR. STURGE: No, I don't recall it. Again, it caused us to reconsider the timing of financing and financial close and those types of things, but I don't recall it being a big pitch or a step back of discussion.

MR. HISCOCK: If we could turn to Exhibit 02390, which is a review of the project termination – or of project termination undertaken by Mr. Meaney and others, would you have been involved in that?

MR. STURGE: I was aware what he was doing there, yes. Yeah.

MR. HISCOCK: Did the new Liberal government ask that the option of cancelling the project be analyzed?

MR. STURGE: I'm pretty certain this – because if you look at the timing of this, I think that's why it was being done, yes.

MR. HISCOCK: To the best of your knowledge, would that report have been given to the new government?

MR. STURGE: Yes, it would have, yes.

MR. HISCOCK: The case for continuing to build Muskrat Falls was built upon projected growth and demand over the next 50 years. And if we go to page 3 of that Exhibit 02390 there, we find the following paragraph under Need for Power: "Demand for power continues to grow and is expected to exceed what the current energy assets can supply from a capacity perspective by 2018/19 absent interconnection and a new generation source being available to meet Island customer requirements."

Would you agree that Nalcor has substantially reduced its demand projection since DG3 and that is acknowledged by Nalcor in its project updates including in 2017?

MR. STURGE: Yeah, the forecasts are down substantially. I don't know – they're down.

MR. HISCOCK: Down, yeah.

MR. STURGE: Your view and my view of substantial might be different, but they're down, yes.

MR. HISCOCK: Yeah.

Without load growth, the argument for Muskrat Falls basically comes down to the replacement of Holyrood, would you agree?

MR. STURGE: If there was – if you assume there was never any load growth, then yes, it's replacement of Holyrood, yes.

MR. HISCOCK: Currently, the – over the last few years the trajectory of load has been decreasing, correct? It hasn't been –

MR. STURGE: It's been pretty flat over the last four or five years, yeah.

MR. HISCOCK: Okay.

MR. STURGE: Generally, yeah.

MR. HISCOCK: Also on page 3 of Exhibit 02390, in the second bullet under Need for Power, there's a reference to retirement of Holyrood plant as an argument in favour of continuing to build Muskrat. If the reliability of Muskrat Falls power proves to be problematic, do you agree that Holyrood will need to be replaced anyways?

MR. STURGE: If – just can you repeat the question? If …?

MR. HISCOCK: You know, on the second one here we notice that the age of Holyrood as a significant reason – the other major reason that we need Muskrat –

MR. STURGE: Yeah.

MR. HISCOCK: – is because energy is – energy growth is going to keep growing, which hasn't been true the last four or five years and, also, that we need to replace Holyrood. But would you agree that there's significant concerns about getting that power in a really consistent fashion to the Avalon and that if there's any issues with that, we're going to have to replace Holyrood anyways?

MR. STURGE: I don't think I could comment on the reliability of – you know, the reliability issues that you're talking about on LIL.

MR. HISCOCK: Okay.

Would you agree that there was some point when it would've been economic simply to discontinue this project? That there would've been a point when we saw the cost going up where we should've pulled the plug?

MR. STURGE: I suspect there's always a point on any project when you could discontinue but, you know, the one piece on this one that is very different, is that once you sanction, we had all the Emera obligations and that as well.

MR. HISCOCK: Yeah.

MR. STURGE: So, you know, it's not just the capital costs spent on the project.

MR. HISCOCK: The last couple of questions I have is just on dividends. Nalcor has advanced in Exhibit 00254 the argument that notwithstanding the cost overruns, large dividends can be expected into the future.

Maybe we can bring up Exhibit 00254.

It claims dividends of $22 billion. In the face of reduced demand projections and escalating cost overruns, would you agree that's not realistic anymore? Or do you think it is realistic?

MR. STURGE: Well, I think the dividend stream is still realistic. And in fact in a warped sense, the more equity you put in, the more dividends you create. So, you know, I mean you get into this loop of higher capital costs, higher equity, higher rates, higher dividends.

MR. HISCOCK: That assumes that people are willing to spend an infinite amount of money on electricity. Correct?

MR. STURGE: Yeah, so it's all wrapped up to the earlier discussion we had of load, rate mitigation and all those things, yes.

MR. HISCOCK: Yeah, because they can't pay dividends if they're not making money. It requires a profit to pay out dividends, right?

MR. STURGE: It –

MR. HISCOCK: And right now we're looking at a project that's probably going to generate losses, not dividends.

MR. STURGE: Well, no, I don't think they'll generate losses. I think the issue is that whole interplay of how those dividends are used, how they fit into rate mitigation and what the ultimate rate levels become, how that interplays back to load and all those things, I think.

MR. HISCOCK: Do you agree that given demand elasticity and demographic projections, it's very unlikely that revenues are going to come close to recovering the annual revenue requirements, despite the use of the hybrid accounting methodology which defers the cost into the future?

MR. STURGE: I don't know if I could say that. I mean, we're still a year away from the first year of the operating phase, so for me to say that categorically that would never happen.

MR. HISCOCK: Why would the government have charged the PUB with a reference to inquire into rate mitigation if there was a realistic possibility they were going to be able to collect all this money in dividends?

MR. STURGE: I guess that you'd really have to – best to ask government, you know, why they made the referral to the PUB, I guess.

MR. HISCOCK: Thank you, Mr. Sturge.

Those are all my questions.

MR. STURGE: Okay.

Thank you.

THE COMMISSIONER: All right –

MR. SIMMONS: (Inaudible.)

THE COMMISSIONER: Yeah, sorry.

MR. SIMMONS: If I might, on the question of what the power rates would've been had cost of service been applied – on the question of what the power rates would've been if cost of service had been applied to the Muskrat Falls part of the project, I'm advised that in the 2011 PUB hearings their response PUB-Nalcor-46 addresses that issue. And I expect that that should be in the possession of the Commission.

THE COMMISSIONER: Okay.

Mr. Hiscock, maybe you could review that with your clients and see if that does provide the answer that you wanted. And can you speak to Mr. Learmonth if it is not an exhibit now, that it can be entered as an exhibit.

MR. HISCOCK: We'll do so hopefully at lunchtime.

THE COMMISSIONER: Okay.

All right, thank you, Mr. Simmons, for that information.

We're at break time; I just want to see where we're at here now.

Kathy Dunderdale.

MS. E. BEST: Commissioner, I have a few questions.

THE COMMISSIONER: Okay.

Provincial – Former Provincial –

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

THE COMMISSIONER: Okay.

Julia Mullaley, Charles Bown.

MR. FITZGERALD: Yes, I have a few questions as well.

THE COMMISSIONER: Okay.

Robert Thompson.

MR. COFFEY: Same.

THE COMMISSIONER: Okay.

Consumer Advocate.

MR. PEDDIGREW: Probably 20 or 30 minutes (inaudible).

THE COMMISSIONER: Okay.

All right, Astaldi.

MR. BURGESS: No questions, Commissioner.

THE COMMISSIONER: Okay.

And I don't think – Former Nalcor Board Members.

MS. BUIS: No questions, Commissioner.

THE COMMISSIONER: Okay.

The Trades Council unions are not – yes.

MS. QUINLAN: No questions, Commissioner.

THE COMMISSIONER: Thank you.

I keep missing you.

Dwight Ball, Siobhan Coady.

Not here.

Okay. And then we'll have Nalcor Energy.

MR. SIMMONS: Probably 20 minutes, Commissioner.

THE COMMISSIONER: Okay.

All right, let's take our 10 minutes here now and then we'll go from here.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay, so we've got a few of our lawyers not here.

All right, Kathy Dunderdale.

MS. E. BEST: Good morning, Mr. Sturge.

MR. STURGE: Good morning.

MS. E. BEST: My name is Erin Best; I'm counsel for Kathy Dunderdale.

We met in Phase 1.

MR. STURGE: Yes.

MS. E. BEST: My questions concern the period of time around financial close.

Madam Clerk, if you could please bring up P-02223. Sorry, I don't know which tab that is.

THE COMMISSIONER: Okay. I'll get that now.

02223 is – actually, you don't have that one. So it's on the screen.

MS. E. BEST: Okay. So you see the document there on your screen?

MR. STURGE: Yes.

MS. E. BEST: A week before financial close Alison Manzer there sends an email indicating that the lack of accurate costing information has created a big issue – that's more towards the bottom. And my question for you is: Was this big issue and the fact that the federal government was unhappy at that time, was that reported to the province, and if so, to whom and when?

MR. STURGE: I can't be certain and the only reason I'm – it could've been because at this point in time we were – the whole financing team were off site at an off-site location and we had separate rooms there for the province and Canada and we had a big common room. So we were effectively constantly in conference call mode and meeting mode and you see that – so it could've very well have been that these comments were relayed in those meetings. That's why I'm not certain.

MS. E. BEST: Okay, you're not certain. So I guess –

MR. STURGE: Yeah.

MS. E. BEST: – an extension of my question then is: Can you say with certainty that you, specifically, told anyone in government about this –?

MR. STURGE: About this email from Alison to Jim? I couldn't say that, no. I couldn't, no because I –

MS. E. BEST: So at the top of the email there – I think it is on the screen – I'd just like to read out the last sentence of that email. And I will admit that the wording appears to me to be a little bit vague, but it says: "Canada is concerned to be assured that NL is fully aware of this given the equity – that is of the cost increases there is a perception of run away increases and maybe some elements of withholding that – nip that in the bud I say."

So I take that – I read that to say that Ms. Manzer is indicating that – to Jim Meaney that this ought to be communicated to the provincial government. Do you agree with me?

MR. STURGE: That seems to be what she's saying there, yes, yeah. Yeah. Yeah.

And this was morning of November 21, so it was in that time frame where I – my recollection seems to be that it could've been probably later that day that we started having some discussion on it.

MS. E. BEST: Okay.

When you say: We started having some discussion on it. You mean discussion –

MR. STURGE: Yeah, because I –

MS. E. BEST: – with who?

MR. STURGE: Some of my notes seem to say that there was a meeting, I think, later on the 21st of November. I know Donna Brewer was there. And I had a comment in my notes that Donna Brewer had made the point that if we had – and I guess if you sort of infer what she was saying, is if you had a higher capital cost number, the equity number that the province would have to put in, in December, would've been higher and they had no proof of 'til April. And in the next day there were emails with the $6.5 billion in it to Canada so –

MS. E. BEST: Okay.

MR. STURGE: – or to Newfoundland. So somewhere in that time frame we were clearly starting to talk about the 6.5.

MS. E. BEST: Okay, but you misunderstand my question a little bit –

MR. STURGE: Okay, I may have, sorry.

MS. E. BEST: – because I'm not asking about the 6.5. I'm asking about the fact that the federal government at this time was unhappy and that they considered this to be an issue. I would've thought that alone would be something that would be communicated to the province and so that's what I'm asking you about.

MR. STURGE: I can't recall if it was communicated in that fashion, but I know that through that period, entire period, we would've been in probably daily calls with Ms. Manzer and with Newfoundland at the table. So – and she was pretty open in talking about these issues, so I'm – I can't be certain –

MS. E. BEST: Okay.

MR. STURGE: – but I – no, I can't really answer your question for certain.

MS. E. BEST: Okay.

Different question: If the federal government had not agreed to go with that 6.5 number, instead of the 6.2 number, what kind of COREA payment would government have had to make and when? Because I'm not sure I understand what the obligation is there and I understand you're the expert on that.

MR. STURGE: Yeah, well, I think what would've happened is if we had went with the

6.2, if that – where they locked it in, I believe we would've, in fact, been making a COREA payment in the following month after financial close, December 2013.

MS. E. BEST: And how much?

MR. STURGE: I'm thinking it probably would've been about a quarter of $300 million, so maybe $75 million –

MS. E. BEST: Okay.

MR. STURGE: – I think that's –

MS. E. BEST: And was that information – those figures, that calculation, that date, was that communicated to the province by you?

MR. STURGE: Well, I think that's the discussion we had on the 21st when – in my notes where Donna was talking about the province didn't have any additional equity out 'til April 1. And I think the – what had happened in 2013 is we had planned financial close at October 1 and that's what the province based their equity approval on, and now we're now out two months after that, so we had already put pressure on the equity from the province. And this would've put additional pressure on it.

MS. E. BEST: Thank you.

And so you've mentioned Donna Brewer. Anyone else from the province involved in those discussions, specifically, that you remember?

MR. STURGE: In that particular meeting there were others, yes. And I can't recall offhand but there were others.

MS. E. BEST: Do you know what departments, what level?

MR. STURGE: Does anyone know the tab where my November notes are offhand?

MR. SIMMONS: Yes.

MR. STURGE: Yeah.

MR. SIMMONS: Try P-02523.

THE COMMISSIONER: (Inaudible.)

MR. SIMMONS: The November 21 notes may be on page 20.

THE COMMISSIONER: Tab 17.

MR. STURGE: Yeah, so the meeting on – I was referring to –

THE COMMISSIONER: Page – what page you on?

MR. STURGE: It was on page 20 and it was called a "Debrief with Ed/Charles" but it was more than that in that there was Ed, Charles Bown, Donna Brewer, Paul Myrden, Paul Morris and then some Nalcor folks.

And I – in this meeting I had gone through a number of issues that were sort of outstanding business issues and the first one was capital cost overruns. And my first comment was, "Agrees with pre-funding." My next comment was Donna – and I had – what, I guess, what she was saying – creates a "problem as NL has no approval for equity until April 1."

And then there was another comment: Do savings on financing costs offset? So it was clear in that discussion, we were having a discussion around the implication of if we used the lower number than 6.2 – or lower number than 6.5.

MS. E. BEST: Than 6.5. Well –

MR. STURGE: Higher number than 6.2.

MS. E. BEST: Well, it's – were you talking about it conceptually or had you actually run the calculations and – as to what and when that COREA payment would be? Because I wonder why that wouldn't appear in your notes?

MR. STURGE: At – well, at that point maybe the amount, but I think the concept was that we knew that if we were off 6.5 there would've been some additional number. So whether we talked about, you know – and I don't know if it's exactly $75 million but it was something like that it would've been. And – because the next day we were talking about the 6.5 so –

MS. E. BEST: Mm-hmm.

MR. STURGE: – I have to believe that that discussion has taken place.

MS. E. BEST: Okay.

And so it's come out in the evidence, of course, that for a certain amount of time – which I think we're still trying to nail down – some information with respect to the cost overruns was not communicated to the provincial government and to the federal government. But during the period in between when it was communicated to the federal government and not the provincial government, do you know what was the – I'm trying to figure out what was Nalcor's motivation in doing that, because I would like to understand that motivation.

So do you know – was it an effort, for example, on Nalcor's part to hope to be able to go to the province to present it with a solution at the same time as it was presenting the problem? Was that the motivation?

MR. STURGE: I don't think there was any – at least from what I recall I don't think there's any negative motivation. I think we were working through the issue because the COREA issue was moving as well, the conceptual issue, so we were working through that.

But my recollection was that there were some people – I – it was my belief that Charles was aware we were having a cost update earlier and then Finance was brought in the loop a little bit later. And, to me, that was nothing more than us getting aligned with rolling out the message. I don't think there was any attempt to keep people in the dark, for example –

MS. E. BEST: Mmm.

MR. STURGE: – if you're suggesting that type.

MS. E. BEST: Okay.

Thank you. Those are my questions.

THE COMMISSIONER: Thank you.

Okay so Provincial Government Officials – no questions.

Charles Mullaley – or Julia Mullaley, Charles Bown?

MR. FITZGERALD: Hello, Mr. Sturge.

Andrew Fitzgerald. I represent Julia Mullaley and Charles Bown.

MR. STURGE: Good morning.

MR. FITZGERALD: I'm going to actually change up my order of questioning now that we have this exhibit present here and on the screen. As I read your note, Ed, Charles, Donna Brewer, Paul Myrden – those are finance officials, Brewer and Myrden, correct?

MR. STURGE: Yes. Yes.

MR. FITZGERALD: Yeah and Mr. Morris is Natural Resources.

Your last note there, it says: Do savings on financial costs and IDC provide some offset to the discrete cost increase?

MR. STURGE: Direct cost increase.

MR. FITZGERALD: Is it direct or discrete?

MR. STURGE: I think it's direct.

MR. FITZGERALD: Okay.

MR. STURGE: In my opinion.

MR. FITZGERALD: I guess my question is: Is that a question coming to you from Finance officials?

MR. STURGE: I –

MR. FITZGERALD: Or is that a question you're asking yourself?

MR. STURGE: No, I – it could be but it seems to me a type of question that maybe Mr. Martin would have asked.

MR. FITZGERALD: Okay.

MR. STURGE: But I'm not certain of that, you know.

MR. FITZGERALD: But I guess, really, this was an issue from the province, from the Department of Finance with respect to if they needed more money before budget in April.

MR. STURGE: Yes, that would be the issue.

MR. FITZGERALD: Yeah.

MR. STURGE: Yes.

MR. FITZGERALD: And if you – if the province didn't have the money before the budget was due in April, they would have to take certain measures to try to get that money, wouldn't they?

MR. STURGE: They could or alternatively they could lean on us to see if we had any liquidity that we could cover it. But there would – we would have to firm up some solution, yes.

MR. FITZGERALD: Okay.

I guess my point is when the question is there, do savings on financial costs and IDC provide some offset to the discrete cost increase, there seems to me to be some level of uncertainty there at that meeting as well.

MR. STURGE: Well, I think the issue that was probably raised there – and this is why I think it could've been Mr. Martin raised it – is that probably thinking is – you know, this $300-million cost, we had lower financing costs; would that offset in any way this? And it could've been a small piece, but I don't think it was a large piece because most of those savings were in the operating period.

MR. FITZGERALD: But that's the question I'm getting at. I mean, it's still at this stage, and even if it is Mr. Martin saying it –

MR. STURGE: Yeah.

MR. FITZGERALD: – there seems to be some level of we may be able to work around this.

MR. STURGE: Well, I think at this point there – I mean, some – whatever offset there could've been there on the financing wouldn't have been anywhere near, I don't think, the amount of – because we had a $300-million increase, and I don't think any – there would've been any way it would've fully offset.

MR. FITZGERALD: No, but that's not in your notes, is it?

MR. STURGE: No, but I'm trying to just give you some –

MR. FITZGERALD: No, I understand that. Thank you.

But I guess, back to my point, there's still a level of uncertainty there, isn't there?

MR. STURGE: There was obviously a question somebody had raised, or it could have even been a question I posed myself but I –

MR. FITZGERALD: Okay. Thank you.

MR. STURGE: – can't recall.

MR. FITZGERALD: And you are the chief financial officer of Nalcor.

MR. STURGE: Correct.

MR. FITZGERALD: And when did you start working there?

MR. STURGE: March 20, 2006.

MR. FITZGERALD: March 20, 2006. And you're still there?

MR. STURGE: Still there.

MR. FITZGERALD: Yeah, that's 13 years.

MR. STURGE: Yes.

MR. FITZGERALD: And as an employee of Nalcor, you are governed by their vision and values?

MR. STURGE: Yes, yes.

MR. FITZGERALD: There's corporate governance.

MR. STURGE: Yes.

MR. FITZGERALD: Nalcor has a vision and values.

MR. STURGE: Absolutely.

MR. FITZGERALD: And included in its vision of values are: "Open Communication – Fostering an environment where information moves freely in a timely manner." You were subject to that as well.

MR. STURGE: Absolutely.

MR. FITZGERALD: Now, you were brought to a number of exhibits by Mr. Learmonth, 02531 to 02533. I don't need to bring them up, but these are the exhibits where the $6.5-billion slide is removed from the board presentation. We went through that yesterday.

MR. STURGE: Yes.

MR. FITZGERALD: Do you recall that?

MR. STURGE: I do.

MR. FITZGERALD: And when you were questioned about that – and Mr. Learmonth put the word to you, did you acquiesce or did you agree; there was some discussion about your conduct – you indicated that you still have to survive in the organization as well.

That was a comment you made yesterday. Do you recall that?

MR. STURGE: Yes.

MR. FITZGERALD: Well, given Mr. Martin's management style, was there any room at all for debate if you had concerns about the way things were going on in Nalcor, given this culture of survival?

MR. STURGE: Well, I mean, I – my point was that, you know, ultimately the CEO had the final call on what went into the board papers. And, you know, I think as Mr. Learmonth suggested, I could have taken action but it would be a pretty significant action. You know, I think it's – I think going to the board and, you know, saying that the CEO is doing something is – that's a card you might play once in your career –

MR. FITZGERALD: Yeah.

MR. STURGE: – you know?

MR. FITZGERALD: Well, I'm going to take you through some other actions you could have taken as we move forward here today, but I just wanted to make that point.

Was this culture of survival – that's what I'm going to call it – was that widespread in the organization, Mr. Meaney, the project management team? Like, we can't oppose Mr. Martin or Nalcor because we need to keep our jobs and we need to survive. I mean, how prevalent was that?

MR. STURGE: Well, I think Mr. Martin's dial was that he was pretty hands on and, you know, he controlled a lot of things; the flow of information to the board was something close to his heart, I think. You know, I guess he felt that was his prerogative. The capital cost thing, clearly he had total control over that.

You know, so that level of – that probably wouldn't extended to everything in the organization.

MR. FITZGERALD: Okay.

MR. STURGE: But there were certain areas that, you know, I would say things that went to the board, the capital costs, would have been two things that he would have had, you know, the final say on really, in –

MR. FITZGERALD: What about information coming from the project management team?

MR. STURGE: Well, I view that sort of as a part of the capital cost, yes.

MR. FITZGERALD: And one of the answers you gave yesterday was you said: We were trying to deal with something. Am I correct in saying that there was different factions inside Nalcor at the time? You had your Finance group, you had your project management group and they weren't always aligned, were they?

MR. STURGE: Yeah, I think that's probably, you know, generally a fair assumption in that they operated fairly independently. You were still all a part of Nalcor.

MR. FITZGERALD: Mmm.

MR. STURGE: But there was a level of separation there, I should say, right?

MR. FITZGERALD: Did you witness any of the conduct of Mr. Harrington in terms of how he would treat the SNC people and his project management team members?

MR. STURGE: I wouldn't have witnessed any of that, no.

MR. FITZGERALD: Okay. I ask the question –

MR. STURGE: No.

MR. FITZGERALD: – because there was a reference in our testimony the other day of bullying.

MR. STURGE: Yeah.

MR. FITZGERALD: And I wonder if this helped to spread the culture of survival in the project management team. Were people scared that they were going to lose their jobs?

MR. STURGE: No, I mean I think there was – like, in our organization there was a level of tension, and maybe not an unusual level of tension, but a level of tension between probably some of the project team things and corporate functions. And I've worked in other organizations where – I've worked in Inco and there probably felt the same or similar level of tension between some corporate things and the project team as well.

So I don't know if it's overly unusual or if it was, you know, just the norm, but there was that – you know, they were sort of separate from the rest of the organization in many regards, right?

MR. FITZGERALD: In your experience – and I believe – did you work with CHC Helicopters? Did I hear that?

MR. STURGE: I did, yes.

MR. FITZGERALD: Yes. How many years were you there?

MR. STURGE: Five.

MR. FITZGERALD: Five. And what was your role in that company?

MR. STURGE: VP of finance.

MR. FITZGERALD: Okay.

In terms of – I mean, you've been in both companies.

MR. STURGE: Mmm.

MR. FITZGERALD: In terms of information flow going from the employees up to the executive up to the board, would you say that it was similar in CHC Helicopter?

MR. STURGE: I think it's a very different company, it was a very entrepreneurial, you know, owner. Even though it was a publicly traded company, it was a CEO who was the controlling – or a chairman who's the controlling shareholder. So a pretty different scenario, I think, in terms of how information flows.

MR. FITZGERALD: You used the term publicly traded company. Is there any less of an obligation on corporate executives in a company, a Crown corporation, than there is on a publicly traded company to exercise their duties in good faith and according to their vision and values?

MR. STURGE: No, I don't think there's any lesser. I mean, it's governed by a different set of things; you got securities regulations and those things.

MR. FITZGERALD: Yes.

MR. STURGE: But I don't think there's generally any difference in terms of doing the right thing, you know.

MR. FITZGERALD: In your testimony in October, I believe you indicated that, on some issues anyway, you felt like you were out of the loop. And I believe it's when you were trying to get an update on capital costs from Mr. Martin. Do you recall this?

MR. STURGE: I do, yes. Yeah.

MR. FITZGERALD: Yeah, it's in your notes. Yeah.

MR. STURGE: Yeah.

MR. FITZGERALD: Did you feel like you were out the loop that way when you were working with CHC Helicopter? Or was this the first time you were ever out of the loop?

MR. STURGE: No, I could never – I couldn't say that that's the first time in my corporate career that there were things happening in an organization that I probably was out of the loop on. I mean, I – that –

MR. FITZGERALD: Is it the first time you noted it in your diary?

MR. STURGE: Yeah, I think – I mean, that particular time it was – I think as – and I think I noted it yesterday. Once we got past financial close it seemed like there was a bit of a broader involvement of more folks in the capital. And maybe it happened at that point because now we were into a period of having to fund it and all those things.

But through 2012 and '13 it was – it felt tight, very tight, and it seemed like the project team had – no, they had – I think they had a relationship with the CEO at the time – that maybe it was a historical relationship as well – of trust and probably sort of maybe change some of the normal reporting that you would see in the organization perhaps anyway. But it was really through 2012 and '13 that it felt that, you know, they had a – they were getting aligned with the CEO and, sort of, other people were sort of chasing it, you know?

MR. FITZGERALD: Okay, interesting choice of words. Can you elaborate on the use of the word, tight, for the Commissioner to describe that culture at the time?

MR. STURGE: Well, you know, I mean a lot of what – times what would happen is that I know – and, you know, I guess in some regard you shouldn't be surprised that the CEO wants to understand what's happening in the project. I mean if he didn't it'd be another issue. But it seemed to be that the discussions tended to be, you know, the CEO, Ed – Mr. Martin at the time – and the project team that seemed to be the –

MR. FITZGERALD: Mmm.

MR. STURGE: You know, it was a bit of an inner circle around some of those things. And at some point eventually those things would disseminate their way out to others, but it seemed to be sort of a tight inner circle around them initially.

MR. FITZGERALD: Okay.

If I may, Madam Clerk, have Exhibit P-00807, please? Oh no, it's not in your binder Mr. Sturge, I don't believe.

THE COMMISSIONER: No, that's right. It's on the screen.

MR. FITZGERALD: And if we can just scroll down a bit, probably page 2 or 3 – page 3, please. And right there is perfect.

Now, this was a Decision/Direction Note in May 9, 2011, that was drafted by Terry Paddon and Charles Bown.

MR. STURGE: Yeah.

MR. FITZGERALD: And I would suggest to you that they also operate, like most of us do – want to keep your job, want to make sure you do what's right. Would you accept that?

MR. STURGE: I would expect, yes.

MR. FITZGERALD: Yeah.

But at this point in time, these two individuals, these public servants, wrote a Direction Note to their two ministers saying there need to be more independent review.

MR. STURGE: Yeah.

MR. FITZGERALD: Design and engineering risk, construction risk, generation/technical risk, market risk, financial risk, contractual risk –

they went on the record to show to their ministers we have an issue here, here's what we think should be done.

We do not have any similar type of record from you with respect to the removal of the $6.5-billion slides from the board meeting, do we? No memo to Mr. Martin saying I think this is the problem because?

MR. STURGE: No, I took his direction.

MR. FITZGERALD: Yeah.

MR. STURGE: I think this is a little bit different scenario in that this –

MR. FITZGERALD: Well, the civil servants take direction from the ministers, don't they?

MR. STURGE: They do.

MR. FITZGERALD: Yeah.

MR. STURGE: But I think this scenario was one where the province was entertaining how do we move forward and this was – seemed to be a piece of one way of doing that was my recollection. What was the timing of this again?

MR. FITZGERALD: This was at – this was on May 9, 2011, I believe it's dated.

MR. STURGE: Yeah. So in that time frame – because I recall the province had clearly made the decision they're doing something at that point and this, sort of, would surface in the middle of that.

MR. FITZGERALD: Isn't this an example of making a note – making a memo to your superiors to say: We believe this is the correct course of action or the right course of action or the recommended course of action?

MR. STURGE: I would have made many recommendations to Mr. Martin over the course of my 10 years with him, as well, of –

MR. FITZGERALD: Yeah.

MR. STURGE: – things we should have done.

MR. FITZGERALD: But on the capital cost you didn't? On the briefings to the board and the information flow you didn't make such records. At least Mr. Bown and Mr. Paddon can point to this and say here's what we thought was the right thing to do. You don't have anything in your records to demonstrate that, you know, your thoughts, your apprehension, why you thought the $6.5-billion number shouldn't have been removed from the deck. You don't have that, do you?

MR. STURGE: Well, I mean the issue was, you know, Mr. Martin was – had indicated that he would speak to it.

MR. FITZGERALD: And –

MR. STURGE: And I –

MR. FITZGERALD: All right. Go ahead.

MR. STURGE: I got to work with a level of trust that somebody is going to do that. I mean, I can't – you know, there are lots and lots and lots of things that – and the other thing was happening at that very point in time is that this had been held up for several days –

MR. FITZGERALD: Mm-hmm.

MR. STURGE: – and I was facing a session the next day and this was 5 o'clock the previous day when this discussion was taking place. And I had pretty limited options at that point in time.

MR. FITZGERALD: But you do take copious notes.

MR. STURGE: I do, yes.

MR. FITZGERALD: I didn't see in your notes any reference to the slides being removed with respect to the board meeting?

MR. STURGE: No, but there's an email trail on it.

MR. FITZGERALD: Oh there is.

MR. STURGE: You know, I briefed Mr. Martin early on that –

MR. FITZGERALD: Mmm.

MR. STURGE: – this was going in for the purpose of giving him a heads up that I couldn't speak to the numbers, never would be speaking to the numbers, and that he should.

MR. FITZGERALD: But you agree with me the level of detail was not there in terms of comparing what this note is that my clients made to their superiors compared to the way you acted with respect to the $6.5 billion?

MR. STURGE: I think the comparable discussion, though, might have been if the province here had decided not to do this, would these folks have, you know, sent a note to Cabinet saying they think it's outrageous that they rejected their proposal.

MR. FITZGERALD: They sent it to two ministers outlining what should be done. MHI was what was determined; we all know how that played out. They wanted an external review. They thought it should have been done and they thought they should appropriately recommend this course of action to their superiors.

MR. STURGE: Yeah.

MR. FITZGERALD: They also live in a culture of survival. Mr. Bown survived it a number of years I would suggest. And one of the ways you do survive would be putting things in writing setting out the pros and cons of a course of action. You never did that to Mr. Martin, did you?

MR. STURGE: In the time frame we're in, I took his direction and moved on.

MR. FITZGERALD: Thank you.

Now, I just have a couple of more questions. I believe the majority of – actually if we could go to 02523, Mr. Sturge, and I believe it's page 10 of your notes.

THE COMMISSIONER: It's at tab 17.

MR. FITZGERALD: Oh sorry. Thank you, Justice.

And this was Canada FLG meeting, I believe, Mr. Sturge.

MR. STURGE: That – the heading was but the two things below, Scott Balfour and Charles Bown, were things that would have happened outside of that meeting.

MR. FITZGERALD: Yeah.

MR. STURGE: They wouldn't –

MR. FITZGERALD: Okay.

MR. STURGE: – have been –

MR. FITZGERALD: That's important.

MR. STURGE: Yeah.

MR. FITZGERALD: I'm glad you made that correction or that –

MR. STURGE: Mmm.

MR. FITZGERALD: – clarification.

Now up above there's an Alison and a Charles. I believe Mr. Learmonth referenced a Charles Taylor but that's really a Charles Newman, isn't it?

MR. STURGE: Charles Newman, I think.

MR. FITZGERALD: Yeah.

MR. STURGE: Yeah, Charles Newman.

MR. FITZGERALD: And it's not Mr. Bown?

MR. STURGE: That's not Mr. Bown, no.

MR. FITZGERALD: Okay.

Now – and we look there and it says: "Need to roll new capex out to Donna Brewer. He will speak to Ed. Section 4.10 language could result in NL putting in more equity at FC."

So at this point in time, section 4.10, that's the section where – that was in play and the drafting that was going around with respect to that language, correct?

MR. STURGE: That's correct.

MR. FITZGERALD: And at that point in time, I see the word, could, there in your notes, so we still don't have a definitive answer in terms of whether there was going to be an actual increase and it could result in an increase in the capex.

MR. STURGE: It would only result in the increase if there was a higher capex –

MR. FITZGERALD: That's right.

MR. STURGE: – yes.

MR. FITZGERALD: But the word, could, does appear there, doesn't it?

MR. STURGE: It does, yeah.

MR. FITZGERALD: Yeah.

And then it says –

MR. STURGE: And – but the reason the word, could, appeared is because if they anchored it off the financial close number –

MR. FITZGERALD: Mmm.

MR. STURGE: – it wouldn't result in it, right?

MR. FITZGERALD: My point is there's still some uncertainty.

MR. STURGE: It was uncertainty as to whether they'd anchored off financial close or DG3, yes.

MR. FITZGERALD: Yeah. Could result in Newfoundland putting in more equity at financial close – we need details. That would be Nalcor?

MR. STURGE: I think that was Charles' comment that Finance will need details.

MR. FITZGERALD: Yes and Finance people that would be involved here would be Ms. Brewer and then Mr. Myrden, subsequently.

MR. STURGE: Yes.

MR. FITZGERALD: Yes.

And on the bottom here – you said you're working on the details – but on the bottom it says: "CB spoke to Ed." And then below that we have: "got green light."

Now, Mr. Learmonth asked you yesterday, why would Charles Bown need a green light from Ed Martin? He wouldn't, would he?

MR. STURGE: Well, I – my recollection – you know, and my recollection is only from reviewing these notes – is that I said at the time that we didn't have all the details yet and, you know, I can't give this out to anyone without Ed signing off. So Charles would have went and spoke to Ed and said, you know, I got the green light to (inaudible).

MR. FITZGERALD: Well, this is what I'm wondering here. In your evidence yesterday, you said, with reference to this note, that you were surmising. And at one point you said: I'm guessing now. But is it possible here that Mr. Bown said: If this is gonna happen, you need to get Finance involved? Donna Brewer needs to be involved because this is a financial issue. And is it possible that the green light reference here is that you getting the green light from Ed Martin to move forward on that front as opposed to Mr. Bown getting a green light that he didn't need?

MR. STURGE: Yeah.

I mean, my – the note says Charles Bown spoke to Ed – got the green light.

MR. FITZGERALD: That could be you getting the green light. Given the way Mr. Martin –

MR. STURGE: Oh, it could be.

MR. FITZGERALD: – provides that information.

MR. STURGE: It's not necessarily that Charles got the green light to roll it out. I –

MR. FITZGERALD: Yeah.

MR. STURGE: Yeah, I was misunderstanding your point.

MR. FITZGERALD: Yeah, because the logic doesn't make sense to me. Mr. Bown –

MR. STURGE: Yeah. No, no.

MR. FITZGERALD: – was writing memos to ministers and whatnot. He didn't need a –

MR. STURGE: No.

MR. FITZGERALD: – green light from Ed Martin –

MR. STURGE: No.

MR. FITZGERALD: – did he?

MR. STURGE: No.

But clearly if Charles felt he could have done it, he would have probably just given her the information anyway.

MR. FITZGERALD: Well, it was going to go to Finance. He was giving –

MR. STURGE: (Inaudible.)

MR. FITZGERALD: – it to the appropriate department.

MR. STURGE: So I think in either case here it was a recognition that Ed had to sign off before we rolled it out.

MR. FITZGERALD: Yeah.

Just one quick second, please.

And then when you subsequently rolled it out, it was rolled out – you were dealing with the Department of Finance, mainly Mr. Myrden?

MR. STURGE: Mr. Myrden would have been at the off-site location with us pretty well constantly, you know, through most of that period.

MR. FITZGERALD: Okay.

MR. STURGE: So it would have been him and – but Donna was clearly in the mix somewhere there as well.

MR. FITZGERALD: Do you know when the government finally got a definitive breakdown of the figures?

MR. STURGE: That I can't find any record of. I'm not saying they didn't but I don't have any email or notes that –

MR. FITZGERALD: It's not in the –

MR. STURGE: – (inaudible).

MR. FITZGERALD: – February or March of 2014 when it was budget time, is it? That ring a bell?

MR. STURGE: There would have been a process – during 2014 –

MR. FITZGERALD: Mm-hmm.

MR. STURGE: – there would have been – during that time frame we would have had – we would have provided data, yes.

MR. FITZGERALD: Mm-hmm.

MR. STURGE: Because we were now – we had now rerun our financial models with the financing in and we would have been updating them. I think that data was somewhere in one of the exhibits.

MR. FITZGERALD: Yes, it is.

MR. STURGE: Right.

So there was data there. I don't know if that was the first time, but it would've been the first time that the detailed breakout of that level of detail was there. Because we didn't have that at that point because we still had to rerun our models after the financing.

MR. FITZGERALD: Okay.

So you had to rerun your models after the financing.

MR. STURGE: Yeah, so –

MR. FITZGERALD: So say – hold on, I'm sorry, Mr. Sturge –

MR. STURGE: I'm sorry.

MR. FITZGERALD: – I don't mean to interrupt but if you're rerunning your models after financing, wouldn't you rerun your models before financing?

MR. STURGE: Well what had happened –

MR. FITZGERALD: And just send that over to the government and say, here it is.

MR. STURGE: No, the reason was, is that the outcome of the financing itself influenced the models. So three things were sort of happening around this time frame: there was a higher capital cost estimate –

MR. FITZGERALD: Mm-hmm.

MR. STURGE: – there was a change in the profile over which – the years that that capital gets spent, and there was also a – the financing guide had to get overlaid. So once the financing got all put behind us, we then would've rerun the models to reflect all of those things.

MR. FITZGERALD: Those are my questions. Thank you very much, Mr. Sturge.

MR. STURGE: You're welcome.

MR. FITZGERALD: Thank you, Commissioner.

THE COMMISSIONER: All right.

Robert Thompson?

MR. COFFEY: Good morning, Mr. Sturge. Bernard Coffey for Robert Thompson.

MR. STURGE: Morning.

MR. COFFEY: Actually, I just have one question and it relates to something you just said to Mr. Fitzgerald. You indicated that – I believe in the context of answering a question about going – you going directly to the board. Remember that?

MR. STURGE: Yes, yes.

MR. COFFEY: And you referred to it as an action one might take once in a career. That was your response just now.

MR. STURGE: Yes.

MR. COFFEY: Can I infer from that – properly infer from that, that if you had done so – your perception was that if you did – took such a step, then the result would be either – following you doing so, would either be you would be gone or Mr. Martin would be gone?

MR. STURGE: Whether anyone would be gone, I don't know, but it would be a – it would create a pretty serious situation and for everybody I think. You know, it's – that's my interpretation or view of the question is that, you know, for someone in management below the CEO to go to the board, it would have to be a – I would think a very serious issue. I'm not saying this wasn't an important issue but I wouldn't have viewed it at the point – at that level of complexity because Mr. Martin had said I'm going to update the board.

MR. COFFEY: And – okay, and just, then – just so I'm clear – and this arises or relates to a question I think Mr. Learmonth asked you yesterday – the test in your mind for whether or not you would go over Mr. Martin's head directly to the board or, for that matter, to the minister of Finance, Mr. Marshall, directly –

MR. STURGE: Mmm.

MR. COFFEY: – was what? What would have had to have happened – and I think you used the word, criminal.

MR. STURGE: Yeah, I think if I was being asked to do something I felt was fraudulent, you know, I mean because I – and in terms of restating numbers and, you know, that type of thing. In this case –

MR. COFFEY: So it would have to have reached that level before you would –

MR. STURGE: To me it would, yes.

MR. COFFEY: Okay, so the triggering event would have to amount to criminality before you would go directly to either the board or the minister.

MR. STURGE: I don't know if criminality, but it had to be something very serious in terms of, like I said, restatement of numbers – you know –

MR. COFFEY: Well, restating numbers is not necessarily improper, depending on whether there's a – you know, a proper basis for it. But if restating numbers involved criminality, then yes, that's what you're saying.

MR. STURGE: Yeah, yeah.

MR. COFFEY: Is that what –

MR. STURGE: Ad the only reason I'm hesitating is I don't know – there could be other situations that are not criminal but are, you know, very serious.

MR. COFFEY: Could you give us an example?

MR. STURGE: If – oh jeez, I'm trying. If I was asked to, you know, employ some accounting methodology that would result in an overstatement of net income –

MR. COFFEY: A deliberate overstatement, which –

MR. STURGE: Deliberate overstatement of net income that –

MR. COFFEY: Yeah, well, if, in that context, frankly, that I can tell you, as a former –

MR. STURGE: Yeah.

MR. COFFEY: – prosecutor, that that would be criminal, so –

MR. STURGE: That's the sort of thing that would, to me, really cross my mind, you know.

MR. COFFEY: So anything involving dishonesty would be sufficient and would be necessary for you to directly approach the board.

MR. STURGE: Would be more in that ream, yes. Yeah.

MR. COFFEY: Thank you, Commissioner.

Thanks very much.

THE COMMISSIONER: All right

The Consumer Advocate?

MR. PEDDIGREW: Good morning, Mr. Sturge.

MR. STURGE: Good morning.

MR. PEDDIGREW: I won't keep you up here for too long. I do have some questions though.

So in some of the questions you had from Mr. Learmonth and the issue of the $300 million in less interest as a result of the better interest rate from the federal loan guarantee –

MR. STURGE: Yes.

MR. PEDDIGREW: – and so Mr. Martin was asking about having it categorized as a capital cost saving and I think your answer was that's not the way you would do it or you wouldn't treat it that way, I think is what you said. And just – if you could just elaborate why you would –

MR. STURGE: Yeah, that's right.

I think Mr. Martin's approach to it is – he was trying to present not only had capital cost gone up but other factors had changed. So from a – you know, I think he had sort of a CPW lens when he was looking at that. The overall value or cost of ratepayers really hadn't changed I think is what he was trying to demonstrate.

My comment was that – I mean, they sort of were confusing two things because in one regard, they were talking about a capital cost increase, and the other side – we're talking about effectively reduction in costs or additional revenues during the operating phase. So it is true that from a value perspective, they offset, but it's not necessarily a one for one offset on capital, right?

MR. PEDDIGREW: If you're trying to compare the cost of two things, it's not something you should include.

MR. STURGE: It's dependent on what you're trying to do, I suppose. Right? I think what he was trying to demonstrate is that capital costs have gone up, but you shouldn't be too concerned about it because there were other offsetting decreases from a value to customer perspective, I think is what he was at.

MR. PEDDIGREW: In relation to the issue with the UARB condition and there having to be a guarantee of market rate power available to Nova Scotia ratepayers before the UARB would sanction – or okay the project, could you just remind me, when did you first realize that that was an issue that had been flagged? We are sanctioned in December 2012, and it was after that?

MR. STURGE: Yeah, so it was – I think it was July 22, 2013, that the UARB decision came out.

MR. PEDDIGREW: Right.

And prior to that it was flagged to you by somebody on behalf of Emera, is that –? Or that the matter had to be (inaudible) –?

MR. STURGE: Yeah, okay.

So previous to that was the issue of – back at sanction, we thought that if we sanction the Maritime Link and Emera sanctioned the Maritime Link, then that met the condition precedent for project to have been sanction.

MR. PEDDIGREW: Right.

And what were Emera saying to you at that time? Were they saying basically if you guys sanction, we'll sanction and we're good to go?

MR. STURGE: Yeah, I mean I thought we were aligned on what we were trying to achieve there, yes. And it was aligned at the CEO levels of both organizations, yes.

MR. PEDDIGREW: So are you aware of any comment from Emera at that time to Nalcor that said look, you know, we'll sanction but, you know, we've got this UARB issue out there that we're going to need to deal with at some point.

MR. STURGE: No, I – and we knew that issue was still there and they still needed to clear through the UARB to get approval for the Maritime Link. So that wouldn't have changed in any scenario.

MR. PEDDIGREW: But was there a sense from Nalcor and Emera that, you know, this – it was a rubber stamp; it was not a big deal.

MR. STURGE: No, no, no, no and then that was the reason for the sanction agreement because what it was trying to provide for is if things came out of the UARB report. And so the logic is we sanctioned – both parties sanctioned and then if subsequent to sanction, things come out of the UARB report that were conditions that needed to be addressed, how do we now collectively, between the two companies, sort out those things?

MR. PEDDIGREW: Right.

And I guess the difference between Emera and Nalcor at that point is from the – I guess from the Public Utilities Board's perspective and the government's perspective here in this province, you guys had a clear path, whereas Emera did have the one condition.

MR. STURGE: Well, regardless of the sanction agreement issue, they still needed UARB approval to move forward on the project. And that still could've involved the EAA agreement, so none of that necessarily changed. I think what changed is when Canada said you've got a conditional sanction, is that this whole process now became more critical in our critical path to financing, whereas it wouldn't have been otherwise. I think that was the difference.

MR. PEDDIGREW: And so the decision came out in July of 2013. When did negotiations start between Emera and Nalcor by the way?

MR. STURGE: Almost immediately. I recall there being a team – the two companies got together shortly thereafter and I think they worked through August and September. And I was at some of the meetings early and then I – once the financing process started in probably September, I had backed out of it.

But it was, you know, through then – through October, which is really where the deal really got put together. It would've been Mr. Martin, Mr. Chris Kieley, Mr. Greg Jones; Paul Humphries would've been a part of that.

MR. PEDDIGREW: All Nalcor people?

MR. STURGE: All the Nalcor.

MR. PEDDIGREW: Right.

MR. STURGE: You know, and they would've had an equivalent type of people.

MR. PEDDIGREW: And so when you say all throughout August, September, October, I mean were they meeting weekly? Were they meeting face to face or telephone calls?

MR. STURGE: I can't say it was weekly, but there was – you know, there was – I would say there was three or four meetings through August. And, I think, as it got closer into October – and I've lost track of that 'cause I was off site on the financing so I'm not sure what frequency. But it was probably more frequently as we got closer, would be my guess.

MR. PEDDIGREW: And I believe you said yesterday that there was a meeting between Mr. Huskilson, on behalf of Emera, and Mr. Martin in Ottawa on November 28th, and it went late (inaudible) –

MR. STURGE: That would have been – yeah, it would have been two of those and chiefs of staff from both the premiers at the time.

MR. PEDDIGREW: And so was there no deal up to that point or –?

MR. STURGE: No. There was. I mean, we had essentially dealt with all these substantial issues. There was largely two issues outstanding when we sort of went to Ottawa. One was – I think we'd all agree that the goal of everyone here is to transfer Canada's Triple A credit rating to the – you know, to the project entities.

MR. PEDDIGREW: Yeah.

MR. STURGE: I think there was some discussion of how the wording was going to be done on that. We resolved that issue, and then it really left a remaining issue. And this was an issue that was on our list right from, probably, day one of negotiations of whether the sanction of the Maritime Link and – was de-linked from our getting our financing and it was there. And the people we would have been negotiating would have said, listen, that's going to be dealt at another table, not at our table.

So that one was the last issue. And when we went to Ottawa, at that point, that would have been sort of a discussion that Mr. Martin and Mr. Huskilson and – I think, at that point, it's probably the reason why some of the folks from the, you know, the premier's office of both provinces were there because that wouldn't have been the norm. And they were there 'cause we were now at an issue that was sort of a bit more political issue and would be decided, probably, at that level.

MR. PEDDIGREW: Okay.

As of November 2013 can you estimate how much had been spent on the Muskrat Falls project by that point?

MR. STURGE: I believe I was asked that question by Grant Thornton and I recall filing it something in – last year – I think it was around $800 to $900 million –

MR. PEDDIGREW: Okay.

MR. STURGE: – by financial close.

MR. PEDDIGREW: Mr. Sturge, in relation to the COREA, was – and the discussion around whether it was going to be 6.2 or 6.5 as a reference point –

MR. STURGE: Yes.

MR. PEDDIGREW: – for purposes of calculating payments in the future – was there ever a discussion with Canada about – was there a maximum amount they were prepared to have as that starting point? Did the discussion ever go –?

MR. STURGE: No. No, there wasn't. No.

MR. PEDDIGREW: Okay.

MR. STURGE: No.

MR. PEDDIGREW: So in July 2013 the project management team had information that the cost was, we now know, $7 billion. So that – was that 7 – there was no indication there from Canada that –

MR. STURGE: No.

MR. PEDDIGREW: – they weren't going –

MR. STURGE: No.

MR. PEDDIGREW: – any higher than 6.5 or –

MR. STURGE: No.

MR. PEDDIGREW: – anything like that?

MR. STURGE: And in actual fact, would have been our advantage to have that number as high as possible.

MR. PEDDIGREW: Exactly, yeah. So the implications – if it was a $7 billion figure that went into the COREA calculation, what impact would that have had in terms of COREA payments in 2014 –

MR. STURGE: That's –

MR. PEDDIGREW: – '15, '16?

MR. STURGE: – $500 million of equity that wouldn't have been pre-funded. It would've been the same equity at the end of day, but –

MR. PEDDIGREW: Right.

MR. STURGE: – in terms of the timing, it –

MR. PEDDIGREW: Didn't –

MR. STURGE: – didn't change.

MR. PEDDIGREW: – have to come up with the money right now?

MR. STURGE: Yes.

MR. PEDDIGREW: Okay.

The November 6 day-long meeting that you said took place between the independent engineers, Canada and Nalcor – and I think you were asked yesterday whether anybody from the province was there and you said no. Do you know if the province was aware that that meeting was happening?

MR. STURGE: I'm not certain if they were or not.

MR. PEDDIGREW: Not sure.

MR. STURGE: And the only reason I'm not certain is, as I explained, during that period in time we were all working pretty close together so there wasn't – you know, our – you know, so they might have been aware but I don't really know.

MR. PEDDIGREW: You don't know. Okay.

Some of the questions I was asking to Mr. Meaney – one of the questions was did he have an understanding of why there seemed to be – and I get when big commercial deals are happening – this was a big commercial deal – that when you work up to closing, things – a lot of things happen – it's the end and get brought together at the end and it seems like a rush.

Mr. Meaney did indicate, though, that the lending – the lenders were willing to hold the rates that were available to Nalcor until March. And I'm just wondering, from your point of view, did you – was there ever any discussion between you and Mr. Martin or you and anybody at government about: Look, you know there's an awful lot of things not complete here. We're into the last two weeks of November. Should we push this off a little bit?

MR. STURGE: Absolutely. And there was a series of discussions I had with Charles Bown and Ed in late October, and there's probably some emails, but the issue I had raised was that our recommendation at the time from the financing team was that until we got certainty on – 'cause their decision then, do we appoint a lead arranger?

MR. PEDDIGREW: Do we appoint what, sorry?

MR. STURGE: A lead arranger. Do we award the financing to somebody?

MR. PEDDIGREW: Okay.

MR. STURGE: And our fear was that once we awarded, then if we missed the CPs and the financing gets delayed, then we got this – what appears to be – we've got a financing put in place that no longer is applicable, and in the market this thing could be perceived as a failed financing attempt. So none of us wanted to go there.

So I'd raised the issue with Ed late October that, you know, our recommendation is that until – without the conditions precedent cleared, we probably shouldn't move to award the lead arranger, which we did in –

MR. PEDDIGREW: And when did you –

MR. STURGE: – October 28.

MR. PEDDIGREW: – award lead arranger?

MR. STURGE: October 28.

MR. PEDDIGREW: Okay.

MR. STURGE: So through that discussion – and then we sort of talked, what are our options around this thing? And one of the options that we put on the table was that the only way we could see moving forward was if we could then approach the lenders at that point in time and say, you know, there's conditions precedent here, we – there is risk on the schedule, so to give us their pricing. That would hold us out to the end of March.

And the reason we thought it was important to do it at that point is that if we went through December or November and then went back to the banks and said, sorry, we missed it, can you reprice, then we were losing leverage. So our view was that the only way to do this is to get the banks to do this now in the middle of a competitive process, versus at the end when they had the hammer.

So we did that. We asked all the banks to give us pricing that was – hold us to financial close out to the end of March.

MR. PEDDIGREW: Right, but I mean you still had time to the end of March if you needed to – more time to bring together some of these issues that seemed to be unresolved up until –

MR. STURGE: Right.

MR. PEDDIGREW: Some of them were unresolved up until the day before so, you know –

MR. STURGE: Oh, absolutely, yeah.

MR. PEDDIGREW: Okay, and not sort of dotting i's and crossing t's, but –

MR. STURGE: No, they were big issues.

MR. PEDDIGREW: – actual issues, yeah.

MR. STURGE: Big issues.

MR. PEDDIGREW: Mr. Sturge, same line of questioning I asked Mr. Meaney, and I'm assuming you probably watched some of Mr. Meaney's evidence. But a lot of the questions to you on direct evidence and some – from some of the other legal counsel have been around, well, what did you as Nalcor not provide? You know, why didn't you provide it sooner, why didn't you do this, why didn't you provide this document, that sort of line of questioning.

I guess I had a question about what processes or requirements were put in place by government for you to report to government. So, we saw some evidence yesterday about Minister Marshall had requested in October of 2013 for, you know, a series of five or six questions to be answered about – in relation to the project and costs and things like that.

Besides Minister Marshall, were there any other ministers who put similar requirements in place?

MR. STURGE: You're thinking about the Lower Churchill Project in particular, or –

MR. PEDDIGREW: Yes.

MR. STURGE: Yeah.

MR. PEDDIGREW: Yeah.

MR. STURGE: I don't recall anything formal.

I think the first formal reporting that I call – I recall, was around the Oversight Committee and –

MR. PEDDIGREW: When did that –

MR. STURGE: – those types of things.

MR. PEDDIGREW: That was –

MR. STURGE: That was 2014.

MR. PEDDIGREW: 2014.

MR. STURGE: Yeah, I don't recall that – now, having said that, Mr. Martin had a pretty frequent flow of communication through that period with ministers, you know, so it's not – and the premier, so it's not –

MR. PEDDIGREW: When you say pretty frequent flow, how would you describe – and ministers, if you could just –

MR. STURGE: I don't –

MR. PEDDIGREW: – elaborate.

MR. STURGE: My recollection is that there wouldn't have been – you know, I doubt if there was a month went by that Mr. Martin didn't have – or probably even less, you know, a meeting with ministers and probably the premier. It was pretty frequent.

MR. PEDDIGREW: And would you be in attendance at those meetings?

MR. STURGE: I would've been at some, you know. Depending on the topic, if it was something that he felt I should be there, could be other times that we would've had Gilbert with him than –

MR. PEDDIGREW: And would there be a formal agenda for those meetings or would it be more ad hoc?

MR. STURGE: No, it would tend to be – it was sort of like yesterday, sometimes it could be a meeting around a topic that Ed would update and other things. But there were periods that we would have specific, you know, topics of Lower Churchill that we needed to update on or he needed to update on.

MR. PEDDIGREW: Was there regular reporting, do you know, on the issue of cost and cost increases or was that just – I believe you made reference to two meetings in March where it was sort of brought up informally at the beginning. Is that normally the way that happened?

MR. STURGE: Yeah, so on the cost updates, I mean, you know, before any of those updates were finalized there would've been a – I think a series of meetings with the premier and the minister. And, ultimately, I think, all of those had a meeting with Cabinet, but that was sort of at the very tail end of the process.

In the 2015 example, that was an example where I think Mr. Martin was giving an early update before he had flushed out all of the considerations, but he was sort of doing that. Now, whether he did that, some of the others too, he possibly did, I just happened to be there for that one because –

MR. PEDDIGREW: Okay.

MR. STURGE: – it was while I was there.

MR. PEDDIGREW: So I believe you gave some evidence as well that Mr. Martin seemed to have a frequent or a close – I don't know the – necessarily the right word to use, but I guess a relationship with Charles Bown. He was – would he be, in your view, Mr. Martin's main contact at Natural Resources?

MR. STURGE: I always thought that Charles was very in tune with what was going on and Ed went out of his way to keep him updated. That was always my perspective, yes.

MR. PEDDIGREW: And anybody in Finance that Mr. Martin similarly went out of his way to keep updated?

MR. STURGE: He probably didn't have as much if any direct contact with like, the deputy of Finance. I don't think he had any ongoing relationship there. It would've been, you know, primarily Charles at the deputy level.

MR. PEDDIGREW: And do you know how that relationship with Mr. Bown arose? Was it – any idea of like –?

MR. STURGE: No, I think – I don't think it was anything unusual. I think it was just the fact that Charles was a very important person in a lot of the key files that Nalcor was pushing through. And Ed understood that and understood that the success of Nalcor and moving any of those files would be keeping Mr. Bown in the loop.

MR. PEDDIGREW: And so just to return to one of my questions there from a few moments ago. You're not aware of anything – other than what Minister Marshall put in place in October of 2013 and then the Oversight Committee, which came up in 2014. You're not aware of any sort of formal reporting requirements from either Justice, Natural Resources, or Department of Finance in relation to what Nalcor was required to provide to the province?

MR. STURGE: Up to like financial close, I can't think of anything formal. And then after financial close it became the Oversight Committee things. Now, you know, we would have, as Finance, been providing – you know, through all those periods, through 10-year financial forecasts, it would have had LCP date in them, but it was more of a Nalcor view of the world and –

MR. PEDDIGREW: Right.

MR. STURGE: – those types of things –

MR. PEDDIGREW: And overall company –

MR. STURGE: – and annual budget documents –

MR. PEDDIGREW: – right.

MR. STURGE: – and that sort of thing.

MR. PEDDIGREW: Okay.

And so I think yesterday, as well, you said that in relation to providing information to Canada, and your answer was, well, they were pressuring us, right. And I think that was one of the reasons that you ended up providing the information to Canada?

MR. STURGE: Well, I think the particular item you're talking about may have been the completion of the IE report –

MR. PEDDIGREW: Right.

MR. STURGE: – and we were under a gun 'cause we knew that one was probably – well, along with others, it was one of the key deliverables I had to have for financial close and Canada wasn't happy at that point in time.

MR. PEDDIGREW: The March 2015 meeting that you spoke of just a moment ago, March – I think you said on March 9, it was a meeting yourself, Mr. Martin and – who else was at that?

MR. STURGE: It – on March 9, it would have been Minister Dalley, who was the minister of Natural Resources at the time, it would have been with Charles Bown, Julia Mullaley and I seem to recall Craig Martin was there as well. I –

MR. PEDDIGREW: Okay.

MR. STURGE: – think at point was somehow linked into the Oversight Committee, I think.

MR. PEDDIGREW: That had – that meeting had to do with some sale of hydro assets, but at the beginning of the meeting, Mr. Martin said: Look, I'll update you on – I'll provide you with a cost update on –

MR. STURGE: Yes.

MR. PEDDIGREW: – the Muskrat Falls Project –

MR. STURGE: Yes, yeah.

MR. PEDDIGREW: – now.

Okay. And the March –

MR. STURGE: Yes – sorry.

MR. PEDDIGREW: Sorry, no. Go ahead.

MR. STURGE: I recall – I don't think he had any paper at that point. I think it was just a verbal update.

MR. PEDDIGREW: Okay.

And then the March 10 meeting the next day with Premier Davis?

MR. STURGE: Yes.

MR. PEDDIGREW: Was that March 10 meeting scheduled before the March 9 meeting took place or did it get scheduled after the March 9 meeting?

MR. STURGE: I believe it was because it was about the same topic of asset sales, so I –

MR. PEDDIGREW: Right – you're not sure.

MR. STURGE: Now whether it got scheduled after we met with the minister and he said we – now that we're, sort of, been through that issue, we need to meet with the premier – that could be as well.

MR. PEDDIGREW: Okay.

MR. STURGE: But the intent of both meetings was primarily about asset sales.

MR. PEDDIGREW: But you're not sure whether the March 10 meeting was already on the schedule or whether it got added after. Okay.

MR. STURGE: (Inaudible) 'cause a lot of the times those didn't end up in my calendar. They'd get put in Ed's calendar and he'd tell me or something, right?

MR. PEDDIGREW: Okay.

Sorry, Mr. Sturge, I'm just checking off things that have already been covered.

And yesterday as well – this is my last question – when you were asked some questions by Mr. Learmonth about the atmosphere at Nalcor and you said it was tense, I think was the word – well, actually, you used that word "tense" in your interview and I think –

MR. STURGE: Yeah.

MR. PEDDIGREW: – Mr. Learmonth asked you, you know, do you still –

MR. STURGE: Yeah.

MR. PEDDIGREW: – could you elaborate on what you meant by tense?

MR. STURGE: Yeah.

So through, you know, and this is sort of my recollection here as, you know, as we go into late '15, early '16, and at that point the Astaldi issue was big and it was creating a lot of pressure. And I think, you know, as the government changed, it created – my observation was it created a lot of pressure because I think it was clear that the shareholder's confidence in Nalcor was waning, maybe disappeared, and all of those things were putting pressure on the organization and I think in particular on Mr. Martin at that point in time.

MR. PEDDIGREW: Okay.

I guess that was my question. I think you said that when Stan Marshall arrived, it went some way to restoring trust with the shareholder and that's – I wanted you just to explain what you meant –

MR. STURGE: Yeah.

MR. PEDDIGREW: – by restoring trust.

MR. STURGE: I think it was, you know, well, Mr. Marshall had been appointed by the shareholder so obviously he was their choice at that point. And he'd, sort of, been given a clean slate, shall we say, and I think all of those things cleared the air and –

MR. PEDDIGREW: But why restoring trust? I mean the – restoring trust, if you're restoring something, it sounds like it was lost. Are you saying trust was lost?

MR. STURGE: Well, my sense, you know, my – just giving my personal observation is that when the new government came in, that they probably had little confidence or trust in Nalcor, in Mr. Martin, in all those things and I think that was a pretty – in some cases, a pretty public discussion. And I think others of us in the organization watching that, we knew that wasn't sustainable. I mean, there's no way in the organization that we're in that you can continue to go forward on any normal business if the shareholder doesn't have confidence in the CEO and the management team and the board. It just can't happen.

MR. PEDDIGREW: Okay.

All right. Thanks very much.

Those are my questions.

THE COMMISSIONER: Thank you.

All right. Nalcor Energy?

MR. SIMMONS: Good afternoon, Mr. Sturge.

MR. STURGE: Afternoon.

MR. SIMMONS: I think it is the afternoon now.

First of all, I just want to bring you back quickly to a document Mr. Fitzgerald referred to, which is P-00807, please, Madam Clerk?

This was the decision briefing note that Mr. Fitzgerald was using as a point of comparison when he was talking about information going to the board –

MR. STURGE: Yes.

MR. SIMMONS: – at Nalcor. And scroll down, please, to – it's probably the second page. It's the beginning of the briefing. Okay we can stop there.

So we've seen other documents like this that originate within government and I expect you've probably seen quite a few too that take the form of briefing notes or decision notes or direction –

MR. STURGE: Yes.

MR. SIMMONS: – notes as this one's called.

MR. STURGE: I've seen some, yes.

MR. SIMMONS: Okay.

And I just note that at the beginning it says, the first heading is "Decision / Direction Required." The first bullet frames out whether to approve selection and retention of a qualified consultant. And the second bullet says: "Finance and Natural Resources are supportive of the proposed initiative as it represents both good business practice …" – and so on.

So I don't know if you are familiar with this initiative or if you know of any of the background, but when I read this, I read this as being something that these gentlemen were tasked to do and prepare. And do you know anything about the background to be able –

MR. STURGE: I don't –

MR. SIMMONS: – to comment on that?

MR. STURGE: I can't say I was familiar with that decision note at the time, and probably –

MR. SIMMONS: Yes.

MR. STURGE: – didn't see it 'til –

MR. SIMMONS: Yes.

MR. STURGE: – this Inquiry. But I do know at that point in time we had been working – when I say "we," I know myself and Ed and probably Auburn Warren had been working – had been approached by Robert Thompson –

MR. SIMMONS: Yes.

MR. STURGE: – to start to look at sort of options to move forward in terms of PUB regulation and what that would look like. And that started sort of with a – this type scenario would've been one of the ones we looked at initially –

MR. SIMMONS: Right.

MR. STURGE: – and then it ultimately ended up being a PUB review, but that process had started in April.

MR. SIMMONS: Mm-hmm.

MR. STURGE: So as I look at this, this looks to be part of that discussion that was taking place of options that Robert had triggered in April with us.

MR. SIMMONS: Okay, good.

Thank you.

You were – you've been asked some questions, as well, where you confirmed that in October, I think you said, of 2013, you discussed with Mr. Martin about going back to the financers, I guess, and looking for extensions of some rates up 'til March of 2014, I think you'd said?

MR. STURGE: That's correct, yes.

MR. SIMMONS: So we know that the financial close took place November 29, I think, then with the actual placing of the bonds shortly afterwards and the advance of the money shortly afterwards.

Can you tell me anything about why November 29 was selected as a target date to work so hard towards getting it achieved at that time?

MR. STURGE: Well, what was happening is that once we'd selected the lead arranger, we now had the financing plans in place and our concern – while we had a plan in place that could've extended us out, I think we were all concerned that, you know, as the longer this went, the longer that the deal sort of leaks out into the market.

MR. SIMMONS: Mm-hmm.

MR. STURGE: And we were concerned that, you know, at some point the market could start to say: Is this deal ever happening? Is it a good deal? And, you know, so you get sort of a bit of a deal fatigue in the market. So once we had selected the lead arranger, I mean, our ideal situation was to close it in that scenario.

MR. SIMMONS: All right. Okay.

Was there anything else going on in the financial markets around that time that would've influenced your timing as well?

MR. STURGE: Yeah, the other thing that was going on – well, there was a couple of things happening.

One thing was that we knew we had to be in and out of the market before mid-December for a couple of reasons; one is that the market is effectively shut down, but Canada had another big bond issue happening right after ours. So we – they did not want us in the market anywhere near that because our paper and their paper were effectively looked at Canada paper and they didn't want any – us competing in the market or affecting the market.

MR. SIMMONS: Mm-hmm.

MR. STURGE: So that was one thing. The other thing that was happening is that we knew that post-Christmas, you know, you weren't going to do a deal of this size 'til, you know, mid to late January. And there was also this discussion happening in the US at that point, of the debt ceiling in the US.

And we were concerned that, you know, however that could've played out could've actually, just, you know, caused some distortion in the markets. So our ideal situation is we – you know, that we were that close, if they'd get this done in December, that was our –

MR. SIMMONS: Okay.

MR. STURGE: – our driver.

MR. SIMMONS: So I'm hearing there's at least three different factors that were at play, that were driving it. One was you didn't want information leaking out that could've affected the perception of the value of the bonds in the market.

MR. STURGE: Yes.

MR. SIMMONS: And Government of Canada was actually pushing to have it done earlier so it didn't interfere with their later bond issue. And you had concerns about what was happening in the United States market with this whole debt ceiling thing that comes up every once in a while (inaudible).

MR. STURGE: And the fourth one would've been that – concerning that the longer you go, there could have been a creep in interest rates. That was the other concern.

MR. SIMMONS: Okay. So even though you had some type of assurances up to March, there was still a risk that interest rates would change.

MR. STURGE: Yeah, so what we had assurances on was the spread and the fees that the banks would put on top of the Government of Canada rate.

MR. SIMMONS: Not the rates that you would –

MR. STURGE: We were exposed on the –

MR. SIMMONS: – that the bonds would pay.

MR. STURGE: – Government of Canada rates still, yes.

MR. SIMMONS: Okay.

So there could – if there was still a rate change, there would still be exposure to having the financing be more costly if you waited –

MR. STURGE: Yes.

MR. SIMMONS: – until March.

MR. STURGE: Yes.

MR. SIMMONS: Okay, all right.

Can we bring up Exhibit P-02515 please? This is some emails you were shown yesterday, and –

THE COMMISSIONER: Tab 17.

MR. SIMMONS: – emails you were shown yesterday from October 18, 2013. This deals with Minister Marshall's request for some information.

MR. STURGE: Yes.

MR. SIMMONS: So if we can scroll down please to – here, that's good.

So this is the part of the message that actually lists out what the five requests are. And I think a lot of the questions you've been asked have been focused on number 5, which is the most recent update on expected total project costs by component versus budget DG3 if available. Now when I look at questions 1, 2, 3 and 4 – and take a moment to read through them if you want – am I correct in reading those as being questions that are related to the existing DG3 budget costs?

MR. STURGE: That would be my understanding, yes.

MR. SIMMONS: Okay.

And scroll up please until we see your next message in the chain. Just stop there. You sent a message to Mr. Martin on the same day and say, "Hi Ed, see attached from Paul Myrden on behalf of Minister Marshall. We can start working something based on DG3 costs, but will ensure you see it first. Note on number 5 they are looking for an update on DG3 costs."

So am I reading that as you making a distinction between what was looked for in the first four questions and what was in the fifth question?

MR. SIMMONS: Yes.

MR. STURGE: Yeah.

MR. SIMMONS: Okay. And – if then you scroll up to the top – Mr. Martin sent this on to Charles Bown. Now we're used to seeing messages from people at Nalcor that have about 15 people cc'd on them and all sorts of people in the loop of discussion. This one only goes to Mr. Bown from Mr. Martin.

So would you know about all the communications that Mr. Martin had with Mr. Bown or others at government?

MR. STURGE: No. There's no way I – no way I would know. No.

MR. SIMMONS: Some people would want to make sure that others they worked with are always kept fully informed about everything that's going on so that you would always know what communication Mr. Martin had had with government. Is that the way it worked?

MR. STURGE: No. I'm pretty certain that Mr. Martin would have had, you know, a significant amount of interaction with government that I was never aware of.

MR. SIMMONS: Mm-hmm. Right. Yeah. Okay.

Can we go to P-02521 and we're going to sort of follow the chain of what happened after that request came in there immediately.

THE COMMISSIONER: Tab 15.

MR. SIMMONS: Scroll down, please?

Okay. Let me see. Back up and we can stop there. Okay.

So this message goes from Mr. Warren to Mr. Martin – copied to quite a few other people – on the first of November. It says – "Ed, As discussed for your review." – Paul – "Myrden has asked that we ship across ASAP." And it says there's an attachment there – "Minister Request 13.11.01" and if we go to the next exhibit which is P-2522, please.

THE COMMISSIONER: Tab 16.

MR. SIMMONS: Tab 16. And you were shown this before.

This is the message on the same day where Mr. Warren sends a report back to Mr. Myrden. And the first point is – he says in the message – "Good afternoon Paul, As discussed please find attached summary for your review."

So would you know what kind of discussion had preceded sending this over between Mr. Warren and Mr. Myrden?

MR. STURGE: I don't. No.

MR. SIMMONS: Okay. Can we scroll down, please, to where we see there's a table attached to this. Okay. We can stop here.

So do you recognize this as being – as having seen this before, as being the information that was reported back?

MR. STURGE: Yes it is. Yes.

MR. SIMMONS: Okay. Now you may want to turn up in your – if you need to go back to the questions that the minister asked we can find the reference in your binder 'cause what I'm going to ask you to do is compare this report to the questions and tell me which questions are being answered here, if you can do that.

MR. STURGE: Okay.

MR. SIMMONS: Yeah.

MR. STURGE: Which one had the questions again?

MR. SIMMONS: We are going to go to 02515, which is at tab 9.

THE COMMISSIONER: Tab 9, yeah.

MR. SIMMONS: Madam Clerk, Mr. Sturge may need the 02522 document in front of him on the screen.

MR. STURGE: Yeah so I have the questions here.

MR. SIMMONS: Okay, good.

MR. STURGE: So did you want me to walk through it, or …?

MR. SIMMONS: Yeah, I'm just wondering if you can – you don't need to do it in great detail –

MR. STURGE: No, no.

MR. SIMMONS: – but I'll tell you, from looking at it myself it looks like questions 1 to 4 are answered and that – those questions 1 to 4 being directed towards obtaining information as it relates to the original DG3 estimate.

MR. STURGE: So the first question was a project cost breakdown by component. So that is shown, we break out Muskrat and LIL separately.

MR. SIMMONS: Mm-hmm.

MR. STURGE: And the second question was what – for the portion of each that is our responsibility – so I guess, Newfoundland, Nalcor –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – the details of the funding split between debt and equity –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – and that is shown there, the debt-equity ratios.

Number 3 was for the equity requirement, the split that – between what's already spent and what's still required, and you see –

MR. SIMMONS: Scroll down.

MR. STURGE: – we show equity up to September, and future equity and those types of things.

MR. SIMMONS: Mm-hmm.

MR. STURGE: Number 4 is for the anticipated future equity requirements which, again, you see the future equity number. So, the first four of those questions were answered in this table, yes.

MR. SIMMONS: Right.

And at this point, on November 1, this of course was before you and the Finance team had any update on capital costs, so you weren't in a position at that time to have answered question number 5.

MR. STURGE: That's correct.

MR. SIMMONS: Exhibit 02214, please. This is a bit off topic, but it's – I'm going through in chronological order and I just had a short question on this.

THE COMMISSIONER: Your exhibit number again, sorry?

MR. SIMMONS: I have 02214 –

THE COMMISSIONER: Tab 32.

MR. SIMMONS: – tab 32.

And if we scroll down to the third page, please; this was an email message – it's actually from Mr. Meaney, I believe. And this was the one that had that question in it, if you scroll down, in the second paragraph as what was driving the decrease in LIL compared to the DG3 estimate.

And you were asked, I believe, if there'd ever been an answer to that question and if I recall, you saying that you didn't know if it had ever been answered or not.

MR. STURGE: That was my response, yes.

MR. SIMMONS: Essentially.

Just scroll up to the very bottom of page 1, please, and if we stop there. Here's a message in the same chain from Jason Kean back to Jim Meaney, saying, "With respect to the specific question re decrease in capital for LIL, I advise as follows …." Then it continues on the next day.

So would you agree with me that it appears that that question was promptly answered?

MR. STURGE: It seems as it was, yes.

MR. SIMMONS: Okay, all right.

Now, you've referred a number of times to being off-site during the period leading up to commercial close. And I understand that there were arrangements made for separate space where the Finance team worked outside of the Nalcor offices on Columbus Drive in the period October, November 2013. Is that correct?

MR. STURGE: Yes, from October 1 to –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – December – middle of December we worked off-site, yes.

MR. SIMMONS: Yeah and where were you?

MR. STURGE: We were in a rented property. And it – and the reason we did it is because we wanted to have space that was dedicated over – you know, we could book out for three months. And we had separate meeting rooms set up that Newfoundland could use, that Canada could use and we had a joint meeting room that we would all come together in. So we were effectively in this – was a – it was a house, effectively, we had rented. And, effectively, we were in that house for 2½ months.

MR. SIMMONS: Okay.

MR. STURGE: And –

MR. SIMMONS: And who, generally, from Nalcor was part of that team that moved off-site to just focus on this project for those two-month period?

MR. STURGE: It was – it would've been myself, Auburn Warren, Rob Hull, Jim Meaney, Craig Hippern, some of the Treasury folks occasionally and we had all of the entire modelling team –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – were upstairs working. So it's six or seven people running the models and these estimates.

MR. SIMMONS: Right. So was anyone – did anyone from the government, either Finance or Natural Resources, through that period of October, November, work with you or meet with you at that off (inaudible) site?

MR. STURGE: Mr. Myrden would've been there pretty much through the whole piece. Can't say all the time but –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – very frequently. And many other people could – many of the meetings you see referenced here –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – would've been meetings held there –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – or by conference call with the group that was there, you know, so …

MR. SIMMONS: Okay.

So would Mr. Myrden only attend if he was there for a formal meeting where he would meet and then he would leave? Or did he have some deeper –

MR. STURGE: No, Mr. –

MR. SIMMONS: – kind of involvement?

MR. STURGE: – Myrden would've been there more than others. And I actually recall the day that we priced the final bonds, the actual pricing call. And there was five or six of us in the room and Mr. Myrden was there with us that day.

MR. SIMMONS: Okay, all right.

Now, in that time period, would – what opportunities were there for means of communication with people from government? Because if they're physically somewhere else, presumably it would be telephone or email or a meeting; if you're closer and working more closely together, there'd be more general opportunity to discuss things outside of formal meeting context.

MR. STURGE: It was pretty open and frequent – you know, frequent type discussion there.

MR. SIMMONS: Mm-hmm.

MR. STURGE: Where we were all sort of in a very close space.

MR. SIMMONS: Yeah.

MR. STURGE: And Canada would be there periodically as well with their folks.

MR. SIMMONS: Okay.

So I'm going to ask you a few questions now on the time period, really in the – in mid-November, starting with the 19th of November.

If we can bring up Exhibit P-2523, please.

THE COMMISSIONER: Tab 17.

MR. SIMMONS: Yes, tab 17. These are, I understand, your notes – if we go to page 20. Oh, now I may have this wrong, just a moment now.

I'm looking for a note for the 19th of November so we might just have to scroll up, Madam Clerk, until we find it.

Twenty-five, 23 – okay, we can – let's see. Yes, I think this is it.

THE COMMISSIONER: Page 15.

MR. SIMMONS: If you can bear with me, Commissioner, for a moment.

THE COMMISSIONER: Sure.

MR. SIMMONS: I'm not sure I've got the right reference here.

THE COMMISSIONER: Did you want to – us to take our noon break here then, and maybe you could find that?

MR. SIMMONS: Yes, that may be – I won't be too much longer, Commissioner, so if you do want to take the break, when we come back I should be able to finish up –

THE COMMISSIONER: All right.

MR. SIMMONS: – fairly quickly.

THE COMMISSIONER: Well, let's do that. I think we've got Mr. Lemay on schedule for the Skype at 2, but we'll just delay him a bit –

MR. SIMMONS: Mm-hmm.

THE COMMISSIONER: – because we still have questions from Mr. Buffett potentially and also redirect.

MR. SIMMONS: Yes.

THE COMMISSIONER: So we'll – I'll make some arrangements for that when we break.

MR. SIMMONS: Good.

THE COMMISSIONER: So we'll come back at 2 o'clock.

MR. SIMMONS: Thank you, Commissioner.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

Mr. Simmons, when you're ready.

MR. SIMMONS: Thank you, Commissioner.

So, Mr. Sturge, before lunch I was just gonna pick up and run through just a few of the events – a couple documents in the period from November 19 to the 22, just to put some things in sequence.

So the first one is the exhibit on the screen there now, which is P-02523, tab 17 in your book and it's page 15. And you've previously identified for us that these are notes that you kept of a meeting on November 19, 2013. They begin on the bottom of the left-hand side and it starts out saying, "Call with Canada."

And if I understand from your previous evidence, two of the people who were in attendance at that meeting were Mr. Pelletier and Mr. Myrden from Government of Newfoundland and Labrador. Is that correct?

MR. STURGE: That's correct, yes.

MR. SIMMONS: And on the right-hand side you've made notes of a number of items that were discussed and the third heading is "Cost Overruns." Do you see that there?

MR. STURGE: Yes, I do. Yes.

MR. SIMMONS: And I'm just going to – I'm gonna read down through it and then I have a question for you.

I think what you've written is: definition of cost overruns, from DG3 or from FC – that would be financial close – number.

MR. STURGE: Correct, yes.

MR. SIMMONS: Because, if I understand, at this time there was discussion under way as to what the terms of the COREA provision would be in the financing documents.

MR. STURGE: That's correct, yes.

MR. SIMMONS: Okay.

The next bullet says: "do not seem to be aligned on starting point; BF" – Blair Franklin – "saying that overruns calculated from DG3 (i.e. the $6.2 billion)."

MR. STURGE: Yes.

MR. SIMMONS: The alternative would be calculate then from a different number at financial close, would it?

MR. STURGE: That's correct, yes.

MR. SIMMONS: And then it says: "real dust up on this issue" – got testy between a couple people. "Again, the discussion came back to the need to get Capex" – onto Canada. So –

MR. STURGE: Capex data, I think it says. Yeah.

MR. SIMMONS: "… Capex data to Canada."

MR. STURGE: Yeah.

MR. SIMMONS: So what was the capex data that was being discussed that had to go back to Canada?

MR. STURGE: So at this point it would've been the two items, the breakdown of the capital estimate by contract – by major contract –

MR. SIMMONS: Yes.

MR. STURGE: – and it would've been the chart that shows the side-by-side comparison of the components of the 6.5, including the contingency number.

MR. SIMMONS: Okay.

And Mr. Pelletier and Mr. Myrden were present on this call for that discussion, were they?

MR. STURGE: They would've been on the call, yes.

MR. SIMMONS: Okay.

This was the 19th. Now, we know that on the evening of the 19th Mr. Martin gave his permission to send Canada the information you just described.

MR. STURGE: That's correct –

MR. SIMMONS: Correct?

MR. STURGE: – yes.

MR. SIMMONS: And we've also seen – I don't know if it was shown to you, but there was a message sent to put that data in the data room but not to open it up to Government of Newfoundland and Labrador at that time.

MR. STURGE: Yes, I've seen that, yes.

MR. SIMMONS: Okay.

So let's go to the next day, the 20th, P-02535, please, and that is tab 34.

This is a short message from you to Mr. Warren, Mr. Hull and Mr. Meaney, and this is the one where you say:
"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 LC P cost update data."

And this was very early. This was 6:25 in the morning you actually sent this on the –

MR. STURGE: Yes.

MR. SIMMONS: – day after the meeting we'd just –

MR. STURGE: Yes.

MR. SIMMONS: – looked at. And the first point is you say it's on direction from Ed and Charles. So, at that time, would it have been clear to you that this was something that both Ed Martin and Charles Bown had directed that be done?

MR. STURGE: Well, it was my recollection of the meeting of a few days earlier where Charles had raised the issue as being –

MR. SIMMONS: Yes.

MR. STURGE: – something we should do –

MR. SIMMONS: Yeah.

MR. STURGE: – and then the clearance that Ed gave to do that.

MR. SIMMONS: Okay.

And then it says: "… to walk Donna Brewer and Paul Myrden through the LCP cost update data." So what does that mean?

MR. STURGE: It seems to me to imply that's something more than just the number, but it would've probably been – probably one of those schedules or something like that or –

MR. SIMMONS: Mm-hmm. Okay.

MR. STURGE: – (inaudible).

MR. SIMMONS: So that was the 20th.

And then we'll go to your notes again, P-02523, page 20, and we'll go to your note from the meeting that happened on the next day, November 21.

MR. STURGE: Yes.

MR. SIMMONS: Now, you've been asked about this before. On the left-hand side, halfway down, it says: "Debrief with Ed/Charles, 11/21/13." And it lists the attendees who I understand to have been Ed Martin, Charles Bown, Donna Brewer, Paul Myrden and Paul Morris, correct?

MR. STURGE: That's correct, yeah.

MR. SIMMONS: Mr. Myrden is from Finance, Mr. Morris is from Natural Resources.

MR. STURGE: That's correct.

MR. SIMMONS: And Donna Brewer was deputy minister of Natural Resources.

MR. STURGE: Finance.

MR. SIMMONS: Oh, Finance.

MR. STURGE: Right.

MR. SIMMONS: I'm sorry, of Finance. Charles Bown, deputy minister of Natural Resources.

MR. STURGE: Yes.

MR. SIMMONS: Okay.

And you'd already read out what was – what were identified as the first issues, which was capital cost overruns. And the last bullet there, I think, says – well, no, I'd better get you to read it because it's a bit hard to make out.

MR. STURGE: Okay, yeah, I'll read it.

It says: "Do savings on financing costs and IDC provide some offset to the direct cost increase?"

MR. SIMMONS: Okay.

MR. STURGE: Question mark.

MR. SIMMONS: Now, was this the meeting that had been set up to – as you've said in your previous email – walk through capital cost increases?

MR. STURGE: I'm not a hundred per cent certain it was, but it appears to be at this point we were talking about something that would have indicated that additional capital costs were on the table.

MR. SIMMONS: Okay.

And the bullet just above that says Donna and then there's a colon. So does this indicate something that Ms. Brewer said or contributed to the meeting?

MR. STURGE: That's what I would have done to note, yes.

MR. SIMMONS: The way you'd –

MR. STURGE: Yeah.

MR. SIMMONS: – notify that?

And what does that one say?

MR. STURGE: It says: "Donna: creates problem as NL has no approval for equity until April 1."

MR. SIMMONS: So what do you recall about what this problem was and what Ms. Brewer's concern was? Or how can you explain this?

MR. STURGE: Well, the discussion at this point – and it had been on other issues as well because financial close was delayed. And that the province was concerned that their equity allotment for Nalcor for the fiscal year of 2013-’14 that would have ended on March 31, 2014 –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – had been exhausted and that if we needed any additional equity, they didn’t have approval for that. So that would have either required them to go back to the House of Assembly for a special warrant or us find some other mechanism, but they had no ability.

MR. SIMMONS: So was the existing equity allotment in the province’s budget based on the DG3 number of 6.2 million – billion?

MR. STURGE: It would have been based on the 6.2 and on October 1 financial close.

MR. SIMMONS: Okay.

And under what circumstances would that be a problem in that the province might find itself having to come up with more money than had been budgeted?

MR. STURGE: Because two things would have happened – is they would have had two additional months of funding to pay with equity –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – rather than having them covered by debt.

MR. SIMMONS: Right.

MR. STURGE: And the second issue is that now this would, based on how the COREA thing played out –

MR. SIMMONS: Mmm.

MR. STURGE: – this would potentially create a COREA payment in the month of December 2013.

MR. SIMMONS: Okay.

And the COREA payment would not be created unless the capital cost forecast for the project was greater than the DG3 $6.2-billion number?

MR. STURGE: That’s correct, yes.

MR. SIMMONS: Correct, okay.

MR. STURGE: Yes.

MR. SIMMONS: And then, finally, let’s go to the next day. P-02673, please, which is tab 81 of binder 2. This was the email message that you were looking for yesterday.

MR. STURGE: Yes.

MR. SIMMONS: And at the top of the chain Mr. Warren has sent this message to Mr. Myrden and Mr. Morris. And it’s 10:46 in the morning on November 22, the day after that meeting we just saw.

And if we scroll down, please – you can stop here. He’s forwarded a message from Mr. Martis, who was with, I think, Nalcor’s legal counsel involved in negotiating the terms of the loan guarantee?

MR. STURGE: That’s correct, yes.

MR. SIMMONS: And scroll down a little more, please, to item 1. And what he’s, if I understand – stop there. What I understand he’s doing here is presenting to Nalcor some suggested wording for a proposal to Canada to close out some of the last items that need to be resolved.

MR. STURGE: That’s correct, yes.

MR. SIMMONS: Is that correct?

And item number 1 says: “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 DG3 estimate) using substantially your definition of cost overruns.”

So is there any doubt in your mind here that that 6.5 billion capital cost estimate is referring to the same numbers that have been included in that reconciliation schedule that had been posted to the data room on the 19th?

MR. STURGE: There's no doubt in my mind that that's what it is, yes.

MR. SIMMONS: Okay.

And although this is not worded as saying we are now informing you that the capital cost has grown to 6.5 billion, is this consistent with that, having been a topic of discussion over the previous days, as we just walked through?

MR. STURGE: That would be how I would've put it together as well, yes.

MR. SIMMONS: Yeah, okay.

A couple of questions for you on the creditworthiness issue that Mr. Collins asked you about yesterday. First of all, I understand that originally Mr. Hull had been going to be a witness and was going to speak to this issue and that you were asked if you could cover it off, I guess, as – for expediency by Commission counsel.

MR. STURGE: That was my understanding, yes.

MR. SIMMONS: All right, okay.

So what – can you describe for me what the roles of treasury and Mr. Hull and you would've been in conducting credit assessments of potential contractors for the Lower Churchill Project?

MR. STURGE: Yeah, so the treasury team that reported to Mr. Hull would've been actually doing the work. And this is work that they would've done on – it wouldn't have been the first time they did this work because we would've done creditworthiness assessments on other – in other parts of the business for other reasons; it could be oil and gas, it could be energy marketing.

So it was an area that they would've done – had some exposure too. And they were doing – they would've actually done the creditworthiness assessment and they had completed their work. And the final product of their work we looked at yesterday, I think, was a September 25th –

MR. SIMMONS: We'll go to the month.

MR. STURGE: Okay.

And they would've, at this point obviously, had forwarded their results to Mr. Hull.

MR. SIMMONS: Mm-hmm.

MR. STURGE: And he was passing them on to me with some commentary attached.

MR. SIMMONS: Okay.

So let's look at P-02514, please. It is tab 8 of binder 1 if you wanted to look it up there. We're not going to look at very much of it.

So this is described as a Confidential Memo. The date is September 25, 2013. It's addressed to Ed Over and Ronald Adamcyk, and it comes from Andrew Sinnott, assistant treasurer. So Mr. Sinnott was part of the treasury department at Nalcor, was he?

MR. STURGE: Yes, he would've reported to the corporate treasurer, Scott Pelley, who would've in turn reported to Mr. Hull.

MR. SIMMONS: Right.

So from your review of, you know, the documents before coming here today, would you know if this was the only draft of this document or whether there had been earlier drafts prepared?

MR. STURGE: Of this September 25?

MR. SIMMONS: Yes.

MR. STURGE: I wouldn't know if there were earlier drafts.

MR. SIMMONS: Okay.

MR. STURGE: I don't know. This is the one I saw, right?

MR. SIMMONS: And scroll down, please. Stop there.

Now, in the – under "**Background and Purpose**" in the third bullet there's a reference there to something called "*Guidelines for Credit Worthiness Verification*" and it's got a long document number there. Do you know what that reference is to?

MR. STURGE: That was a Lower Churchill project document that was –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – developed to – for the purpose of assessing creditworthiness. And even though it was a Lower Churchill document, I think the crux of the development of that came out of the corporate treasury team.

MR. SIMMONS: Right. So was that a guideline document for how creditworthiness assessments were to be conducted, not just for the powerhouse spillway contract but for – more broadly, for the project.

MR. STURGE: It would have been for all Lower Churchill contracts that were subject to the creditworthiness.

MR. SIMMONS: Okay.

And if we run down to page 4 on this memo, please? Scroll down. Stop there.

So there's a section here in the memo dealing with "**Creditworthiness Verification: Astaldi Canada Inc.**" Is this the actual formal report on the results of treasury's creditworthiness examination of Astaldi?

MR. STURGE: Yes, it would be. Yes.

MR. SIMMONS: Okay.

That was 25th of September. Now, let's go back to P-02512, please, which is tab 6 of binder 1. This is the email that you were shown earlier from Mr. Hull.

MR. STURGE: Yes.

MR. SIMMONS: So scroll up, please, to the top. Thank you.

So this was September 12, 2013. This is actually some time before the final report we just looked at a moment ago, I believe. And I'm not going to go through this with you but these were comments that Mr. Hull made.

If we go down to the second page, stop there. Continue on. Stop there, okay.

At the end of this message under "**Other**" there's three points there where it says: "Treasury and Risk" had "asked for the following to be provided" and this is kind of three points of follow-up there.

Do you know whether those items were closed off before the 25th?

MR. STURGE: Yes, all three of those were. Yes.

I think the only one that may have been outstanding was the receipt of the financial statements for Astaldi's Canadian subsidiary, but that did subsequently happen.

MR. SIMMONS: Okay.

MR. STURGE: So, all three of them eventually.

MR. SIMMONS: All right.

And if we scroll down further – you can stop here. Now, this is a table that was attached to Mr. Hull's message. And I understand this to be the original of the table that you then took and expanded on somewhat in order to give the evidence you gave yesterday.

MR. STURGE: That's correct, yes.

MR. SIMMONS: Right. Okay.

Okay, thank you very much. Just wanted to clarify that.

That's all my questions, Mr. Sturge.

MR. STURGE: Thank you.

THE COMMISSIONER: Thank you.

Mr. Buffett?

MR. BUFFETT: No questions, Mr. Commissioner.

THE COMMISSIONER: Okay.

Mr. Learmonth, redirect.

MR. LEARMONTH: Thank you.

First, I'd like to enter two exhibits. The first one will be Exhibit P-02728, and that was the PUB-Nalcor-46 document that came from the Public Utilities Board. It was requested, I think, by Mr. –

THE COMMISSIONER: Mr. Hiscock.

MR. LEARMONTH: – Hiscock.

THE COMMISSIONER: (Inaudible.)

MR. LEARMONTH: And the second is an Exhibit P-02690 – I'd like to enter.

THE COMMISSIONER: Okay. The first one was – I'm sorry, I missed the number on the first one.

MR. LEARMONTH: 02728.

THE COMMISSIONER: Okay. So that's the PUB document with the cost-of-service costs of the –

MR. LEARMONTH: Correct.

THE COMMISSIONER: Okay. All right. Both those exhibits will be entered as marked.

MR. LEARMONTH: Okay. Thank you.

Mr. Sturge, you mentioned that if there – if the government was going to acknowledge or agree to a, you know, capital – or recognize a capital cost increase to 6.5 or 6.531, that they would have to go to the House?

MR. STURGE: No, I don't think they would go to the House for the approval of the estimate. My recollection is that increases in capital cost were typically – Cabinet was briefed before. I think probably the only exception to that might have been the 6.5 and possibly because it wasn't sort of a formal AFE shift at that point. But I don't think they would've – I think maybe my comment was if they were short on equity and needed additional equity beyond the appropriated amount, they would have to go back to the House of Assembly. Might've been my comment there.

MR. LEARMONTH: You don't know which situation applied here, do you?

MR. STURGE: In which –

MR. LEARMONTH: It didn't go to Cabinet as far as we know.

MR. STURGE: In the 6.5?

MR. LEARMONTH: Yeah.

MR. STURGE: I actually couldn't tell you for certain if it did or didn't. I know the others because they were more of a formalized process in 2014, '15, '16 and '17. I know they all went to Cabinet.

MR. LEARMONTH: Well, there's no evidence that this went to Cabinet.

MR. STURGE: Yeah.

MR. LEARMONTH: I mean, for example, Derrick Dalley and Paul Davis have both testified –

MR. STURGE: Yeah.

MR. LEARMONTH: – that they never heard of it. And there will be other politicians who will say that never heard of it so –

MR. STURGE: Yeah.

MR. LEARMONTH: – I think it's unlikely that it went to Cabinet.

MR. STURGE: I can't confirm that it did or didn't. I have no reason to believe – I have never seen anything that showed it did, but I wouldn't take that necessarily as evidence that it didn't.

MR. LEARMONTH: Yeah.

But, I come back to a point that you've got a – you know, you're talking about a $300-million-plus capital cost increase. We're throwing around big numbers here but, still, $300 million –

MR. STURGE: Yes.

MR. LEARMONTH: – is a lot of money. Do you agree?

MR. STURGE: Absolutely.

MR. LEARMONTH: And I think people would find it – do find it or may find it very surprising that you can't pull out an email or proof that this money was given – this figure was given and acknowledged by the Province of Newfoundland. What we have here, I suggest, is like a mosaic that, well, I think he knew, and there's this email and it doesn't say it, you know, spot-on, but if you take this and add in this factor and this factor, then they should have known. That's what we're dealing with here

And I wonder if you can explain why there wasn't a clear communication to the Province of Newfoundland? You had a document prepared, you know, you had that reconciliation, the one dated November 19?

MR. STURGE: Yeah.

MR. LEARMONTH: Why did – was this document not sent to the Government of Newfoundland?

MR. STURGE: Well, I mean, I can't be certain that there was no communication because – and the only reason I say that is that any time there has been a cost update, it would always have been Mr. Martin briefing the premier, he –

MR. LEARMONTH: Yeah.

MR. STURGE: – would have briefed the minister. So I can't for certain say he didn't do that.

MR. LEARMONTH: You can't say he did it, either, can you?

MR. STURGE: Absolutely. I –

MR. LEARMONTH: You don't know.

MR. STURGE: I don't know.

MR. LEARMONTH: No.

MR. STURGE: In the case of the emails, I think, you know, your comment, sort of, patching a quilt work together is – I think, the only reason we're doing that is that it's sort of the only physical evidence we have. But – and in terms of the discussion, I'm absolutely certain that we had – we were discussing these concepts, you know, outside of those emails.

MR. LEARMONTH: Yeah.

Well I can tell you that at least one member of the civil service will deny that there was – this information was properly – was communicated to them in the clear, unequivocal way that I think you're suggesting, so – and I'm just saying that isn't it unfortunate that Nalcor didn't take the time – it would have taken about two seconds to send the document to the Province of Newfoundland and then put the whole question – resolve the whole question.

And I, you know – and just as a – the question I have on that is, don't you think before – that's assuming this had to go to Cabinet rather than to the House of Assembly – there would have to be some internal written record of this in the files of the Government of Newfoundland if they received it. Correct? I mean you can't go to – like, for example, one of the bureaucrats isn't gonna go into a minister and say: I'd like you to get this approved by Cabinet, the figure is 6.531, I don't have a document but, you know, just take my word – that's what it is.

MR. STURGE: Yeah, I – you know, I guess as we sit here today where we are, I can't disagree with that. It would be really nice to have a document –

MR. LEARMONTH: Yeah.

MR. STURGE: – that had all that in it. I can't disagree with you.

MR. LEARMONTH: Yeah, because if it had to go to Cabinet – if this figure had to go to Cabinet, you would in all likelihood, following the proper procedure, it would have to go to the Cabinet Secretariat and the Clerk of the House would have to – would be aware of this figure. Correct?

MR. STURGE: You know, that I'm not totally certain because I know Mr. Martin would have done updates and even Mr. Marshall does updates to the Premier and to the minister. I don't know if it always flows through the Cabinet Secretariat process or if it's a bit more informal than that, I –

MR. LEARMONTH: The Clerk, I can tell you, the Clerk of the House of Assembly at the time – or excuse me, the Clerk of the Executive Council will testify that she didn't know anything about this 6.5 number.

MR. STURGE: I can't really help you much more than – I know there's this little circle that I was in at that point in time –

MR. LEARMONTH: Yeah.

MR. STURGE: – I'm pretty certain they did, but I really can't give you any sense of how broad that circle was.

MR. LEARMONTH: Then, well, I'll just ask one question: Why didn't you send an email or put it in Mr. Bown's hand or Mr. (inaudible)? Why didn't you do that? That's normal business procedure, isn't it?

MR. STURGE: Well – yeah, I guess the reason I wouldn't have done it is that we were – you know, as we are all sitting here now discussing these issues is – you know, it was clear to all of us that there was that discussion taking place, so I guess it never probably occurred to us that, you know, that was a necessary thing to do.

MR. LEARMONTH: Well, you know, that's your perception, but I can tell you your perception maybe wrong because –

MR. STURGE: It could very well be, I agree.

MR. LEARMONTH: Yeah.

The next question I have is – Mr. Hiscock asked you about this creative accounting and one other point I wanted to raise with this – under this topic, that's the way he described it – I may have used that term yesterday but in the 6.2 DG3 numbers – well no, the first point is this, that we understand from documentation that the Innu Nation was paid compensation – I won't give the full amount but substantial compensation for redress for the fact that Innu Nation was not consulted on the Upper Churchill deal.

MR. STURGE: That's correct.

MR. LEARMONTH: Do you agree with that?

MR. STURGE: That's correct.

MR. LEARMONTH: Yeah.

And we also know that whatever the amount of that compensation was, was not included in the DG3 numbers. Correct?

MR. STURGE: The Upper Churchill Redress, you're correct, that was viewed to be a Nalcor cost that Nalcor bore, it wasn't in the estimate, you're right.

MR. LEARMONTH: But why wouldn't it be added to the estimate, because the cost would not have been incurred unless Muskrat Falls proceeded, correct?

MR. STURGE: Yeah, indirectly you could get there. I think the issue was that – because there was discussion of whether it should be a CF(L)Co cost. I mean, ultimately it's probably where it should have sat. And I think the conclusion was that – just the whole CF(L)Co situation was too tangly to try to put this is in. So Nalcor, I think, opted to eat that cost themselves rather than – and I think the province actually funded the cost, I think. I think there was a fund set up, but –

MR. LEARMONTH: Yeah. But it wasn't included –

MR. STURGE: That wasn't in the DG3 estimate, you're correct.

MR. LEARMONTH: Do you think it should've been?

MR. STURGE: You know, I suppose it's one of those ones you could argue both ways.

MR. LEARMONTH: Yes.

MR. STURGE: I think the view at the time was that it was clearly an issue that was related to compensation for Churchill Falls –

MR. LEARMONTH: Yeah.

MR. STURGE: – and, you know, wasn't directly related to Muskrat Falls. And you're probably going to find people on both sides of the argument on that one, I would suspect.

MR. LEARMONTH: Right.

Now, if we could just pull up on the screen the exhibit that I just entered, P-02690. Okay, if we just go down a bit to the – where it says Donna Brewer.

Donna Brewer is sending an email to Auburn Warren and you, and – yeah, just you and – Derrick Sturge with copies to Charles Bown at the Government of Newfoundland on March 8, 2014.

MR. STURGE: Yes.

MR. LEARMONTH: And so we're coming up to budget time –

MR. STURGE: Yes –

MR. LEARMONTH: – correct?

MR. STURGE: – that's exactly what is going on.

MR. LEARMONTH: Yeah.

So Donna Brewer says in this email: "Auburn.

"Could you update the attached and return.

"I would like to provide to Minister Johnson.

"House reopens Wednesday March 12 …."

Now, if government already had this updated figure why would they be requesting this in March, do you know?

MR. STURGE: So this was the minister's request document –

MR. LEARMONTH: Yeah.

R. STURGE: – yeah – being updated.

MR. LEARMONTH: Yeah.

MR. STURGE: So, yeah – no, I wasn't – I don't think I suggested they had this document before.

MR. LEARMONTH: No. But if they had the information and it was sufficient for – for example – Cabinet to approve it as an additional capital cost, why would they write you again and ask for the information –

MR. STURGE: I think the difference –

MR. LEARMONTH: – if they already had it?

MR. STURGE: The difference is now that we had – as I think I explained it this morning to someone – is now we had the financing close –

MR. LEARMONTH: Yeah.

MR. STURGE: – we had the updated capital cost and spend profiles, so we'd now processed all of those new pieces of data through our financial models, and we were now getting the equity requirements specific for the coming fiscal year prepared.

So they wouldn't – there's no way we would've had this data at financial close because financial close, in a way, was one of the key inputs into this change in data.

MR. LEARMONTH: Yeah, but this is March 2014.

MR. STURGE: This is March, so this was now part of our budget process that we would go every year, yes.

MR. LEARMONTH: Yeah.

Okay, well, if we just turn to page 3 of the exhibit, you'll see in the top right-hand column we have the figure 6,531.8. Do you see that?

MR. STURGE: Yes, yeah.

MR. LEARMONTH: That's a number.

MR. STURGE: Yeah.

MR. LEARMONTH: And then look at the left column.

It says: "Project budget as at January 18, 2014." Do you see that?

MR. STURGE: Oh – no, where am I missing here?

MR. LEARMONTH: Right here.

MR. STURGE: Project budget …

MR. LEARMONTH: Go down – just go down, yeah.

MR. STURGE: Oh, June 18?

MR. LEARMONTH: No.

MR. STURGE: No.

MR. LEARMONTH: January 18.

MR. STURGE: Where am I –?

MR. LEARMONTH: Okay –

MR. STURGE: Why am I –?

MR. LEARMONTH: – go down a bit, please?

MR. STURGE: Why am I missing this?

MR. LEARMONTH: Can you please go down, Madam Clerk?

MR. STURGE: Oh yes, yes, okay.

MR. LEARMONTH: See it, on the left side?

It says: "Project budget as at January 18" –

MR. STURGE: Yeah.

MR. LEARMONTH: – "2014."

So if this figure had been – you know, was the updated project budget at the time of financial close on November 29, or even December 13, why would the date of either November 29 or December 10 or 13 not appear –

MR. STURGE: Yeah (inaudible) –

MR. LEARMONTH: – as opposed to January 18?

MR. STURGE: There's two reasons for that. One is that the financing had now been calculated. So one of the things that the Investment Evaluation group did bring after Christmas is they took the financing and they now ran it through the financial models and came up with the AFE numbers for financing. So that would've been one of the January 18 things.

And I think the second thing that may have happened is there may – there could've been some alignment of the spend profile in the budget. So while the 6.5 may have not changed, some of the spending – how it got spent – could've shifted, which – those two factors could be the ones leading to a new budget dated January 18.

MR. LEARMONTH: Well, you prepared this document, so you should be able to give a clearer answer.

MR. STURGE: I know a hundred per cent certain that the financing is one of them because the financing numbers had to be calculated, and that wasn't a small job because we were now taking the new financing and the rates –

MR. LEARMONTH: Yeah.

MR. STURGE: – we had achieved, the investment products that we invested in, that all had to be run through here, so that definitely was one of the January 18 updates. So that alone would've created a new set of numbers. And I was then just saying that it could also be that the spend profile had been adjusted as well. I – that I'm certain of.

MR. LEARMONTH: But this information wasn't provided to the Government of Newfoundland until they asked for it, is that right?

MR. STURGE: Well, it would've started being prepared as part of our budget process that we were going through there, right.

MR. LEARMONTH: When?

MR. STURGE: In March.

MR. LEARMONTH: In March.

MR. STURGE: So in March what we would've been showing them is what the equity ask was –

MR. LEARMONTH: Yeah.

MR. STURGE: – for the fiscal year '14-'15.

MR. LEARMONTH: Yeah.

MR. STURGE: And leading into that would've been this data.

MR. LEARMONTH: But you used this figure, you're saying, at – well, we know in the financing documents on November 29, correct? 2013?

MR. STURGE: At November 29 what we would've had is an estimate of, for example, where the Government of Canada rates were going to be and we would've had an estimate of what our investment rates of how we were going to reinvest the proceeds. Once we went through financial close, we now had actual numbers on both of those.

MR. LEARMONTH: But –

MR. STURGE: And this would've reflected that.

MR. LEARMONTH: Okay. Assuming what you're saying is correct for the sake of the question, why then, when you got these figures finalized on January 18, did you not send it, on your own initiative, to the Government of Newfoundland?

MR. STURGE: I – the only thing I can conclude is that we knew we were going through this process – 'cause we go through this process every year – and big part of our budget discussion with the province is all around the equity.

MR. LEARMONTH: Yeah.

MR. STURGE: So that was –

MR. LEARMONTH: But if –

MR. STURGE: That would've fed into that.

MR. LEARMONTH: No, but if you wanted to keep the Province of Newfoundland up to date on project cost estimates, and you had this, we'll say, new calculation as of January 18, why didn't you send it to the Government of Newfoundland on January 18, rather than wait for them to ask for it?

MR. STURGE: Well, I guess at that point we didn't have a formalized reporting mechanism, and really there had be nothing fundamentally changed, because the financing played out as we thought, and there was no surprises in that that would've changed what everyone expected would come out of the financing. So –

MR. LEARMONTH: That's in your opinion.

MR. STURGE: – (inaudible) – in my opinion, yes.

MR. LEARMONTH: Your opinion.

But what do you mean about a reporting mechanism? All you have to do – you could've communicated this information on January 18 to the government by an email. I mean, that – you don't need an elaborate reporting requirement.

MR. STURGE: No, I mean, I'm not –

MR. LEARMONTH: You agree?

MR. STURGE: I'm not disagreeing with that we couldn't, but I was just suggesting that, you know, we do a lot of typed reports and, sort of, we could send a lot of things to the province, I suppose. You could make the argument around a lot of different pieces. But I think our logic here – and, you know, I know that it may not – you may not like my logic, but it was that, you know, we were going to have this discussion as part of the budget process anyway. So it's not like this discussion would never happen.

MR. LEARMONTH: No, I know. Fair enough.

But you haven't answered my question that – the question is this. I put to you that if Nalcor had wanted to keep the Government of Newfoundland and Labrador, who was funding this on behalf of taxpayers – if they'd want to keep them up to date you would have sent this document to the Government of Newfoundland by email transmittal the same as you did on March 11.

There was no need for any, you know, elaborate reporting process or anything like that. It's a very simple thing, could be done in a minute, so why didn't you do it?

MR. STURGE: I can't give you a reason except we didn't create it 'til then but I –

MR. LEARMONTH: Until January 18.

MR. STURGE: I take your point we could have done it. I agree we could have.

MR. LEARMONTH: But you didn't?

MR. STURGE: We didn't.

MR. LEARMONTH: Okay.

And then if we look at your email on page 1 to Donna Brewer where you provided this information – this is March 11 – you say: "Donna, attached is an updated chart as per your request."

MR. STURGE: Yes.

MR. LEARMONTH: And this is in bold and underlined: "**<u>Please note that this chart is based on data that has not yet been made public</u>** and should be used accordingly."

MR. STURGE: That's correct, yes.

MR. LEARMONTH: Well, why hadn't this information been made public?

MR. STURGE: So the 6.5 billion estimate when it changed it was never made public. And I – that wouldn't have been my call not to make it public, but it wasn't. And it actually wasn't made public until – I'm trying to think if it ever was made public, now that I think about it, because I'm trying to fast forward. I know the IE report went out in April 15, 2014, and I believe the 6.5 data in that was redacted. I'm not certain but I believe it was.

MR. LEARMONTH: Yeah.

MR. STURGE: But I don't know if the 6.5 was ever on to itself made public.

MR. LEARMONTH: But, you know, we've heard politician after politician emphasize the – that there's a strong burden or duty on politicians to keep the public up to date on changes to capital cost. We've heard that from many witnesses and I think you're – would you be aware of that evidence?

MR. STURGE: Absolutely, yes.

MR. LEARMONTH: Yeah.

So why are you saying here – like, you're cautioning: Please note – and it's underlined – that this chart is based on data that has not been made to the public. Why didn't Nalcor make the information – why didn't Nalcor communicate this information to the public?

MR. STURGE: It wouldn't have been my decision. And I don't know if that was a discussion that Mr. Martin would have had with the province about how this gets rolled out. I suspect it would have been.

MR. LEARMONTH: You guess that it would have been?

MR. STURGE: I'm only guessing, yes –

MR. LEARMONTH: Yeah.

MR. STURGE: – I'll give you that. And – but I think I was highlighting here the fact that I knew this wasn't public and I wasn't totally certain that Donna would know that or not.

MR. LEARMONTH: Well, she's the deputy minister of Finance; I think she would know that.

MR. STURGE: She is but I think Natural Resources tend to have a more in-depth, day-to-day knowledge of what's happening than Finance. And I was just cautioning here, just to protect her –

MR. LEARMONTH: Yeah.

MR. STURGE: – that she may not know that.

MR. LEARMONTH: Yeah but Charles Bown was on this email too.

MR. STURGE: Yes.

MR. LEARMONTH: So he would have got it also.

MR. STURGE: I mean the decision as to whether it went public; I had no reason why it shouldn't go public. But it wouldn't have been – that wouldn't have been my decision.

MR. LEARMONTH: It wouldn't have made any difference what you thought anyway, right?

MR. STURGE: Probably not.

MR. LEARMONTH: No, it was up to Mr. Martin.

MR. STURGE: I mean it would have been Ed's choice. Yeah.

MR. LEARMONTH: Yeah. Who –

MR. STURGE: And that's his prerogative as the CEO, I suspect but –

MR. LEARMONTH: Well, I don't want to go over that again. But, anyway, he had absolute control over the release of capital cost estimates. Correct?

MR. STURGE: Yes, that was his call.

MR. LEARMONTH: Did you ever discuss – when this figure was revised – well, we know, it was revised as of November 29 because it's in the financing documents. Did you ever approach Mr. Martin and say: Listen, we have a revised figure here, we'd better communicate this to the public? Did you ever ask about that?

MR. STURGE: No, I don't recall having that discussion with him.

MR. LEARMONTH: Why not?

MR. STURGE: Because it would have been his call as to when he released it to the public.

MR. LEARMONTH: Yeah but that doesn't mean you couldn't have prodded him or suggested that it be done forthwith.

MR. STURGE: Yeah. I didn't have that discussion. I do know that when the independent engineer report was released on April 15 that I'm pretty certain the data in there was redacted. And I'm pretty certain that that was an ongoing discussion, not just with Mr. Martin, but also I'm pretty certain the province would have been involved in that discussion.

MR. LEARMONTH: Once again, you're assuming that. Is that correct?

MR. STURGE: Yeah, I'm pretty certain but I'm only saying assuming because I know any time something like that goes out, there's a joint provincial Nalcor thing. I don't think that was just a Nalcor release.

MR. LEARMONTH: Yeah.

But, anyway, Mr. Martin, I guess, by the fact that it wasn't communicated to the public, had decided to sit on it. Is that a fair comment or not?

MR. STURGE: It's all I could conclude. Yes.

MR. LEARMONTH: It's all you can conclude. Now was there ever an AFE done for this 6.531?

MR. STURGE: There was in – so Jim Meaney started the process in 2014. And you recall, yesterday, we had the discussion about the $418 million additional contingency that was being added in and that didn't happen. So then, when that decision was made, Jim then started the process to update all of the AFEs for the $6.5 billion and the financing with the intention of bringing them to the board in March.

MR. LEARMONTH: And did he do that?

MR. STURGE: And he presented – he completed them; they're all done. I actually saw them somewhere in here in an exhibit. He sent them to our corporate secretary for inclusion and gave them to Gilbert, I think, for discussion with Ed first. And they didn't go forward to the board, so –

MR. LEARMONTH: They didn't?

MR. STURGE: No. So, somewhere along the way, Mr. Martin had made the decision that he was going to update the AFE once, I suspected, and not twice.

MR. LEARMONTH: Okay, so when was –

MR. STURGE: That would've –

MR. LEARMONTH: So this never went to the board then?

MR. STURGE: The AFE never got approved. The additional 300 –

MR. LEARMONTH: Well, hold on now – sorry, if I – you're saying now it didn't get approved? I think what you're saying is it never went to the board –

MR. STURGE: It never went to the board, yes.

MR. LEARMONTH: – so it couldn't have been approved by (inaudible).

MR. STURGE: No.

MR. LEARMONTH: Correct?

MR. STURGE: It was approved in the 6.99 update.

MR. LEARMONTH: Yeah, but that's in June of 2014?

MR. STURGE: That's June 2014. Mr. Meaney had prepared the AFEs for discussion with Mr. Martin in mid-March 2014.

MR. LEARMONTH: And he – Mr. Martin decided not to put it to the board, is that correct?

MR. STURGE: It would've had to have been his decision, yes.

MR. LEARMONTH: It would have to have been. All right.

So isn't that – you know, if this figure was known on or about – by November 29, 2013, and the revised AFE wasn't done until June 2014, does that not appear to you to be a very, very long time between those two events?

MR. STURGE: Yeah, it was no reason that AFE – I mean, the reason March was the date is that was our regular scheduled board meeting through all these entities, so I can see the logic of that. And there was no reason – I could see that it shouldn't have been and that's why Jim went through the process to do it.

MR. LEARMONTH: Yeah but you say regular schedule. I mean, if you've got an AFE of over $300 million, that would appear to me to be an important issue that would justify calling, not an emergency meeting, but an unscheduled meeting of the board, even if it was done by telephone, to advise the board of this. Do you agree with that?

MR. STURGE: I expect the only reason it didn't was that in this case – like, normally you're absolutely correct. When – any other time we did cost updates, AFE updates, the board approved the AFE concurrent with the update being released publicly (inaudible) correct. And in this case, the only thing I can see that could've been different is that the board was aware of the 6.5 long before the AFE was being brought forward. So it maybe wasn't the same urgency, I don't know.

MR. LEARMONTH: But –

MR. STURGE: But they weren't – they had yet to approve the financing AFEs.

MR. LEARMONTH: Well – but the board didn't even know – you can't even confirm that the board knew about the 6.5 before financial close. You can't.

MR. STURGE: I –

MR. LEARMONTH: You said it's probable they didn't because it's not in your notes and it's not in the minutes.

MR. STURGE: I can't confirm it but I can confirm they knew it on December 17. That's the first –

MR. LEARMONTH: Okay and what's the basis of your –

MR. STURGE: That would be the –

MR. LEARMONTH: – providing that confirmation?

MR. STURGE: I think there's an update deck that Mr. Martin or Mr. Bennett used –

MR. LEARMONTH: Yeah.

MR. STURGE: – at that board meeting.

MR. LEARMONTH: Yeah, but the horse was out of the barn then. I mean, the documentation was closed; you had the money for – so there was nothing they could've done about it then.

MR. STURGE: Obviously, at that point, you couldn't change the financing. I was just pointing out they were aware of the estimate so –

MR. LEARMONTH: Yeah, but what's the point of telling them after, you know, at a point when there's nothing they can do about it except perceive the information and shrug their shoulders?

MR. STURGE: Again, I'm not a hundred per cent sure they didn't know and may be a question Mr. Martin can clarify. I –

MR. LEARMONTH: Well, you don't want to say anything more about that?

MR. STURGE: I don't know if they did. I mean, I can't – I looked myself to find any evidence that it did go to the board; I couldn't find anything.

MR. LEARMONTH: There's nothing, is there?

MR. STURGE: But that doesn't mean it didn't, you know? So I – that's why I'm –

MR. LEARMONTH: Well, but – you know, we're talking about – you know, Nalcor's a big company. I mean, there are minutes that are required in – you know, for a board to keep. And anything as important as this – I put to you it's a virtual certainty that if items such as a $300 million capital cost increase was discussed, that it would be in the minutes.

MR. STURGE: I would agree that that would likely be a thing that would make it to the minutes, yes.

MR. LEARMONTH: Okay.

MR. STURGE: But I can't – because it's not in the minutes, I can't definitively say that it wasn't discussed. That's the only –

MR. LEARMONTH: But can you – but you – but do you agree that if it isn't in the minutes, it's probable – I know you can't say definitively – but it's probable that it wasn't discussed?

MR. STURGE: I would say it's a higher likelihood that it wasn't, but I –

MR. LEARMONTH: Yeah.

MR. STURGE: – can't say it's a hundred per cent likely –

MR. LEARMONTH: No, no. But a higher probability, yeah, that it wasn't –

MR. STURGE: Yes.

MR. LEARMONTH: – discussed. Okay.

Those are my questions. Thank you.

THE COMMISSIONER: Can I just confirm, Mr. Sturge, what the number was in the federal loan guarantee when it was signed in November 29, 2013?

MR. STURGE: So it was $6.2 billion at that point.

THE COMMISSIONER: Right. But when it was – when the financial close took place, what was the number then?

MR. STURGE: At financial close, it was $6.5 billion.

THE COMMISSIONER: Was it 6.5 or was it 6.531?

MR. STURGE: 6.531.

THE COMMISSIONER: Okay. So –

MR. STURGE: And 6.202, I think, was the –

THE COMMISSIONER: Right.

So – and – pardon me for having to ask you this, but you just said that – just on this last document that was entered, and I'm trying to get this clear in my mind that the numbers weren't actually – the models weren't actually done until after Christmas and it was June 18 that you came up with the – are you saying that it was then that you came up with 6.531?

MR. STURGE: No, there's two pieces to it. So the 6.531 was known at financial close. Then what we had to do is we had to take the models with the 6.531, we had to add in the financing cost that had – 'cause we didn't know the actual cost until December 10 and we didn't know the actual cost – or the investment rate that we would earn on reinvesting that money till probably later in December. So those two pieces then had to be inserted into the financial models and the models rerun with all the actual components of the financial close in it. And that didn't change the 6.531 but it did come up with a reaffirmation, I guess, of the $1.2-billion financing cost that was in it.

THE COMMISSIONER: All right.

Thank you very much, Mr. Sturge. You can step down.

Okay, well our next witness is Mr. Lemay and I understand we're going to be getting him by phone or by Skype.

So we'll take our break here now and that will give us an opportunity to get him on the phone.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay.

All right, Mr. Collins.

MR. COLLINS: Thank you, Commissioner.

I believe our next witness is appearing by Skype, and before we put him on the screen I'd like to ask for an order to enter Exhibits P-02637 to P-02645, and P-02729 and P-02730.

THE COMMISSIONER: All right. So is Mr. Lemay on the screen then? If we could have him brought up.

Those will be marked as numbered.

Okay, there you are.

All right, Mr. Lemay, you'll be affirmed at this time.

Okay, we don't hear him, so we need to –

MR. LEMAY: Are you all hearing me?

THE COMMISSIONER: Yes, we hear you now.

Thank you.

MR. LEMAY: Okay.

THE COMMISSIONER: Can you hear us?

MR. LEMAY: Yes, I do.

THE COMMISSIONER: Okay.

So we're gonna have you affirmed at this time before we start.

MR. LEMAY: Good.

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. LEMAY: Yes, I do.

CLERK: Please state your name.

MR. LEMAY: Paul Lemay.

CLERK: Thank you.

THE COMMISSIONER: Okay.

Mr. Collins.

MR. COLLINS: Mr. Lemay, you've already testified in Phase 1 and you've outlined your experience, and you've testified that you were engaged in May 2011 to produce a Class 3 estimate for the Muskrat Falls Project and that you produced the estimate on December 15, 2011. And you've explained what that estimate covered and what it didn't cover, and what changes were made to it in 2012 before sanction. And I'm not gonna ask you to revisit those points.

Because the estimate is so complicated and contains so many different elements, we're going to focus on labour costs, and particularly on the labour costs of the Muskrat Falls powerhouse, intake and spillway. And I'm going to summarize – start by summarizing, briefly, how the labour costs were estimated. And, Mr. Lemay, you can confirm whether I got this right.

So the three main factors in labour costs are the quantities, performance factors and labour rates. Is that right, Mr. Lemay?

MR. LEMAY: Yes.

MR. COLLINS: And the quantities, say, the powerhouse, needs so much structural concrete and so much rebar and so on. Is that right?

MR. LEMAY: Yes, quite much.

MR. COLLINS: And then the performance factor, we'll say, it takes 10 work hours for every square metre of rebar and two-and-a-half work hours to erect and strip a square metre of formwork and so on. Is that right, Mr. Lemay?

MR. LEMAY: Yes, it is.

MR. COLLINS: And then once you have the quantities and the performance factors, you can multiply them to see how many total labour hours it should take. Is that –?

MR. LEMAY: Exactly.

MR. COLLINS: And then the third factor is the labour rates and the labour rates estimate how much you pay for every work hour, and so maybe $65 an hour or $100 an hour. And by multiplying the total number of labour hours by the labour rates, you get the total labour cost. Is that correct, Mr. Lemay?

MR. LEMAY: Yes, it is.

MR. COLLINS: And so, just as an example, if we could go to P-02644, which is tab 13.

Now, this is a document – this is – if we go to page 2 of this document. This is not your final estimate, Mr. Lemay, but it's an earlier form in a draft and I'm gonna use it just to illustrate how the quantities and labour factors and rates combine to produce a labour cost estimate. So –

MR. LEMAY: Okay.

MR. COLLINS: – if we go to page 2, Madam –

MR. LEMAY: Yes.

MR. COLLINS: – Clerk, and if we scroll down to "**Subtotals - Concrete Directs**" we should see – that's the description, and for that we have a quantity in the next column of 438,000 cubic metres. Could you zoom in on that, Madam Clerk –

MR. LEMAY: Yeah.

MR. COLLINS: – so we can see?

MR. LEMAY: 438,301, that's the total concrete for the powerhouse.

MR. COLLINS: And if we scroll – if we look over under MH, which is man-hours, we get unit 3.16, which was the performance factor that was used in this version of the estimate. And by multiplying those we –

MR. LEMAY: Yes, that's one of them, yeah.

MR. COLLINS: And by multiplying those we should get 1.38 million, which is the number under totals – that's the total number of man-hours or work hours.

MR. LEMAY: Exactly.

MR. COLLINS: And then in the next column we have 64.11 – if you look down two rows – per man-hour. That's the labour rate, what we pay per hour. And by multiplying –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – 1.38 million by 64.11, we get about 88.7 million, which is the total labour cost for concrete directs in this version of the estimate. Is that right, Mr. Lemay?

MR. LEMAY: Yes, that's what I see there.

MR. COLLINS: And so that's generally the significance of the performance factors which are the main thing we're gonna talk about here. The labour rates themselves – the rate per hour, that came from Nalcor, is that right?

MR. LEMAY: Yes, it is.

MR. COLLINS: So you got those rates and it wasn't your job to estimate them.

MR. LEMAY: Repeat that again.

MR. COLLINS: It wasn't your job to estimate the labour rates; you took them from Nalcor.

MR. LEMAY: No. No, it was given to us by Nalcor.

MR. COLLINS: Do you remember who provided them to you?

MR. LEMAY: I believe it was Mark Turpin, but I wasn't sure if it was Mark Turpin or Jason Kean himself.

MR. COLLINS: Okay.

So if we go to P-00094, which is tab 10 in the binder, at page 63.

MR. LEMAY: Just a second.

MR. COLLINS: This is – absolutely. This is Nalcor's Basis of Estimate, and I know this is not a document you produced, but at page 63 they have a list of all-in average hourly rates. Are these the rates that were used in your estimate, to you knowledge?

MR. LEMAY: Yes, I don't have the – comparing list next to me, but these rate were given to us from Nalcor and it was, as you can see, all-inclusive rate.

MR. COLLINS: And so what does an –

MR. LEMAY: All-in average.

MR. COLLINS: What does that mean, an all-in composite rate?

MR. LEMAY: That means that inclusion (inaudible) 10 days – 10 hours per day for seven days pre week.

MR. COLLINS: And so overtime –

MR. LEMAY: So you know where the –

MR. COLLINS: – overtime should be built into that rate.

MR. LEMAY: Oh, yes, because the first 50 hours is straight time, and then the next 10 hours is time and a half, and the other 10 hours are double time, so this is factored into a composite rate, all-in rate for 70 hours a week of work.

MR. COLLINS: Thank you very much, Mr. Lemay.

So we're gonna focus now on the performance factors. The quantities are what they are and the labour rates are what they are, the remaining element of labour costs is performance factors and we're going to focus on that.

When I asked – if we turned to P-02645, that's tab 14.

MR. LEMAY: Yeah.

MR. COLLINS: Now, as I understand it, you produced this document to help explain how you got your labour performance factors and how you benchmarked them against other projects.

MR. LEMAY: Exactly.

MR. COLLINS: So it's quite an important document. And, Commissioner, we're going to spend a fair bit of time on this document because it's quite important to understanding the labour costs.

MR. LEMAY: Um –

MR. COLLINS: So my understanding of how the benchmarking process worked is that this sheet contains data from a range of previous projects, from – for how many labour hours it took for each of the steps involved in pouring concrete.

MR. LEMAY: Exactly.

MR. COLLINS: And so if we start with the first page, in the left column we have description. And underneath description, if we zoom in a little farther, Madam Clerk –

MR. LEMAY: Yeah, place concrete. And then you have incidental: curing, green cut and, oh, foundation prep horizontal and vertical. You want me to explain what it is exactly?

MR. COLLINS: I think we could – I don't think we need to go through, necessarily, all of the steps of preparing concrete, only – can you confirm that this should – if you added up all these steps together, they should give you – that's everything you need to take concrete and place it into the powerhouse in a final way.

MR. LEMAY: Yeah, exactly. That's the way to prepare an estimate, a concrete estimate. You'll have to go through all these item to develop, you know, the final cost per cubic metre for concrete place – put in place.

MR. COLLINS: And so if we go – if we look at farther down, one of the last columns says: Total M-H. That's …?

MR. LEMAY: Total man-hour, yeah.

MR. COLLINS: And that's the total number of man-hours or work hours for each of the projects.

MR. LEMAY: Yeah.

MR. COLLINS: And in the next row down we have: Total MH/M3, which is the total number of direct hours per cubic metre of concrete?

MR. LEMAY: Yeah.

MR. COLLINS: And direct hours here, this means craft labour or carpentry and masonry. It doesn't include –

MR. LEMAY: Exactly.

MR. COLLINS: It doesn't include supervision.

MR. LEMAY: No, the supervision is down below.

MR. COLLINS: And it doesn't include rebar.

MR. LEMAY: No.

MR. COLLINS: And it doesn't include mixing the concrete or delivering it.

MR. LEMAY: Delivering the concrete, it's not there, but placing the concrete, it's the first two line all way – all the way up.

MR. COLLINS: And so –

MR. LEMAY: So the placing of the concrete is included, but not the delivering of the concrete. It's another item.

MR. COLLINS: So the – this starts with concrete delivered on site and ends up –

MR. LEMAY: Yeah.

MR. COLLINS: – with it in the powerhouse.

The next –

MR. LEMAY: Yeah, in the form.

MR. COLLINS: The next row is one that it took me a little longer to understand. This is the Form Ratio.

MR. LEMAY: Mm-hmm.

MR. COLLINS: And as I understand, this is the ratio of how much formwork there is per cubic metre of concrete. Is that –?

MR. LEMAY: Yeah, that is an average. You take the total quantity of cubic metre that you have and you have the total square metre that you're forming and that give a ratio, okay? So that's what you see down there, the form ratio, metres square over cubic metre.

MR. COLLINS: And the significance of that is that the more formwork per cubic metre of concrete, the more complex the pouring job and the more hours you should expect. Is that right?

MR. LEMAY: Not necessarily. You know, it's a ratio that helps when you compare a project to another. Like, you could see, you know, it varies from 0.76, 0.8, 0.9; some are lower, some are higher. So, you know, it's kind of a guideline but has no relation with the productivity factor.

MR. COLLINS: And so if we scroll down a little farther then –

MR. LEMAY: Yeah.

MR. COLLINS: If we scroll down a little farther, Madam Clerk, we have two very small rows; one is Rebar. And that shows how much rebar there is, how many total hours it – were spent erecting the rebar and then the average of how many hours per cubic foot. And then –

MR. LEMAY: It's not cubic –

MR. COLLINS: No? Cubic –

MR. LEMAY: It's not per cubic foot. The – we are all in square metre here.

MR. COLLINS: Square metre.

MR. LEMAY: The rebar –

MR. COLLINS: Sorry.

MR. LEMAY: The –

MR. COLLINS: Sorry.

MR. LEMAY: The quantity of rebar, you know, is –

MR. COLLINS: Square metres.

MR. LEMAY: – per kilogram.

MR. COLLINS: I misspoke. Thank you.

And beneath that, in the last row, we had indirects.

MR. LEMAY: Yeah.

MR. COLLINS: And that's the total number – that's on-site supervision, essentially. Is that right?

MR. LEMAY: Yes, that's the contractor supervision.

MR. COLLINS: So it doesn't include the camp costs, the accommodation costs.

MR. LEMAY: No.

MR. COLLINS: Those things are sometimes called indirects but they are not included in this analysis.

MR. LEMAY: No, not in there. Those are these other indirect; you know, like, the camp, utilities. That's another indirect – type of indirect, doesn't go into there at all.

MR. COLLINS: And so the next big row, which we'll also talk about, is the Global general factor of man-hours per cubic metre. And this shows how many work hours it took per cubic metre of concrete, including rebar and indirects.

MR. LEMAY: Exactly.

MR. COLLINS: So, now, if we scroll back up to the top of the page, Madam Clerk, we have – we see –

MR. LEMAY: Mmm.

MR. COLLINS: – a number of project names, LG-4, Nipawin, LA-1. Could you describe what these projects are, Mr. Lemay?

MR. LEMAY: Yeah, LG-4 is in James Bay, La Grande-4; and Nipawin is a dam project in Saskatchewan; and LA-1 is Laforge-1 in James Bay; LG-1 is La Grande-1. Then you see Grand-Mère. That is more likely near La Tuque. It's not far from Trois-Rivières. You know, it's more in a city job. And you have Eastmain – Eastmain-1 and Eastmain-1-A, the last two column and, of course, the Muskrat Falls factor that we used.

MR. COLLINS: And beneath the names of the projects we have the number of turbines and the type of turbine.

MR. LEMAY: Yeah.

MR. COLLINS: And the significance of the type of turbine, if I understand it – this correctly is that if you have a – a Francis turbine is used for high waterfalls where the water falls a long distance into the turbine. And, as a result, Francis turbine powerhouses end up being very tall and tend to have a smaller amount of water per megawatt; whereas a Kaplan turbine, the water falls a shorter distance and so you need to – it tends to be a shorter powerhouse with a bigger tube because you need more water per megawatt. Is that right?

MR. LEMAY: Exactly, Sir.

MR. COLLINS: And that's – this is the significance of the turbines in benchmarking the turbine, right?

MR. LEMAY: Yeah, yeah, yeah. You got it.

MR. COLLINS: So – now, if we look at the Eastmain projects – if we scroll over to the Eastmain projects, we'll see there isn't actually much data in those columns. Can you tell me why that is?

MR. LEMAY: Yeah.

This – beside, if we talk – if we go back to all of the other column, the data that you see there is that what it really cost or happened at the job. And, of course, Eastmain I did not get, you know, the final production factor that was performed, okay, because it was too recent. So that's why I don't have the final perform factor to compare with all the other project that are back 10, 15, 20 years ago, you know?

MR. COLLINS: So – and what you mean about that is if we look at Nipawin, for example –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – we can see from your – we can see from this exhibit that, say, incidental, curing in total in Nipawin – 82,000 square metres of concrete was cured and it took 0.036 work-hours per square metre. Whereas at Eastmain that data wasn't ready, it wasn't available when you got the data, so you didn't use it. Is that right?

MR. LEMAY: I just want to make sure I'm looking at the same line as you. Can you –

MR. COLLINS: Oh, sorry, I –

MR. LEMAY: – show me again –

MR. COLLINS: – let's –

MR. LEMAY: – which line.

MR. COLLINS: I was looking at Nipawin, curing.

MR. LEMAY: Curing – okay, curing.

Okay, yeah, you have 82,000 square metres and you develop, you know, 2,953 cubic metre. That 0.036 man-hour per square metre –

MR. COLLINS: (Inaudible.)

MR. LEMAY: – and we use in Muskrat Falls almost the same thing, 0.033, for a much larger area.

MR. COLLINS: Yes.

MR. LEMAY: So –

MR. COLLINS: So in – but the reason I'm focusing on the Eastmain to begin with is that in the fall, when you testified, you said that you used data from Eastmain-1 and Eastmain-1-A and that –

MR. LEMAY: Yes.

MR. COLLINS: – you used that data to benchmark the powerhouse and intake. But here –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – there is no recorded data. So to me, there seems to be a bit of an inconsistency. Could you explain that?

MR. LEMAY: Well, if you look at another exhibit that we looked about at the beginning of the questioning today, you saw on Jim Daubersmith summary sheet, you know, all the different factors are the same line with what you see on this one. So what we use for Eastmain is what you see on Jim Daubersmith sheet, okay? On P-02644, page 2.

So if you want to compare the same – what we use on Muskrat Falls, you know, is what Jim had done. And what Jim has used is coming from my experience from Eastmain because when Jim sit down and complete his estimate, I sit down with him, and we went over all the factor (inaudible) –

MR. COLLINS: Mr. Lemay, you're breaking up.

MR. LEMAY: And we – yeah, sorry, you don't hear me?

MR. COLLINS: We lost a few words. You can keep going now.

MR. LEMAY: Okay.

So, you see, all that you see there from Jim Daubersmith summary sheet are in line with comparing with Nipawin for foundation prep, curing, place concrete and everything. So it is not written under the column Eastmain but – because I don't have the final – but I – since I was at Eastmain myself and I did the estimate myself, you know, I know that the factor that we use are very close to what Jim used so –

MR. COLLINS: So –

MR. LEMAY: – and what Jim used looks to what Nipawin was using, so it jives, you know –

MR. COLLINS: So what –

MR. LEMAY: – it is comparable.

MR. COLLINS: – I don't quite understand what you say – what you mean about how you used Eastmain data, which, as I understand, you don't have – you didn't have. How did you use –

MR. LEMAY: I don't have –

MR. COLLINS: You don't have the final data –

MR. LEMAY: – I didn't have the – I didn't have the final –

MR. COLLINS: What did you have?

MR. LEMAY: – because, you know, it's not what I have. What I had, it was the –

MR. COLLINS: The estimate?

MR. LEMAY: – curing, curing factor, you know. While I was in Eastmain, I was checking on the production the people were performing, okay. But one week they were maybe doing 2.4 square metre per hour and other week, it was 2.5, so – so it varies.

So I checked that on – regularly, you know, and I kept record of that, you know, and I kept that I – to be able, you know, to – to prove that we use approximately the same factor from a similar job in Nipawin. But to be – to be concise, to be fair with my summary, I can not show under Eastmain all the values – factor perform because I don't have the final –

MR. COLLINS: So –

MR. LEMAY: – and all the other are final. So what we did in Muskrat Falls, it's – we sat down and we say: Okay, we're gonna go to this production factor, and I knew myself what we had done –

MR. COLLINS: So, can I summarize –

MR. LEMAY: – during work –

MR. COLLINS: – can I –

MR. LEMAY: – during the work.

THE COMMISSIONER: Just let him answer the question –

MR. COLLINS: I apologize.

MS. MURPHY: Thank you.

THE COMMISSIONER: – and then we'll probably be able to understand this.

So you said that what you did in a –Eastmain was what?

MR. LEMAY: What I did in Eastmain, it was taking the – no, no – on the site, weekly, and after (inaudible), I was checking, you know, what kind of factor they were performing, okay. It was not final but I could say that, you know, doing the formwork, it was not 5 hours per square metre they were taking, it was not 2, it was 3, 3.4, something like that. So I kept notes about that for eventual comparison and eventually compare with the final figure we will get, but I could not show on that sheet.

When the question was that, do you have some benchmarking, Mr. Lemay, I said, yes, I have some benchmarking and this is the benchmarking. But, you know, it felt like between two situation is – I'm using a curing factor perform at Eastmain four years ago, not final but curing, okay. And what Jim had done and what we put – what you see under Muskrat Falls is what that Jim had put as a factor, and it looks fairly similar.

MR. COLLINS: So could I – do you mean that your experience at Eastmain validated or confirmed your – the factors you used even though you didn't have the final data?

MR. LEMAY: Yes. Exactly.

MR. COLLINS: Thank you.

So the second –

MR. LEMAY: It was no surprise to me.

MR. COLLINS: – the second question I had about the projects you picked – or a second question – a few weeks ago Mr. Keith Dodson, who's a consultant with Westney – do you know Mr. Dodson?

MR. LEMAY: No.

MR. COLLINS: He testified that he was shown data from La Romaine, Péribonka and Eastmain to back up the labour productivity estimates. You didn't show him that data, did you?

MR. LEMAY: No. I didn't have that information.

MR. COLLINS: And so – since you didn't have that information, you didn't use that information in producing your estimate.

MR. LEMAY: No, not at all. Like I told you, I use, you know, my own experience that was fresh – that was on Eastmain-1.

MR. COLLINS: Very good.

So if we return to the sheet – to P-02645 –

MR. LEMAY: Mm-hmm

MR. COLLINS: – tab 14. On the right –

MR. LEMAY: Yeah.

MR. COLLINS: – we have Muskrat Falls powerhouse and intake estimates for you to – scroll over a bit, Madam Clerk? And, so these – all the other data is actual production values achieved. But these values on the right are your estimates of what could be achieved at Muskrat Falls. Is that right?

MR. LEMAY: (Inaudible.)

MR. COLLINS: So these – these numbers in green on the right –

MR. LEMAY: Yeah.

MR. COLLINS: – the Muskrat Falls data, that is your estimate for – your estimate for what could be achieved –

MR. LEMAY: Muskrat Falls.

MR. COLLINS: – and –

MR. LEMAY: Yeah. Yeah.

MR. COLLINS: – you have the quantities on the left, then the total hours in the middle and the performance factors on the right.

MR. LEMAY: Exactly.

MR. COLLINS: Okay.

And this benchmark – this document here – these projects were used to develop these – this estimate. Is that right?

MR. LEMAY: Yes. It tell – it was used as a guide only –

MR. COLLINS: As a guide only.

MR. LEMAY: – you know. As a guide only, yeah, I see. You know, we – if we compare one and the other, you could see there is no big variation of curing or placing concrete. It –it's in the same range so –

MR. COLLINS: And –

MR. LEMAY: – it looks – it looks all right.

MR. COLLINS: And so that's true for the – for all the concrete hours, and also for the rebar hours. What about the indirects? The – you benchmarked the number of indirects against the other projects, too, right?

MR. LEMAY: Yeah, the indirect hour are shown there, yeah.

MR. COLLINS: And they're not just shown there, but the data from the other projects is used to benchmark the number of indirects you need.

MR. LEMAY: Yeah, total man-hour. That is what it has been recorded for these project, yeah.

MR. COLLINS: For Muskrat Falls I'm asking.

MR. LEMAY: So what is the question?

MR. COLLINS: For Muskrat Falls you estimate 750,000 indirect hours for –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – in the final version, not on the –

THE COMMISSIONER: Excuse me, can we –

MR. COLLINS: Yes.

THE COMMISSIONER: – we may need to go down the screen a little bit –

MR. COLLINS: Oh, yes –

THE COMMISSIONER: – to get to that number.

MR. COLLINS: Could we scroll down a little to see that? That's a good point, Commissioner. You –

THE COMMISSIONER: Just go over to the left a little bit. Can we move that –?

MR. LEMAY: Yea, (inaudible).

MR. COLLINS: To the – just to the right.

MR. LEMAY: (Inaudible.)

MR. COLLINS: Just to the – the Muskrat Falls data is on the right, Commissioner.

THE COMMISSIONER: I know that but I wanna see where – what line is the indirect hours. Okay, so it's – okay –

MR. COLLINS: I apologize.

MR. LEMAY: Indirect are –

THE COMMISSIONER: Okay.

MR. LEMAY: – the light blue.

THE COMMISSIONER: Okay.

MR. COLLINS: Mr. Lemay?

MR. LEMAY: (Inaudible.)

MR. COLLINS: What are you saying, Mr. Lemay?

MR. LEMAY: Just below the rebar.

MR. COLLINS: Yes.

MR. LEMAY: If you push your cursor on the left, you know. Okay.

You see there –

MR. COLLINS: Indirects.

MR. LEMAY: – rebar and then are indirects.

MR. COLLINS: That's right. Let's go to the right column now.

MR. LEMAY: Yeah.

MR. COLLINS: And so you have 754,000 indirects compared to – if we go up to the directs line, it's 1,090,000 directs. That ratio is also benchmarked against these other projects, right?

MR. LEMAY: Yeah.

MR. COLLINS: Thank you.

MR. LEMAY: Yeah.

MR. COLLINS: So if we go to the – we now have to, I'm afraid, explain the other sheets in this exhibit. So this is the first sheet, and this is dated – if we go the bottom left corner.

MR. LEMAY: Yeah.

MR. COLLINS: Oh, I have that wrong. Scroll up, perhaps. I haven't written that down, where this is.

If we go to – yes, the bottom left corner. Could we scroll down a bit farther, Madam Clerk? Up a little. There it is.

It's dated November 8, 2011, so the second – if we go to the second sheet, this contains spillway data. So the first sheet was for the powerhouse and spillway – powerhouse and intake.

MR. LEMAY: Mm-hmm.

MR. COLLINS: The second sheet is for the spillway, and this has three different projects and it has different numbers.

MR. LEMAY: Yeah.

MR. COLLINS: The third sheet is a different powerhouse sheet, also dated November 8, 2011. And it doesn't contain – it has slightly different data, there's no Eastmain, but there is Keenleyside.

Do you – can you tell us why that is, Mr. Lemay?

MR. LEMAY: No, Keenleyside is a project dam in Vancouver, and I was not very familiar with this project and I did not use Keenleyside.

MR. COLLINS: And that's because it's important to know what the projects are that you're benchmarking against. Is that right?

MR. LEMAY: Yeah, it's there, you know, to show, you know, as a comparable project, what kind of factor they have perform, you know, but I am not very familiar with Keenleyside.

MR. COLLINS: So now if we go to the fourth sheet –

MR. LEMAY: Yeah.

MR. COLLINS: – we have a later version of the same sheet from November 26, 2011.

MR. LEMAY: Mm-hmm.

MR. COLLINS: That's in the bottom left corner again.

MR. LEMAY: Mm-hmm.

MR. COLLINS: And this is the same as the first sheet, except if we go to the right, we see there are 200,000 more hours under erecting and stripping formwork.

MR. LEMAY: Yeah.

MR. COLLINS: And that's correct, Mr. Lemay?

And so that –

MR. LEMAY: Yes, it does.

MR. COLLINS: – and that increases your man-hours per cubic metre, and your global general factor.

MR. LEMAY: Yeah, so that is the 20 per cent that I told you that I have add the 200,000 hour, you know? It equals here from one million, 20 per cent to 200,000 hour.

MR. COLLINS: So this is a topic I was going to come to later, but let's focus on it now.

If we go to –

MR. LEMAY: Yeah.

MR. COLLINS: – P-00861, which is tab 8.

MR. LEMAY: Just a second.

MR. COLLINS: This 200,000 hours and the 20 per cent are two important issues about how this labour productivity was estimated. And if we go to page 81 in this document –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – I'm going to read from the bottom of page 81.

MR. LEMAY: Yeah.

MR. COLLINS: It says: "… prior to CCE close-out," – which is capital cost estimate close-out – "SLI has conducted a further review of the structural concrete component of the Project with respect to, amongst others, the aggressiveness of the concreting schedule, as described in the Construction Methodology & Timeline Factors ….

"As a result of this review and not withstanding Nalcor's directive to maintain unchanged the initial estimate assumptions, SLI has elected to carry in the CCE and additional 200 000 labour hours to cover for the inherent loss of labour productivity that will result from the congestion of the concreting work areas and the strain on the supply chain of materials to the worksite."

So –

MR. LEMAY: So –

MR. COLLINS: – the 200,000 hours that were added between page 1 and page 4, are they the 200,000 hours that are referred to here?

MR. LEMAY: Exactly.

MR. COLLINS: And when you said the 20 per cent – in our interviews, you discussed a 20 per cent allowance that you added to labour. Is that also –

MR. LEMAY: Yeah.

MR. COLLINS: – the 200,000 hours?

MR. LEMAY: It is part of it. It has a repercussion, you know, that 20 per cent, you know – what do you mean – the 20 – the – which 20 per cent are you talking about?

MR. COLLINS: This is exactly what I mean. So you discussed in your interview that you made a – added a 20 per cent allowance to all the labour. I can point you to exhibits, if you like.

MR. LEMAY: (Inaudible.)

MR. COLLINS: On the other hand – let's – yes, let's go to the 20 per cent now and resolve this issue.

If we go to P-01677 – sorry, if we go to P-01843, which is tab 11 at page 4.

MR. LEMAY: Which tab is that?

MR. COLLINS: Tab 11.

MR. LEMAY: Okay.

MR. COLLINS: At page 4, you say: "… an amount of 20% of the total direct labor hour corresponding to" – 2.5 million – "hours over a grand total of 12,600,000 direct hours, was included into the base estimate under a lump sum amount of approximately $200 million."

MR. LEMAY: Yeah, but this is the – that 20 per cent is for the whole job. That's for the –

MR. COLLINS: So is it different from the 20 per cent that – for the 200,000 hours?

MR. LEMAY: Oh, yes.

MR. COLLINS: All right. Let's leave that issue for the time being and come back to it. Thank you.

Okay.

But the 200,000 hours is the 200,000 hours that's referred to in SNC-Lavalin's base of estimate?

Mr. Lemay?

MR. LEMAY: Yeah, that 200 – yeah, what is the question?

MR. COLLINS: The 200,000 hours that was added between page 1 and page 4 –

MR. LEMAY: Yeah.

MR. COLLINS: – that is the same as the 200,000 hours in SNC-Lavalin's estimate?

MR. LEMAY: That 200,000, that came, you know, after the review that we had with Nalcor –

MR. COLLINS: And the review –

MR. LEMAY: – sit down and the review – the internal review with Nalcor.

MR. COLLINS: And this is – in mid-November 2011, you reviewed –

MR. LEMAY: Yeah and that –

MR. COLLINS: – the whole estimate with Nalcor and you added 200,000 hours.

MR. LEMAY: Strictly for the concrete of the powerhouse only.

MR. COLLINS: And it's –

MR. LEMAY: That's it.

MR. COLLINS: (Inaudible) –

MR. LEMAY: The 200 million, that refers to 20 per cent of unproductivity coverage (inaudible) –

MR. COLLINS: We'll talk about that later Mr. Lemay. Thank you.

MR. LEMAY: Is that okay?

MR. COLLINS: It is. So –

MR. LEMAY: Good.

MR. COLLINS: – that's helpful. So now – we'll talk now about the use of the performance factors. As I understand it, you considered that because the performance factors come from previous projects, each of which had its own problems, they already account for, in your mind, the problems that come up on construction sites.

So rework is built into the performance factors. And breaks and cold weather, labour disputes, night shifts. Because all those conditions existed on the previous projects, if you take the performance factor, you don't need to add an allowance for those factors; they're already built in. Is that right, Mr. Lemay?

MR. LEMAY: Mm-hmm.

MR. COLLINS: And – so you don't adjust the performance factor based on whether hours are in the summer or the winter; you assume a – the performance factor – the same performance factor works year-round.

MR. LEMAY: Yes.

MR. COLLINS: And similarly, you don't adjust day or night shifts. You don't make special allowances for labour conditions because you assume that those conditions are reflected in the performance factor.

MR. LEMAY: Yes.

MR. COLLINS: Now, in particular, you assume that all seven days of work – all the hours people are working – count towards the number of hours you think are necessary.

MR. LEMAY: Sure.

MR. COLLINS: Because we've sometimes heard that Nalcor, for scheduling purposes, assumes six days of work and a seventh day for rework. But when you do your estimate, you count all seven days of work; when you estimate your capital costs, all seven days of work count towards the number of hours you need.

MR. LEMAY: Yes, I did. I don't know what the schedule people have done, but myself – you know, it's based on 70 hours per week.

MR. COLLINS: That's very helpful.

So now, when we – we received from you your benchmarking document on February 28, which was a couple of days before your March 2 interview. And after we received it, we combed our databases to find anything similar that – any other similar related documents, and we found one document which Nalcor had provided us, which is P-02644. And it's tab 13.

So we've – we looked at this document earlier just to illustrate how the labour costs were estimated. But at page 14 of this document we see a version of the same benchmarking sheet that we saw earlier, but there's only one project, Project "A."

Can you confirm that Project "A" on page 14 is the Nipawin project?

MR. LEMAY: Well, let me compare. I don't want to lie to you.

MR. COLLINS: Please don't.

MR. LEMAY: Nipawin – okay, that's the powerhouse. Oh no, it's not Nipawin, it's not the same quantities. It is – no, that sheet doesn't – oh, excuse me, it's the spillway. Just a second, I'm sorry.

MR. COLLINS: It's okay.

MR. LEMAY: I was not looking at the right pages. Nipawin – okay, Nipawin, 54 – yeah, yeah, that's Nipawin.

MR. COLLINS: Thank you.

On the next sheet we have your spillway – there's a version of the spillway, again with Project "A." And can you confirm that Project "A" here is La Grande-1?

MR. LEMAY: Just a second, again. Confirm that Project "A" is what?

MR. COLLINS: La Grande-1.

MR. LEMAY: Oh, La Grande-1. Yeah, let me check with the other sheet here. La Grande-1, quantities are spillway and – no, that's powerhouse, we're looking at spillway here – spillway. I cannot compare them. I don't have the other sheet with the (inaudible).

MR. COLLINS: The spillway sheet is –

MR. LEMAY: Okay, the spillway – okay, okay, I got – yes, it is. Yes, I got it. Sorry.

MR. COLLINS: No problem.

MR. LEMAY: There's so many summary sheet here. Yeah, it is LG-1.

MR. COLLINS: Thank you.

MR. LEMAY: Good.

MR. COLLINS: And the reason you only included Nipawin is that Nipawin is the most comparable project to your estimate, is that right?

MR. LEMAY: Yes, it's almost, you know, a – it was the best one to compare.

MR. COLLINS: This is the best comparator and the one that's closest to what you estimated?

MR. LEMAY: Yes, it's – that's what – it happened.

MR. COLLINS: And so when you sent it – when you sent this document to Nalcor, you simplified it and you only included that because it was the most important one to focus on. Is that right?

MR. LEMAY: I'm not quite sure. What is your question again?

MR. COLLINS: Instead of sending Nalcor six different projects to look at, you only sent them one project.

MR. LEMAY: Okay.

MR. COLLINS: And it was the most similar project.

MR. LEMAY: Yeah, yeah, yeah.

MR. COLLINS: In your mind.

MR. LEMAY: Yeah, yeah.

MR. COLLINS: Okay.

MR. LEMAY: You're right.

MR. COLLINS: And same with the spillway, it was La Grande-1 was the most important?

MR. LEMAY: Exactly. Yeah, exactly.

MR. COLLINS: Now, I've one other question about these sheets. If we go down to the bottom-left corner again, Madam Clerk, we'll see that the date is actually December 8, 2012. And if we go to the far right, we'll see that the performance data is slightly different from the sheet you provided us. It takes 3.85 hours instead of 3.94 per cubic metre of concrete and it's to go –

MR. LEMAY: Can you show me? Can you show me?

MR. COLLINS: If you compare tab 14, page 4 to –

MR. LEMAY: Tab –

MR. COLLINS: – tab 13, page 14.

MR. LEMAY: Page what? I don't have that here. Page 14 – whoops, we're going to get it. We're going to get it.

So, what are you saying again?

MR. COLLINS: I'm saying that the data on tab 13, page 14 is slightly different, slightly lower than the data on tab 14, page 4. And this document is –

MR. LEMAY: Yeah.

MR. COLLINS: – more recent.

MR. LEMAY: Yeah, 12th –

MR. COLLINS: Tab –

MR. LEMAY: – of December and this is – yeah, there's about a week after. So that is probably due to the final adjustment from Jim Daubersmith, the fine-tuning, you know.

MR. COLLINS: So it's actually tab 13 we should focus on, not tab 14, which you provided to us.

MR. LEMAY: Yeah.

MR. COLLINS: Thank you.

MR. LEMAY: Welcome.

MR. COLLINS: So if we go now to P-00094, tab 10, p 69.

MR. LEMAY: Just a second.

MR. COLLINS: Of course.

MR. LEMAY: P what?

MR. COLLINS: P-00094, which is tab 10.

MR. LEMAY: Tab 10 – excuse me.

MR. COLLINS: And page 69, Madam Clerk.

Now, this is Nalcor's basis of estimate and this is Nalcor's own summary for itself and for its decision-makers of how –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – this cost estimate was done.

If we scroll down, we see what Nalcor says are the production rates, the performance factors used in the estimate. And my understanding from you is that these aren't correct?

MR. LEMAY: Yeah, there is a little difference as you can see there. Where it's 6-something and it's 5.97, there is no big, big difference, but I am not seeing that – I have not made that summary sheet on page 69, you know.

MR. COLLINS: So it seems that somehow this sheet is inaccurate.

MR. LEMAY: It is. It is not – yeah. It is not accurate.

MR. COLLINS: Did – so – is it your – did Nalcor change the performance factors in the estimate after December 15, 2011?

MR. LEMAY: I cannot answer that.

MR. COLLINS: So you don't know if they maybe changed the performance factors. But you know –

MR. LEMAY: No.

MR. COLLINS: – that these performance factors aren't right.

MR. LEMAY: Yeah, well, there is not a big, big difference, you know, 6.44 and 5.97 but, you know, it is not the same thing. Why it's different, I don't know; you have to ask them.

MR. COLLINS: They also have – they also include batching concrete as part of their estimate. And my understanding was –

MR. LEMAY: Yeah.

MR. COLLINS: – batching concrete was not part of your estimate.

MR. LEMAY: No, it is not. And neither haul concrete, it's not part –

MR. COLLINS: So –

MR. LEMAY: – my batch and haul are including the cost of the supply of the concrete, you know, that you see here and there – in the estimate about $235 per cubic metre, this is a price f.o.b. site.

MR. COLLINS: So if you deducted those you'd be down to 5.19 hours per cubic metre, is that right?

MR. LEMAY: I have not worked that out, you have to multiply again –

MR. COLLINS: That's okay –

MR. LEMAY: – (inaudible) –

MR. COLLINS: – it's a question –

MR. LEMAY: – times two, blah, blah, blah, blah, blah.

MR. COLLINS: But if – this number appears to be lower than yours and it appears to include additional steps that were not included in yours.

MR. LEMAY: It looks like.

MR. COLLINS: And that's a question for someone else.

MR. LEMAY: Yup.

MR. COLLINS: So, thank you for that.

Now –

MR. LEMAY: You're welcome.

MR. COLLINS: There's a relationship between the capital cost estimate and the schedule; so can you explain how you used the schedule when developing your capital cost estimate?

MR. LEMAY: I have not used the schedule at all. That was another group of people who does the schedule and of course when we are doing our estimate it create hours and, you know, we are putting that on a small sheet, you know, 8 by 11 and say, okay, with so many people during so many weeks, you know, it will take automatically so many months.

So we ended up, you know, with a very preliminary schedule, general schedule, just to see are we talking of a job of four or 10 years, you know. So that's all – that's the only check, schedule check that we're doing. The real schedule was done by somebody else.

MR. COLLINS: So this estimate –

MR. LEMAY: (Inaudible.)

MR. COLLINS: – is pretty much based only on the quantities and there's no – it wasn't tied together with a schedule in any detailed way?

MR. LEMAY: Not the estimate, no. Well, I say no. You are saying that my estimate is not in line with their schedule. I never compared a schedule, I never seen it really, you know? So I cannot say it was not compatible with the schedule or not. I am not seeing other schedule – the real one, I mean, you know.

MR. COLLINS: So there's no connection at all between your estimate and the schedule?

MR. LEMAY: No, this is two activities separate.

MR. COLLINS: Thank you, Mr. Lemay.

MR. LEMAY: Welcome.

MR. COLLINS: Now, if we go back to P-00861, tab 8, page 79, this is the SNC Basis of Estimate again. If we go down, you see –

THE COMMISSIONER: Okay, tab …?

MR. COLLINS: Sorry –

THE COMMISSIONER: What?

MR. COLLINS: – this is tab 8.

MR. LEMAY: Yeah, which page?

MR. COLLINS: Page 79.

MR. LEMAY: Yeah.

MR. COLLINS: This is your – the – your company's Basis of Estimate again. And if we go down to the Cold Weather Concreting –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – it says: "costs are included for heating concrete during winter months (generally ½ of each year) as well as a provision for a temporary building enclosure for the Intakes and Powerhouse only at a cost of $1320/m2 (plus heating and lighting costs) for a 'substantial' building that would be insulated and structurally capable of supporting gantry cranes for work inside."

Is that your understanding, Mr. Lemay?

MR. LEMAY: Yeah.

MR. COLLINS: And so because of this temporary enclosure, you were comfortable to assume that workers would be able to achieve the same productivity in winter and summer. All year round they'd be pouring 3.94 direct hours per cubic metre, and they'd be able to pour 585 cubic metres a day all year round because of the enclosure.

MR. LEMAY: Exactly. That's the purpose of it.

MR. COLLINS: Yeah.

Do you have experience with temporary enclosures of this kind?

MR. LEMAY: Yes.

I have – I had two experience myself; one at LA-1 and one at Eastmain-1-A –

MR. COLLINS: Sorry –

MR. LEMAY: – where we had a –

MR. COLLINS: LA-1 is Laforge-1?

MR. LEMAY: Yes, Laforge-1 and Eastmain-1 –

MR. COLLINS: A.

MR. LEMAY: – Eastmain-1-A, yeah.

MR. COLLINS: And in those cases did the enclosures cover the whole powerhouse and intake?

MR. LEMAY: The whole powerhouse up to a certain level. Not including, you know, the structural –

MR. COLLINS: Steel?

MR. LEMAY: – permanent structure. Strictly, you know, up to the alternator floor of the concrete floor of the powerhouse, not the whole structure itself, you know?

MR. COLLINS: What about –

MR. LEMAY: It covers two (inaudible).

MR. COLLINS: What about the other projects you benchmarked against? What about Nipawin, for example? Did that have – did they work under a temporary enclosure?

MR. LEMAY: Not Nipawin. You mean, Laforge, right?

MR. COLLINS: Laforge they worked under a temporary enclosure. Did Nipawin –

MR. LEMAY: Yeah.

MR. COLLINS: – they didn't work under –

MR. LEMAY: I never said that there were –

MR. COLLINS: No.

MR. LEMAY: – temporary building in Nipawin. I said Laforge and Eastmain-1-A.

MR. COLLINS: I'm asking – the other projects you benchmarked against, like Nipawin; did Nipawin have a temporary enclosure?

MR. LEMAY: I don't know.

MR. COLLINS: You don't know?

MR. LEMAY: No.

MR. COLLINS: So – and we don't – so you mentioned Eastmain-1-A but as we saw we don't actually have the final data from Eastmain-1-A to compare with.

MR. LEMAY: Yeah, exactly.

MR. COLLINS: And at Laforge-1, if we go back to P-02645 –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – and we look at Laforge-1 ,which is LA-1, and scroll down we'll see that it took six hours per cubic metre of concrete and including rebar and indirects, 10 hours per cubic metre. It's the worst performance data of any of these projects.

MR. LEMAY: Just a second now while I – so what are you saying again?

MR. COLLINS: I'm saying that Laforge-1, which appears to be the only project here where the workers worked under a temporary enclosure –

MR. LEMAY: Yeah.

MR. COLLINS: – has the worst performance data of any of the projects you compared us to.

MR. LEMAY: Well it depends, you know, at LA-1 the portion that has been covered was strictly the invert. It was not covering the whole concrete structure at Eastmain – at Laforge-1, okay? So it was not – we cannot compare the temporary covering, the winter shelter building, with the data that I showed you on these pages with the benchmarking. There is no relation, you know, in between because I was not – we were comparing this project for the concrete matter but not for the building shelter.

We cannot compare because if I recall in LA-1 the winter shelter did not cover the whole concrete structure, you know? So there is a good portion of it that has been done open sky during, you know, probably maybe different weather condition. So it's not appropriate really to compare apples and apples with winter sheltering.

MR. COLLINS: You were benchmarking a project where a lot of the concrete was planned to be poured in the winter under a temporary shelter, but you didn't – none of the projects you were comparing it to really had that condition except for one, which was an outlier. And you didn't make any allowance for the fact that workers would be working under a temporary shelter. Is that right?

MR. LEMAY: Yeah, well, when you have a winter shelter, you know, you should expect, you know, to have about the same production factor during the summertime, you know. And which portion it has affect or not, you know, we'll have to remake a calculation – is it applicable or not, you know; I cannot make a comparison sheet that reunite all the various condition that happened on these two projects and say it is comparable all the way down with every aspect of it, you know.

I was trying to show you that the factor that we use for Muskrat Falls – we did not pick up numbers from the clouds; we did a totally analysis, you know, of the factor that we can recall – we could find and we tried to compare so we made the most accurate possible estimate. But, you know, perfection does not exist and we cannot be – we cannot have things to be compared everywhere for everything.

MR. COLLINS: Isn't the idea of benchmarking that you choose projects that are basically comparable and then you adjust the production factors based on the differences between your project and theirs. So if you apply –

MR. LEMAY: Yeah, in a –

MR. COLLINS: If it's a factor in – if it's a disadvantageous factor – a disadvantage that this project has that the other projects didn't have, shouldn't you make some allowance for it?

MR. LEMAY: You know, and to an ideal world that's what would have – best to happen but, like I told you, it was not a copy-paste job. You know, they say: Oh, exactly, we're going to do that plan. You know, there is some difference here and there and we tried to do the best we could, you know.

MR. COLLINS: I'm going to suggest that a temporary structure is quite a significant factor when you consider productivity. And one reason is that – say you're planning – say you start work in the middle of the summer, the first thing you need to do is build a temporary structure. And while you are building it, it's in the way and it's going to be obstructing workers.

And then all winter long you need to work underneath it. And we've heard testimony that these temporary structures, they have to have huge doors. And every time you open the door, you know, in Labrador, in winter, the air blows in at -30 degrees. It's actually very cold inside the structure no matter how much you heat it. You need to hoard the concrete, even underneath the temporary structure.

Isn't that all possible, Mr. Lemay?

MR. LEMAY: Well, you know, you – when you install a winter shelter, you don't open the door like this, like you mentioned and losing all your heat. When you pour the concrete, it is done through big special pipe, special opening, and when you open the door, it's for a very short period of time for a special delivery, and the door remain open a very small period of time.

You know, it does not affect that much, you know, the temperature inside. So the guys say: eh, close the door, we're freezing here. You know, it's big and it does not really affect the, you know, the production.

MR. COLLINS: No?

MR. LEMAY: We had – the winter shelter – no. The winter – the activities inside of the powerhouse, under the winter shelter, you know, like I told you is going smoothly. There is some little interference even there, when you have to enter some piece of equipment, bring the concrete, but it is really minimal – minimum impact.

MR. COLLINS: The first summer you spend building the temporary structure around the work site. Then, the second summer, you've built a temporary enclosure around only two units. So the second summer, you need to take it down and move it to cover the other two units for the next winter. And so –

MR. LEMAY: No –

MR. COLLINS: – you spend both summers with the temporary enclosure in the way, and both winters you're working under this enclosure.

MR. LEMAY: No, that winter shelter, you know, is standing up in the air with huge columns that are included, you know, in – that are incorporated in the concrete column, so – and concrete wall. You almost – after you walk there, you know, you don't see those columns, so they are not in the way, really, when you are building your powerhouse.

When you do your work, your winter shelter properly, you align your big column support in integrating them into your concrete structure so you don't have to dismantle it. You cannot dismantle; it is cast in the concrete. So you have to, you know, just move the horizontal part and the temporary – what do you call that, the rolling bridge – small rolling bridge, you know. That's the only thing that you will transform – transport from one group to another.

So that – you would do that at the end of the fall, ready to be in line with the winter production – a winter session. So, really, when you planify your work properly, the erection of the winter shelter is not in the way that much significantly.

MR. COLLINS: So it's an unfortunate coincidence that Laforge has the worst productivity data of any of the projects you compared it to.

MR. LEMAY: No, I told you, we did not cover – we cannot compare, you know, Muskrat Falls and Laforge-1 as winter shelter. It was two different type of winter shelter, Mr. Collins, completely.

MR. COLLINS: Okay.

MR. LEMAY: There is no comparison.

MR. COLLINS: So – but Nipawin is a much more comparable project in your mind.

MR. LEMAY: Yeah, but I don't know if they had a winter shelter.

MR. COLLINS: Okay.

So let's return to the 20 per cent allowance you said you added to all labour hours.

MR. LEMAY: Yeah.

MR. COLLINS: We almost discussed this earlier. So you added that to reflect the risk of labour unproductivity, that's right?

MR. LEMAY: Yes, I did.

MR. COLLINS: And another time you said that you added a $200 million allowance to reflect poor labour productivity, that's the same thing – the 20 per cent labour allowance and the $200 million labour allowance, that's the same thing, right?

MR. LEMAY: Well, the 20 per cent – the $200 million came – that is total – going to start at the beginning. All the work for the direct – all the direct hour of the project are 10 million hours, okay? They had the capital cost estimate is 10 million hours.

So we took 20 per cent of that, which is 2 million hour, okay, at $100 per hour. So that makes the $200 million to cover for the labour unproductivity, which is equal to 20 per cent. That's how we have calculate that. You understand?

MR. COLLINS: Yes.

And just to follow up, when you told Grant Thornton that your productivity rate was five hours per cubic metre instead of four hours per cubic metre, the difference is the 20 per cent allowance for labour of productivity. Is that right?

MR. LEMAY: Well, I don't recall that moment that I said that. Was it before or after?

MR. COLLINS: If –

MR. LEMAY: But, you know –

MR. COLLINS: If we go to P –

MR. LEMAY: (Inaudible.)

MR. COLLINS: If we go to P-01677, tab 12, page 33, you say – page 33. You say: "… *Astaldi has used a productivity average of 7 man-hour/ m3, compared to 5 man-hour/ m3 for my estimate*."

MR. LEMAY: Okay. Oh yeah, I remember now. Okay.

MR. COLLINS: So you showed us earlier 3.85 and 3.94.

MR. LEMAY: Yeah, so the 3.9 to 4.4, that's the 20 per cent.

MR. COLLINS: So you add 20 per cent, then it's close to five and you round up?

MR. LEMAY: Yeah, exactly. You're right.

MR. COLLINS: Right.

MR. LEMAY: That's exactly it.

MR. COLLINS: Did the 20 per cent allowance apply to all labour hours, direct and indirect? Or does it only apply to direct labour hours?

MR. LEMAY: Only direct labour hour.

MR. COLLINS: So – very good.

So we've been asked for documents – we've asked you for documents in the past showing where in the estimate the $200 million is found and how it's justified. And I – we haven't really identified that. Can you explain why?

MR. LEMAY: The thing is we use – the software system that we use to do the estimate, I could not access that software anymore –

MR. COLLINS: No.

MR. LEMAY: – because, you know, it has been too long. You know, we had that until 2014 and, since 2014, we did not renew the licence with HCSS software system so I was not able to go into that HCSS system and call an output showing sub-item that will show you, hey, here is the $30 per hour that generates the 300 million, you know, that I was explaining you earlier. I cannot show you the – that because I don't have access to that software system.

MR. COLLINS: And –

MR. LEMAY: But I told you I did include it. It is included in the 5.1 capital cost.

MR. COLLINS: And the – so you can't show us where it is; you also can't show us any justification at the time saying – an email saying: I am gonna add $200 million to the capital estimate. Is that okay? Or a team meeting where you said: We're going to add $200 million. Or even a sheet where, I don't know, on November 24, there was two – it was one number and then it went – it increased by $200 million.

Do you have any pieces of paper at all that show the addition of $200 million?

MR. LEMAY: Unfortunately not. But I told you, I told my software responsible to do it and it did it.

MR. COLLINS: So and if we go to P-00861, which is tab 8, this is the SNC-Lavalin Basis of Estimate again. I couldn't find any reference to the $200 million in here.

MR. LEMAY: Well, again, that Basis of Estimate printout that you see there is not the last issue of it, okay?

MR. COLLINS: It says on the front the 5th of July, 2012. Did you add the 200 million after that?

MR. LEMAY: No.

The $200 million, I told you, it is in the capital cost estimate that is prior to 15 December, 2011.

MR. COLLINS: Yes, I thought so.

So are you saying this July 2012 document was – it was –

MR. LEMAY: Not the latest one that had to go with – that had to be turned to Nalcor. It's not the latest edition, the last, last edition –

MR. COLLINS: Would the last –

MR. LEMAY: – that would have –

MR. COLLINS: – last edition –

MR. LEMAY: – that would have – yeah – that would have mentioned a – we have included, you know, $200 million for – on labour productivity.

MR. COLLINS: Do you mean it isn't final or it isn't – is there a subsequent version that contains the $200 million?

MR. LEMAY: No.

I'm saying that what I – the document that I see here is not the last edition.

MR. COLLINS: Is – can you –

MR. LEMAY: And there was no (inaudible).

MR. COLLINS: – send us a version –

MR. LEMAY: I recall there was no other document because Jason Kean says to Jean-Daniel Tremblay, I believe: Don't finish it, I'm taking care of it.

MR. COLLINS: Yeah, so you said – so this document, this is a draft document, it was never completed. But this is the –

MR. LEMAY: Yeah.

MR. COLLINS: – final version from July 2012. Are you saying –

MR. LEMAY: Mm-hmm.

MR. COLLINS: – that even as of July 2012, the $200 million allowance for labour productivity it still hadn’t been recorded?

MR. LEMAY: I don’t know.

MR. COLLINS: Isn’t –

MR. LEMAY: It was in the estimate, but it was not written. I could not see it was written somewhere.

MR. COLLINS: Isn’t that quite a significant –

MR. LEMAY: You’re asking me –

MR. COLLINS: – decision, to add $200 million to the estimate?

MR. LEMAY: Of course, it would have been appropriate to write it, that in the Basis of Estimate, but I’m telling you, this edition that you see here does not talk about it and it should. But since it’s not the right one, it doesn’t say it.

MR. COLLINS: If you can find any further evidence that this $200 million was added, I’d very much appreciate that.

MR. LEMAY: Oh, I will.

MR. COLLINS: Let’s – so let’s return to the project you chose to benchmark labour productivity against. Most of them happened, you know, quite a – quite some time ago. We have La Grande-4, that’s 1974; Nipawin, 1986; Laforge-1, 1990; La Grande-1, 1992; Grand-Mère is the best, 2004. Is that right, Mr. Lemay?

MR. LEMAY: And what is the question again?

MR. COLLINS: These projects happened – most of them – quite some time ago, didn’t they?

MR. LEMAY: Yeah. Yes, of course, you see the date down below.

MR. COLLINS: Are you aware of construction productivity trends? Has construction productivity been rising or falling in general?

MR. LEMAY: I have not followed that myself, you know, specifically.

MR. COLLINS: You’re not aware of any trends? So we’ve heard from – earlier from Mr. Keith Dodson that his firm has been tracking labour productivity and it’s generally been falling. You have no – you don’t know if that’s true?

MR. LEMAY: Well, he can say whatever he wants, but I’m not aware of that statement, you know, from Mr. Dodson. I don’t even – I didn’t even know that these people had been involved in the project until you spoke to me about it when we met March 2.

MR. COLLINS: Do you investigate North American labour productivity trends? You’re a professional estimator; do you go to workshops? Do you read papers?

MR. LEMAY: It happens sometime but not in that level of detail. I know if the production for a type – this type of powerhouse, you know, being built had decrease or increase, not, you know, the – I don’t think there is a workshop dedicated and comparable to what we’re doing that would – you know, to be followed.

MR. COLLINS: So you’ve benchmarked Muskrat Falls productivity against a range of Quebec sites and against Nipawin. So let’s talk about Nipawin first, which I understand was the main project you benchmarked it against. Do you know if Nipawin was a unionized site?

MR. LEMAY: No.

MR. COLLINS: You didn’t investigate that?

MR. LEMAY: No, that was happen, you know, in 1985, and I did not check that.

MR. COLLINS: Did you work at Nipawin?

MR. LEMAY: No.

MR. COLLINS: Do you know if foremen were free to work at Nipawin?

MR. LEMAY: I don’t know.

MR. COLLINS: Do you know were there any restrictions on crew composition?

MR. LEMAY: Not either.

MR. COLLINS: Do you know anything about the environmental rules?

MR. LEMAY: Not at all.

MR. COLLINS: Quality assurance?

MR. LEMAY: I was not there, you know? It's a job that has been done in 1985, and the only backup I had is the production factor that was performed, you know, on that job. But I did not investigate, you know, every other condition.

MR. COLLINS: Why did you think Nipawin was the most comparable of the projects we were looking at? It's a much smaller project.

MR. LEMAY: It's because –

MR. COLLINS: It's very – it's a long time ago.

MR. LEMAY: – no, no. It's a Kaplan type – that's the –

MR. COLLINS: It's not the only –

MR. LEMAY: – the turbine is a Kaplan type.

MR. COLLINS: If we go to tab 14, which is your benchmarking data, it's not the only Kaplan turbine there.

MR. LEMAY: I know but Nipawin happens to be one of them, and, you know, I had to line up on one or the other, and that's the one that I choose. I cannot take all of them, you know?

MR. COLLINS: Do you know if it was actually a remote a site, like Muskrat Falls, or if the workers lived in the nearby town of Nipawin?

MR. LEMAY: That's a good question. I don't know.

MR. COLLINS: No? Do you know anything about the safety culture at Nipawin? If the workers had to wear PPE, if they had to fence themselves off?

MR. LEMAY: I was not there. I don't know, Mr. Collins.

MR. COLLINS: What about breaks? Were breaks paid?

MS. MURPHY: Mr. Commissioner –

MR. LEMAY: But what?

MS. MURPHY: Commissioner?

THE COMMISSIONER: Excuse me just for a second, Mr. –

MR. LEMAY: Yeah.

THE COMMISSIONER: – Lemay.

MS. MURPHY: I would just like to note –

MR. LEMAY: Yeah.

MS. MURPHY: – that the witness has repeatedly said that he was not on site at Nipawin and that he didn't look this data up. So this line of questioning continuing down every single heading of every item of day-to-day work on the project, perhaps he's made his point?

THE COMMISSIONER: Okay. What – your response, Mr. Collins?

MR. COLLINS: There's a large number of factors relevant to labour productivity. I think asking once about a range of them is appropriate.

THE COMMISSIONER: Yeah, I agree. I mean, notwithstanding the fact that Mr. Lemay wasn't at this project, it's a project that he used to benchmark Muskrat Falls – the Muskrat Falls estimate. And if there are factors that may well impact that benchmarking, I think they should be put to Mr. Lemay, and he can indicate whether he considered them or he didn't.

So go ahead, Mr. Collins.

MR. COLLINS: So we've heard that at Muskrat Falls areas of the work site are often fenced off for safety reasons until they're fully safe for workers. And that workers –

MR. LEMAY: Excuse me –

MR. COLLINS: – we've heard –

MR. LEMAY: – excuse me, what did you say?

MR. COLLINS: We've heard that at the Muskrat Falls work site, areas of the site are often fenced off until – until the area is fully prepared for construction work so that it's safe, workers aren't allowed through the area. Or perhaps if work is being done above then it will be fenced off and so workers have a limited numbers of routes they can go through and they often have to take circuitous routes from one place to another. You didn't – do you know if that was the case at Nipawin?

MR. LEMAY: I don't know, I was not either at Nipawin and I was not on the site on Muskrat Falls. I don't know what happen at Muskrat Falls and I was not at Nipawin, so –

MR. COLLINS: I think –

MR. LEMAY: – I was involved with the estimate only.

MR. COLLINS: – I meant to ask you about the Keenleyside project which we discussed earlier, where you did have the data and you ultimately excluded it and didn't consider it. You said you excluded the Keenleyside data because you didn't know very much about it, but it seems to me you don't know very much about Nipawin either. Why did you exclude Keenleyside but not Nipawin?

MR. LEMAY: I told you, Keenleyside was in Vancouver and I never heard about it as much as I heard about Nipawin. Nipawin I had, you know, I had – Nipawin, I was working for a company who built Nipawin, but Keenleyside I have never, you know – I don't even know who built Keenleyside, so no.

So it came on the sheet because Jim Daubersmith, I believe, had some knowledge about that – that job in Vancouver but personally since I didn't have anything about it I prefer to remain with Nipawin because I worked for a company who built it and I – I could trust more the factor of Nipawin than another one.

MR. COLLINS: If we – if we go to P-02645, on page 3, we can see that Nipawin –

THE COMMISSIONER: Tab 14.

MR. LEMAY: – tab 14 – we can see that at Nipawin it took on average 6.2 hours per cubic metre, whereas at Nipawin [sp. Keenleyside] it took 9.48, which is almost 50 per cent more. So another difference between Keenleyside and Nipawin – which you didn't know very much about either of them – is that one had a much better productivity number than the other. Is that right, Mr. Lemay?

MR. LEMAY: So which line you're comparing again?

MR. COLLINS: If we compare the global general factor –

MR. LEMAY: Yes.

MR. COLLINS: – the last blue line, we see Nipawin, 6.22 –

MR. LEMAY: Yes.

MR. COLLINS: – and Keenleyside, 9.48.

MR. LEMAY: Yeah.

MR. COLLINS: So in Nipawin –

MR. LEMAY: Okay.

MR. COLLINS: – the workforce was – you didn't know much about either of these projects, but you chose the one that had very good productivity numbers and you excluded the one that had very bad productivity numbers. Is that right?

MR. LEMAY: Well, you're saying that, but I did not exclude that. If I did want – if I would have – if I would have the intent of not – of excluding it, I would have not shown it on the sheet.

MR. COLLINS: Did you ever send this sheet to Nalcor?

MR. LEMAY: I think so. I think so, but I'm just telling you that my final decision for Muskrat Fall production factor are more like Nipawin than any other that you see on your sheet. That's all I say.

MR. COLLINS: So the remaining five projects on your sheet, they're all Hydro-Québec projects. Now, we've heard evidence earlier from Larry Cavaliere, who's a construction worker with experience in Quebec, that Quebec labour practices are significantly different from Newfoundland and Labrador labour practices. And we've heard that there's a single province-wide collective agreement, that foremen are allowed to work and craft jurisdictions are significantly more flexible.

Does that match your understanding?

MR. LEMAY: I don't recall that. I don't know who is that gentleman and who is taking that information. I have no recollection of that in particular.

MR. COLLINS: You don't know –

MR. LEMAY: I'm not saying it's not true, I'm just not aware about that.

MR. COLLINS: You're not aware of Quebec's collective agreement rules?

MR. LEMAY: Well, I – no, I remember little bit, you know, of what rules are, the working foremen, non-working foremen, but to be comparing with one or other comment, I don't know.

MR. COLLINS: Is it also true that Quebec has a large workforce with a lot of hydro dam experience?

MR. LEMAY: What?

MR. COLLINS: Isn't it also true that Quebec has a – the Quebec workforce is extremely experienced at building hydro projects?

MR. LEMAY: Oh yes, they've been doing that since 1970 with the first phase of James Bay and the second phase. So they're not perfect, but they're pretty good.

MR. COLLINS: There are a lot of people who know what they're doing building a hydro dam; and there's a lot of supervisors too –

MR. LEMAY: I –

MR. COLLINS: – a lot of skilled supervisors. Now, were you aware that Nalcor's benefits strategy created hiring priorities so that Labrador Innu would have the first right to work, followed by Labrador residents, followed by Newfoundland residents?

MR. LEMAY: I'm not – I didn't know that.

MR. COLLINS: You didn't know that.

MR. LEMAY: No.

MR. COLLINS: So is that a factor that you might've included – considered when choosing your productivities, had you known it?

MR. LEMAY: Excuse me, Sir, could you repeat that?

MR. COLLINS: Is that a factor that might have affected the productivities you chose, had you known it?

MR. LEMAY: Well, of course, you know, it would, but was it exactly, you know, it's – what happened exactly? Like, I told you, I was not on the site so I don't know. I cannot answer, you know, a comparison between those two since I was not on Muskrat Fall execution.

MR. COLLINS: You did know something about Newfoundland and Labrador construction projects though because you'd worked at Hibernia, hadn't you?

MR. LEMAY: I worked in Hibernia, yeah, in 1990, but for a small period of time. And that was mainly in the technical and estimating the various requests from the subcontractor, you know, if it was payable or not. I was not working, you know, to follow the site performance and stuff like that, you know. And it was – I mean Hibernia is a quite different project than what we are doing in Muskrat Falls.

MR. COLLINS: So what about – you were working with Nalcor which would've had a lot – access to a lot of information about Newfoundland construction productivity and a lot of local benchmark data. Did you make any inquiries about the local data and history?

Did you ask for anything?

MR. LEMAY: I'm not saying I didn't ask nothing. I mean question was raised, it was asked as needed, you know. Was there a specific question or a specific area that I have chase the information? I don't want to mislead you, you know, and I didn't make that estimate with my head down in the floor, you know. We tried to do it the best we could with the information we could gather here and there.

MR. COLLINS: What about the Lower Mattagami Project in Ontario, didn't you work there?

MR. LEMAY: Yeah, for six months, yeah.

MR. COLLINS: And that was a unionized environment with similar rules to the rules of Muskrat Falls. Do you have any recollection of what the data was like there? What the productivity was like?

MR. LEMAY: No, because I didn't get – when I leave the project, you know, it was not finished.

MR. COLLINS: Isn't that the truth with Eastmain too? But you still used the Eastmain experience.

MR. LEMAY: Well, the Eastmain I'd been there for five years, you know, and Lower – Smoky Falls in Lower Mattagami, I was there for six month only.

MR. COLLINS: Didn't SNC-Lavalin have a lot of internal experience with Newfoundland and Labrador construction? Didn't they build Voisey's Bay? Couldn't you have got data from that?

MR. LEMAY: I'm not familiar with everything that SNC-Lavalin has been involved over the past 20 or 25 years. There is some and, you know, I did not chase –

MR. COLLINS: So –

UNIDENTIFIED MALE SPEAKER: The sound's gone.

MR. COLLINS: – let's – the sounds gone? Mr. Lemay?

Mr. Lemay, were you speaking? I didn't hear you.

THE COMMISSIONER: Hmm.

Someone in the back room, maybe we could get Mr. Lemay back on the screen?

MR. COLLINS: Mr. Lemay?

I can't hear you, Mr. Lemay.

THE COMMISSIONER: Yes, so we have problem with the sound so maybe we can try to get that fixed.

UNIDENTIFIED MALE SPEAKER: Technical issue on the other side.

THE COMMISSIONER: Pardon me?

UNIDENTIFIED MALE SPEAKER: Technical issue in Montreal.

THE COMMISSIONER: Technical issue in Montreal. Lovely.

Okay, let's take a couple of minutes, see if we can fix the technical issue in Montreal.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. I understand we have Mr. Lemay back.

MR. LEMAY: Yes. How are you?

THE COMMISSIONER: Good, Sir. We're just waiting for you to appear on the screen. Very good.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. LEMAY: Do you hear me?

THE COMMISSIONER: Yes. We can hear you fine. Thank you, Sir.

Your mic.

MR. COLLINS: Thank you, Mr. Lemay. Welcome back.

So – indirects. Your final estimate for the powerhouse and intake is that there are 1,290,934 direct concrete hours. Is that right? Go to page – Exhibit 02645, page 4.

MR. LEMAY: Which tab?

MR. COLLINS: That's at tab 14.

MR. LEMAY: Okay. Page 4? You said page 4?

MR. COLLINS: Yeah. Page 4.

MR. LEMAY: Okay, I have it.

MR. COLLINS: And so you have 1,290,934 direct hours and you have indirects – if we go down, it's one of – it's the second very small line at the bottom. You could – could you zoom in, Madam Clerk? Just above the – above the 6.84 we see 754,288.

MR. LEMAY: Yes.

MR. COLLINS: So that's 754, 288 direct hours. And so you –

MR. LEMAY: Yeah.

MR. COLLINS: – told us earlier that you benchmarked that the indirects – the number of indirect hours, the number of supervision hours needed per unit of – for direct hours – but that ratio is benchmarked against similar projects. Is that right?

MR. LEMAY: Yeah. Probably, yeah.

MR. COLLINS: And so if you had a higher ratio, if you needed more supervisors per unit of – per labourer, then you'd have more indirect hours and more costs. That right?

MR. LEMAY: Yeah.

MR. COLLINS: And so when I divide –

MR. LEMAY: What is your question?

MR. COLLINS: So when I divide your 754,288 indirect hours by your direct concrete hours, I get a ratio of 0.58 indirect hours per direct hour. How did you come up with that ratio?

MR. LEMAY: Yeah. But you're not getting the complete picture. You have to add the spillway. You have to add the big gravity dam, that are not shown there. You're missing hours, you're missing indirect hours or (inaudible).

MR. COLLINS: Are you suggesting – if we go to tab 13, which is – pages 14 and 15, this is the document you submitted.

THE COMMISSIONER: 02644.

MR. COLLINS: Exhibit 02644. Thank you.

If we look at page 14 –

MR. LEMAY: It's not the right exhibit – yeah.

MR. COLLINS: If we look at page 14 and scroll down, we'll see 754,288 indirects for the powerhouse and intake alone.

THE COMMISSIONER: Just a second now.

MR. LEMAY: Mm-hmm.

THE COMMISSIONER: Let's all try to get there at the same time.

MR. COLLINS: Sorry. I've skipped ahead here.

THE COMMISSIONER: So we're on page –

MR. COLLINS: We're on page 14.

THE COMMISSIONER: Okay.

MR. COLLINS: And if we scroll down on the left, we'll see the seven – the same 745 – 754,000 direct hours – indirect hours.

THE COMMISSIONER: Right.

MR. LEMAY: Yeah.

MR. COLLINS: And then if we go to the next page, we have separate indirect hours for the spillway –

MR. LEMAY: Yeah.

MR. COLLINS: – 124,950 additional indirect hours for the spillway. And what –

MR. LEMAY: Okay.

MR. COLLINS: – I take from that, and you can confirm this or not, is that the 754,000 indirect hours are for the powerhouse and intake alone?

MR. LEMAY: Yeah.

MR. COLLINS: So I don't actually need to look – this is actually a complete – this is a fair ratio, direct hours to indirect hours for the powerhouse and intake alone.

MR. LEMAY: Yeah.

MR. COLLINS: So if I divide them, I get 0.58, right? 0.58 indirect hours for every direct hour?

MR. LEMAY: Well, that's what it says, yeah.

MR. COLLINS: Now when I compare that to the ratios of the other projects, it's much lower. If I look at La Grande-4, I get 0.91. If I look at Nipawin, which was the project you benchmarked against most, there is 0.92 indirect hours for every direct hour.

MR. LEMAY: Yeah. It's –

MR. COLLINS: If I go –

MR. LEMAY: – it – yeah. Yeah.

MR. COLLINS: – if I go to –

MR. LEMAY: That's what we see.

MR. COLLINS: – La Grande-1, it's 0.98. And the only project with a lower ratio than you used is Laforge-1, but Laforge-1 has the highest overall cost and by far the most direct hours.

MR. LEMAY: Yeah.

MR. COLLINS: If we – I know you didn't use the Keenleyside project but if we go to page 3 of this – of, sorry, if we go to tab 14 and page 3 of that exhibit, we'll see at Keenleyside the ratio is 1.44.

MR. LEMAY: Yeah.

MR. COLLINS: So all of – you estimated that the Muskrat Falls powerhouse and intake would need fewer hours of supervision for every unit of labour than five of the six projects you benchmarked against. In any case, it's significantly less.

MR. LEMAY: Not necessarily. Like I told you, there is other concrete structure that are done by the same contractor that has indirect hours that you have to take into consideration for the whole exercise –

MR. COLLINS: When we –

MR. LEMAY: – you know.

MR. COLLINS: – when we went to the spillway, there was a separate accounting of indirect hours for the spillway.

MR. LEMAY: Yeah.

MR. COLLINS: So –

MR. LEMAY: But –

MR. COLLINS: – are you now saying that the spillway – isn't this data for the powerhouse and spillway alone?

MR. LEMAY: Yes, strictly alone.

So you don't have the whole picture for the indirect crew that was involved on this project, you know, to be able – really to be able to compare – to make a good comparison, we need to compare all the structure because there was not only staff for one type of structure and other staff one type of structure.

You have the whole supervision staff to take care of the whole project, that includes all the other work that to be done, you know. So, really, to establish a ratio comparable that makes sense, we will have to take into consideration all these other structure as well, you know.

MR. COLLINS: When you did your December 15 estimate, wasn't – didn't you estimate it by structure and not by concrete – contract package?

MR. LEMAY: Yeah, by structure. Yeah.

MR. COLLINS: So you hadn't actually – you didn't know yet how the structures were going to be combined into packages.

MR. LEMAY: No, that was not set up yet.

MR. COLLINS: If we turn to the Grant Thornton phase 2 report, which, again – which is P-01677, tab 12.

MR. LEMAY: Tab 12.

MR. COLLINS: At page 33, again, we'll see you have – you were asked about the differences between your estimate and Astaldi's. And you say: *"The main reason is because Astaldi has a higher ratio between Staff person and Site Workers than we use to see … in Canada, for similar type of contract."*

Is that right, Mr. Lemay?

MR. LEMAY: Yeah.

MR. COLLINS: But if you had gone by the ratio in the other Canadian projects you benchmarked against, you would have been much closer to the Astaldi estimate than your actual estimate was.

MR. LEMAY: Yeah. But I did not, you know – that is one way of looking at the various figure, but when it come to the indirect hours, you know, I'm not checking everywhere with every project – does they have enough – same ratio hour, because what is happening on final performance factor – for each project, there is different situation; at each places, different condition. And that generates or needs more or less, you know, supervision.

It's – so it – we have to take care about these comparison, you know, and like I told you at the very beginning, we're using that sheet only as a guide. You have to remember I've been in the business for the past 40 years, I've seen a lot of these projects. So I think I have a pretty good idea of what it should cost and how long it should take to do the job, so – and that's what I did. We start to dig here and there, we're gonna find all kind of differences and we're gonna speak for years about it.

MR. COLLINS: Commissioner, I don't have much more but it's past 4:30. I wonder if it's a – ?

THE COMMISSIONER: All right.

Mr. Lemay, we started you this afternoon in order to – so that we can ensure we finish tomorrow. So we're going to start tomorrow morning again at 9:30 Newfoundland time.

Are you available at 8 o'clock tomorrow morning your time, to continue?

MR. LEMAY: Sure.

THE COMMISSIONER: Okay.

So we'll continue on tomorrow morning at 9:30 Newfoundland, 8 o'clock Quebec time and we should be able to finish you up sometime tomorrow.

MR. LEMAY: Okay.

THE COMMISSIONER: Thank you very much.

MR. LEMAY: Thank you very much.

THE COMMISSIONER: Okay.

We're adjourned now –

MR. LEMAY: And thank you, Sir.

MR. COLLINS: Thank you.

THE COMMISSIONER: Okay, we're adjourned 'til tomorrow morning at 9:30.